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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 756 and 760

Commodity Credit Corporation

7 CFR Parts 1410, 1421, 1425, 1427, 1430, 1434, and 1435

[Docket ID FSA–2021–0003]

RIN 0560–AI59

Supplemental Dairy Margin Coverage Payment; Conservation Reserve Program; Dairy Indemnity Payment Program; Marketing Assistance Loans, Loan Deficiency Payments, and Sugar Loans; and Oriental Fruit Fly Program

AGENCY: Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule amends the regulations for Dairy Margin Coverage (DMC) to allow supplemental DMC payments to participating eligible dairy operations. DMC provides dairy producers with risk management coverage that pays producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain level. Eligible dairy operations with less than 5 million pounds of established production history may enroll supplemental pounds based upon a formula using 2019 actual milk marketings. Supplemental DMC coverage is applicable to calendar years 2021, 2022, and 2023. Participating dairy operations with supplemental production may receive supplemental payments in addition to payments based on their established production history. In addition, the rule amends the alfalfa hay calculation used in determining the average feed cost and actual dairy production margin. To end prolonged months of milk indemnity payments, the rule amends the regulations for Dairy Indemnity Payment Program (DIPP) to indemnify affected farmers for depopulating and permanently removing cows after discovery of chemical residues affecting the commercial marketing of milk for the applicable farm and likely affecting the marketability of cows for a lengthy duration. The rule also implements a new Oriental Fruit Fly (OFF) Program as authorized in the Consolidated Appropriations Act, 2019. In addition, the rule updates the existing Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) loan rates to be consistent with the Agriculture Improvement Act of 2018 (the 2018 Farm Bill); the loan rates were already changed administratively because the loan rate changes were self-enacting. This rule also amends the Conservation Reserve Program (CRP) regulations to remove two discretionary requirements.

DATES:

Effective: December 13, 2021.

Comment due date: For the OFF Program only, we will consider comments on the Paperwork Reduction Act that we receive by: February 11, 2022.

ADDRESSES: For the OFF Program only, we invite you to submit comments on the information collection request. You may submit comments by going through the Federal eRulemaking Portal as follows:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and search for Docket ID FSA–2021–0003. Follow the online instructions for submitting comments.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. All comments received, including those received by mail, will be posted without change and publicly available on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For the Supplemental DMC Payment Program and DIPP, contact Douglas Kilgore; telephone: (202) 720–9011; email: *douglas.e.kilgore@usda.gov.* For the MAL and LDP Programs, contact Shayla Watson; telephone: (202) 690–2350; email: *Shayla.watson@usda.gov.* For the OFF Program, contact Kimberly A. Kempel; telephone: (202) 720–0974; or email: *Kimberly.kempel@usda.gov.* For CRP, contact Jody Kenworthy; telephone: (202) 690–5230; email: *jody.kenworthy@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Supplemental DMC Payments

This rule is amending the DMC regulations in 7 CFR part 1430 to establish supplemental payments to participating dairy operations. Subtitle D, section 1401, of Title I of the 2018 Farm Bill (Pub. L. 115–334) (changes codified in 7 U.S.C. 9055–9057) authorizes DMC to provide a risk management program for dairy operations that pays producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain dollar amount selected by the producer. Producers are eligible for catastrophic level margin protection (based on a $4 margin and 95 percent production history coverage) for their dairy operations by paying an annual administrative fee, and are also able to purchase greater coverage (up to $9.50 margin on 5 to 95 percent of production history) for an annual premium.

Section 761 of Subtitle B of Title VII of Division N of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) authorizes eligible participants in DMC, who have an approved DMC contract, the opportunity to create a supplemental production history and receive supplemental payments whenever the average actual dairy production margin for a month is less than the coverage level threshold as selected by the dairy operation. Dairy operations eligible for supplemental coverage must have an approved DMC contract for the applicable calendar year and have an existing DMC production history of less than 5 million pounds.

A significant number of current DMC participants established a production history using marketings from 2011, 2012, and 2013. Since that time, many dairy operations have increased their milk production above their established production history by expanding the dairy herd or increasing milk production per cow.

Eligible DMC operations that have an increase in 2019 milk marketings from their established production history have the opportunity to receive

payments on supplemental pounds of milk marketings. The supplemental production history is determined by multiplying 75 percent of the result of subtracting the dairy operation's established production history from their actual milk marketings for the 2019 calendar year; calculated as follows:

(2019 milk marketings − production history) × 75%

A participating dairy operation with approved supplemental pounds will have the same coverage percentage and level as on the DMC contract for the applicable calendar year. DMC indemnity payments will be issued according to the corresponding coverage levels for both established production history and supplemental pounds.

The sum of the pounds covered by supplemental DMC and the established production history cannot exceed 5 million pounds. The total covered production history is determined by the coverage percentage multiplied by the sum of supplemental production history and the existing DMC production history.

Supplemental production premium fees are determined using the Tier 1 premium rate and the supplemental production history to ensure that the total covered production history does not exceed 5 million pounds. Tier 1 premium rates are specified in 7 CFR 1430.407. Dairy operations enrolled in multi-year lock-in contracts are not eligible for the premium discount on supplemental pounds. Multi-year lock-in contracts will pay the standard premium rate by coverage level on supplemental production history. When a dairy operation with a multi-year lock-in contract enrolls supplemental production history, the supplemental history is enrolled up to and including the 2023 coverage year.

FSA will announce by press release and external communications a 45-day or more special enrollment or coverage election period for participating dairy operations to establish supplemental production history. When supplemental production history is established, dairy operations are required to cover the pounds of established production history and supplemental production history. Dairy operations not enrolled for 2021 DMC cannot enroll during the supplemental special enrollment. Eligible dairy operations for supplemental production history once enrolled and approved may receive applicable indemnity starting in January of 2021 through December 2023. For dairy operations where a succession-in-interest occurred or occurs on or after January 2, 2021, through the special enrollment opening, the predecessor must establish supplemental history for the successor to be eligible for 2021 supplemental DMC coverage because the predecessor originally established the production history. The successor will only be eligible for the days in 2021 in which they succeeded to the dairy operation. The successor will not be eligible for 2021 supplemental coverage if the predecessor does not establish supplemental production history. Otherwise, supplemental production history established by a successor during the same period will not be effective until the 2022 coverage year.

To accurately reflect dairy operation feed costs, the rule will amend the calculation of average feed cost and actual dairy production margins by determining the price for alfalfa by using the price for high quality hay. The previous rule used an average of high quality (premium and supreme) alfalfa hay and average quality hay to calculate the hay price according to 7 CFR 1430.411(c)(3). USDA is making this change retroactive to the beginning of the 2020 program year, as a discretionary change.

Dairy Indemnity Payment Program

As codified in 7 U.S.C. 4551, the Secretary of Agriculture is authorized to indemnify affected farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products containing harmful pesticide residues, chemicals, or toxic substances, or that were contaminated by nuclear radiation or fallout. DIPP was originally authorized by section 3 of Public Law 90–484, and was amended by section 1402(b) of the 2018 Farm Bill, extending the authority for DIPP until September 30, 2023.

This rule amends the regulations in 7 CFR part 760 to indemnify affected farmers for depopulating and permanently removing cows in certain situations as explained in this section. This rule is also amending the amount of time a dairy is eligible to receive indemnification for milk under DIPP. Both changes are discretionary.

For certain affected farmers, elevated levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) chemical residues in their dairy cows has led to extended participation in DIPP, resulting in the need to consider an appropriate change under DIPP to better address these circumstances. Because efforts to investigate and address PFAS by the Federal government are ongoing and additional studies are needed to understand how to significantly reduce accumulated PFAS levels in dairy cows, affected cows may be determined likely to be not marketable for a lengthy duration. Currently the science related to PFAS is evolving. FSA carefully considered the circumstances and determined that in cases where dairy cows are likely to be not marketable for a lengthy duration, as determined by the Deputy Administrator for Farm Programs (DAFP), the affected cows would be eligible for depopulation. The potential increase in these situations requires this change in DIPP policy for contaminated milk and other similar events resulting in milk and cows that are likely to be not marketable for longer durations. Therefore, the amended rule:

- Limits indemnification of milk due to chemical residues to 3 months to monitor chemical levels, unless an extension is approved, removing the cows from milk production during that time; and
- provides indemnification of the cows through DIPP where the cows are likely to be not marketable for 3 months or longer [from the date the affected farmer submits an application for cow indemnification per 7 CFR 760.13].

Changing the DIPP regulations to allow for the indemnification of affected cows from the same loss [1] will eliminate the potential for continued and prolonged months of milk indemnification and in most cases reduce the overall expense to the government and producer. The DIPP statute authorized the Secretary to make indemnity payments for cows or milk but USDA has not previously implemented regulations for the indemnification of cows. The term of DIPP milk eligibility is changing in this rule to limit indemnification for contaminated milk due to the same loss to 3 months, unless an extension is approved. An extension may be granted if, upon request from an affected farmer and at the discretion of DAFP, DAFP approves additional months of milk indemnity payments to allow additional time for planning for removal (depopulation and disposal), and public agency approval of such plan, required for cow indemnification or in circumstances where chemical residues are anticipated to be reduced to marketable levels according to a plan

[1] As defined in § 760.2, ''same loss'' means the event or trigger that caused the milk to be removed from the commercial market. For example, if milk is contaminated, the original cause of the contamination was the trigger and any loss related to that contamination would be considered the same loss. An example of a cause of contamination would be contaminated water from a specific well or feed grown on certain fields.

submitted by the affected farmer. Prior to this rule, an affected farmer was limited to receiving 18 months of payments under DIPP due to the same loss.

As a result of the changes being made by this rule, any affected farmer may apply for cow indemnification, with eligibility then determined by DAFP. The application must be filed with the FSA county office for the county where the farm headquarters is located by December 31 following the fiscal year end in which the affected farmer's milk was removed from the commercial market, except that affected farmers that have received at least 3 months of milk indemnity payments prior to December 13, 2021, must file the form within 120 days after December 13, 2021. Upon written request from an affected farmer and at DAFP's discretion, the deadline for that affected farmer may be extended. For affected cows that produce contaminated milk, DAFP will determine eligibility for cow indemnity based on whether those cows are likely to be not marketable for 3 months or longer [from the date the affected farmer submits an application for cow indemnification per 7 CFR 760.13]. To make this determination, DAFP will take into consideration the levels of chemical residues in the contaminated milk by reviewing milk testing results, the commercial market's assessment of the current marketability of the affected cows, the type and source of chemical residues in the milk and animal tissues, and the projected duration for chemical residues to be reduced to marketable levels. Additionally, DAFP will review the actions the affected farmer has taken to reduce the chemical residues since the contaminated milk was discovered. After the affected farmer submits a complete application for DIPP cow indemnification on a form approved by DAFP, including the required documentation specified in 7 CFR 760.12, DAFP will determine eligibility for cow indemnification for those affected cows according to 7 CFR 760.10. Once an affected farmer is approved for cow indemnity payments, that affected farmer will no longer be eligible for additional milk indemnity payments in the future for the same loss.

Bred (young dairy female in gestation) and open (young dairy female not in gestation) heifers that are not marketable due to elevated levels of chemical residues as the result of the same loss are eligible for cow indemnification through DIPP if determined by DAFP to likely be not marketable for 3 months or longer under 7 CFR 760.11 after review of a recommendation on eligibility from the appropriate FSA county committee. The affected farmer may include heifers in the cow indemnity request if the heifers' intended purpose is milk production and that future milk production is likely to be not marketable due to the same loss. DIPP indemnity payments for affected bred and open heifers due to same loss will be calculated as provided in 7 CFR 760.11. Information required to apply for cow indemnity for heifers is specified in 7 CFR 760.12.

In order for the affected farmer to receive approval for cow indemnification, the application must provide a removal plan for depopulating, disposing of, and permanently removing the affected cows and heifers from any future commercial milk production. That removal plan must be approved by the applicable public agency where the affected cows are located and in accordance with the public agency's depopulation and animal disposal requirements at the time of disposal, including any applicable Environmental Protection Agency (EPA), State, and local guidelines and requirements. The removal plan must provide FSA, to the satisfaction of the FSA county committee, a timeline of all aspects of cow removal, how and where cows will be depopulated, including how the cows and chemical residues, if applicable, will be disposed of, and documentation of the approval of the removal plan from the applicable public agency.

DAFP, upon request from an affected farmer on the application for cow indemnity and at DAFP's discretion, may approve indemnification of affected cows that were not marketable and were depopulated or died above normal mortality rates [2] for the farm between approval of the affected farmer's application for the first month of milk indemnity and approval of the removal plan for cow indemnification. An affected farmer making such a request must submit an accounting of affected cows depopulated or died above normal mortality rates for cows between approval of the affected farmer's application for the first month of milk indemnity but before the public agency approved the removal plan. This request for cow indemnification may include both cows that were included in applications for milk indemnity and heifers that were affected from the same loss.

Indemnification for affected cows through the Livestock Indemnity Program (LIP) is not an option for affected farmers because chemical residues are not an eligible cause of loss under LIP.

The application for cow indemnification should include all affected cows, including heifers, as well as any deceased or previously depopulated cows, for which the affected farmer seeks indemnification. To apply, the affected farmer will need to provide the information specified in 7 CFR 760.12: An application form approved by FSA, a removal plan, an inventory of adult cows or bred or open heifers at applicable weight ranges, and depopulation and disposal authorization from an applicable public agency. A written statement is required from 2 commercial markets that declined the acceptance of the affected cows through a cull cow market, slaughter facility, or processing facility due to the levels of chemical residues in the affected cows. Additionally, documentation of any projected timelines to reduce the chemical residues, actions the affected farmer has taken to reduce the chemical residues to marketable levels, including any professional assistance obtained for chemical residue remediation, including, but not limited to advice, consultation, and discussion of strategies with the public agencies. For heifers, the affected farmer will also need to provide: Veterinarian records, blood test results, or other testing information for DAFP to make its eligibility determination. In addition to any other information sought in § 760.12, if an affected farmer has not applied for milk indemnification through DIPP before applying for cow indemnification, the affected farmer will also need to provide documentation according to 7 CFR 760.6(a), (b), (h), and (i).

Affected farmers have the choice to receive 50 percent of cow indemnification after application approval and the remaining 50 percent after the cows are depopulated and removed or 100 percent after the cows are depopulated and removed. FSA will provide indemnification of cows to compensate for the value of the affected cows for eligible affected farmers according to the calculations set forth in 7 CFR 760.10 and 760.11, but will not provide cost share assistance of cow depopulation and removal expenses. The Natural Resources Conservation Service can assist affected farmers in

[2] DIPP will use the normal mortality rates for cows established by the FSA State Committees for the Livestock Indemnity Program (LIP). The FSA State Committee annually determines normal mortality rates in their state for the following weight ranges:

- Dairy, nonadult less than 400 pounds;
- Dairy, nonadult 400 pounds or more; and
- Dairy, adult cow.

developing a removal plan and may provide cost share assistance to help with proper disposal and permanent removal through the Environmental Quality Incentives Program.

Once approved for cow indemnification, the affected farmers will dry the affected lactating dairy cows to stop further milk production. Affected farmers approved for indemnification of cows that subsequently restock the original farm with new dairy cows and commercially market milk at the original location of contamination, are not eligible for DIPP indemnification for any future contamination from the same loss.

FSA is also amending 7 CFR 760.6(i) to include the requirement that all milk indemnification applicants provide monthly milk testing results detailing the chemical residue levels in the milk to align with current procedure. In addition, FSA is amending 7 CFR 760.2 to add definitions for ''contaminated milk,'' ''depopulation,'' ''not marketable,'' and ''violating substance'' in 7 CFR 760.2 and FSA is amending § 760.7 to apply to both milk and cow indemnification.

Marketing Assistance Loans and Loan Deficiency Payment Programs

FSA administers the MAL and LDP Programs for CCC. The 2018 Farm Bill extends the existing MAL and LDP programs for the 2019 through 2023 crop years with minor changes implemented by this rule. Sections 1201 through 1205 and 1301 of the 2018 Farm Bill authorize the continuation of the MAL and LDP programs, the Economic Adjustment Assistance for Textile Mills, the Extra Long Staple (ELS) Cotton Competitiveness Payment Program, and the Sugar Program. The changes required by the 2018 Farm Bill include: Revising the loan rates for wheat, feed grains, soybeans, and pulse crops; providing the ability to pledge contaminated commodities for recourse loans at 100 percent of the loan rate if merchantable; removing payment limitation and other payment eligibility criteria for MAL and LDP for all commodities; providing a new formula for upland cotton base loan rates; revising the name of the Economic Adjustment Assistance for Users of Upland Cotton Program to Economic Adjustment Assistance for Textile Mills, and adjusting the trigger point for payment under the ELS Cotton Competitiveness Payment Program. The 2018 Farm Bill also established the loan rates for raw cane sugar and refined beet sugar. This rule also makes discretionary changes to include provisions for Commodity Certificate Exchanges, to clarify the regulations and to remove expired provisions.

This rule updates 7 CFR parts 1421, 1425, 1427, 1434, and 1435 to implement the mandatory changes required by the 2018 Farm Bill and the discretionary clarifying changes and technical corrections. All applicable handbooks and forms are also being updated with conforming changes.

The 2018 Farm Bill changes in this rule have already been implemented administratively for the 2019 and subsequent crop year.

Existing MAL and LDP Programs

Producers of eligible commodities can apply for MALs or LDPs, subject to terms and conditions as specified in applicable regulations. MALs are 9-month loans with the commodity pledged as collateral for the loan. A producer who is eligible for MAL may choose to receive LDP in lieu of receiving a MAL. LDPs allow the producer to receive a payment when the alternative repayment rate for that commodity is below the loan rate, instead of pledging the commodity as collateral for MAL. The general structure of the MAL and LDP Programs are not changing with this rule. The 2018 Farm Bill changes eligibility requirements for producers, as well as the loan rates for many commodities.

MALs and LDPs are available beginning with harvest or shearing season for each commodity and extend through the marketing year for that particular commodity. Nearly all MALs are nonrecourse loans, meaning that the commodity is collateral for MALs and may be delivered at maturity as full payment for an outstanding MAL. Recourse loans are available for a few commodities for which long term storage is not readily available, meaning that the collateral cannot be delivered as full payment for MALs. With the 2018 Farm Bill, recourse loans will now be available for contaminated commodities that are merchantable. MALs and LDPs must be requested on or before the final loan availability date for the applicable commodity. Producers may repay the MAL at a rate that is the lesser of the loan rate plus interest or an alternative repayment rate as determined and announced by the USDA. The repayment rate is based on average market prices for the preceding 30 days, or an alternative rate set by a similar method established by the Secretary. If the market price as reflected in the repayment rate falls below a loan rate specified in the 2018 Farm Bill for that commodity, producers can redeem a MAL at the posted repayment rate, deliver the MAL commodity to CCC, or use Commodity Certificates to exchange the commodity.

As an alternative to receiving a MAL, a producer can forgo a MAL, and instead, may obtain an LDP on their crop, if an LDP is currently available for the applicable commodity and the producer is eligible for the MAL. LDPs allow the producer to receive a payment when the repayment rate for a commodity is below the loan rate for that commodity.

Upland Cotton National Loan Rate Calculation and ELS Loan Rate Change

Section 1202 of the 2018 Farm Bill specifies the national loan rates for the 2019 through 2023 crop years for the eligible loan commodities.

Section 1202(a)(3) of the 2018 Farm Bill amended 7 U.S.C. 9032 to add subsection (b)(6) and sets the base loan rate for upland cotton at no less than $0.45 per pound or more than $0.52 per pound based on the average of the adjusted prevailing world price for the two immediately preceding marketing years, as determined by the Secretary, and may not equal less than 98 percent of the loan rate for the preceding year. This change is designed to make the loan rate more reflective of prevailing market prices, and serves to limit the impact of decreased market prices on the loan rate while allowing any price changes to the established loan rate to be reflected in future base loan rates.

Payment Limitations and Adjusted Gross Income

Section 1703(a)(2) of the 2018 Farm Bill removed references to market loan gains and loan deficiency payments in 7 U.S.C. 1308, and as a result, payment limitations no longer apply to market loan gains and LDPs. Additionally, by removing market loan gains and loan deficiency payments, payment limitations, actively engaged in farming requirements, and the cash rent tenant provisions no longer apply to market loan gains and LDPs as well.

The average Adjusted Gross Income (AGI) limit for most FSA and CCC programs is $900,000 and remains unchanged. The $900,000 limit is for total average AGI, as opposed to the way AGI has operated previously, with multiple limits for farm and non-farm income, and the separate, different limit for conservation programs. Producers exceeding AGI can apply for and receive a MAL. Nonrecourse MALs must either be repaid at principal plus interest, exchanged with commodity certificates if the alternative repayment rate is below the established loan rate, or forfeited to the commodity to CCC in satisfaction of the loan debt. Producers

who exceed AGI may use a commodity certificate to repay MALs and receive a market loan gain. An alternative repayment rate does not apply to ELS cotton or sugar. All recourse loans must be repaid at principal plus interest and cannot be forfeited.

This rule makes conforming changes to payment limitation references throughout 7 CFR parts 1421, 1425, 1427, and 1434.

Summary of MAL and LDP Discretionary and Clarifying Changes

In addition to implementing the 2018 Farm Bill changes, FSA is making changes resulting from a retrospective review of the MAL and LDP regulations. Most of the changes are clarifying changes to make the regulations clear and consistent. Information regarding commodity certificate exchanges is now included in 7 CFR 1421.110 and 1427.22. That information is a technical correction as commodity certificates were reintroduced to the MAL program in Section 740 of Title VII of Division A of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113), which amended section 166 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7286). Beginning with 2015 crop year MALs, the Secretary has the authority to provide commodity certificates in the same terms and conditions as were in effect for the 2008 crop year for loans.

New and Revised MAL and LDP Definitions

This rule adds a definition for ''commodity certificate exchange'' in §§ 1421.3 and 1427.3. A commodity certificate exchange is the exchange of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. A commodity certificate may not be transferred or exchanged for the inventory of CCC.

This rule also revises the definition for ''market loan gain'' in 7 CFR part 1421 and adds a definition for ''market loan gain'' for upland cotton in 7 CFR part 1427 to be consistent across all rules involving marketing assistance loans. A market loan gain is the loan rate, minus the announced repayment rate on loans repaid at a rate that is less than the loan rate. A producer's AGI must be below the limit as specified in 7 CFR parts 1421 and 1427 in order to be eligible to receive a market loan gain.

The changes are being made to add clarity and consistency in the regulations.

Commodity Certificate Exchange

Use of commodity certificates was reintroduced and made effective with the 2015 crop year MALs as authorized under section 740 of the Title VII of Division A of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113), by amending section 166 of the Federal Agriculture Improvement and Report Act of 1996 (7 U.S.C. 7286) using the same terms and conditions in effect for the 2008 crop year. This rule revises the regulations to clarify the availability of commodity certificates at loan redemption.

Cotton

The 2018 Farm Bill reauthorizes and extends existing cotton MAL and LDP provisions, which are in 7 CFR part 1427. It also extends the authorizations for the Economic Adjustment Assistance for Users of Upland Cotton Program and ELS Cotton Competitiveness Payment Program.

This rule amends 7 CFR part 1427 to remove outdated references, and to clarify definitions consistent with the changes being made to 7 CFR part 1421.

As specified in section 1203(b) of the 2018 Farm Bill, the Economic Adjustment Assistance to Users of Upland Cotton will be referred to as Economic Adjustment Assistance for Textile Mills.

As specified in section 1204(b) of the 2018 Farm Bill, the regulations for the ELS Cotton Competitiveness Payment Program are amended to reflect the statutory change of the payment trigger from 134 percent to 113 percent.

Honey

Section 1703(a)(2) of the 2018 Farm Bill reauthorizes and extends existing honey MAL and LDP provisions with some modified numbers and removed the words ''payment limitations'' in 7 CFR 1434.1.

Miscellaneous Changes

This rule makes a discretionary change in 7 CFR 1421.9 to allow DAFP additional flexibility to adjust premiums and discounts and whether they are accounted for at the time of disbursement.

Throughout 7 CFR part 1421 nonsubstantive housekeeping changes are being made to the regulations to fix typographical errors and add to the clarity, readability, and consistency in the regulations. These changes do not represent substantive policy or administrative changes. These changes are in 7 CFR 1421.5, 1421.104, 1421.112, and 1421.417.

Oriental Fruit Fly

This final rule establishes provisions in 7 CFR part 756, for providing assistance as authorized by section 778 of Subtitle B of Title VII of Division N of the Consolidated Appropriations Act, 2019 (Pub. L. 116–6), which appropriated $9 million to FSA for the purpose of making payments to producers affected by an Oriental fruit fly (*Bactrocera dorsalis*) quarantine as referenced in House Report 115–232. Funds will remain available until expended. The quarantine, which lasted from August 28, 2015 through February 13, 2016, was necessary and successful in eradicating the Oriental fruit fly. Because the Non-Insured Crop Assistance Program (NAP) does not apply in instances of a state or federally declared quarantine and RMA does not offer a quarantine endorsement in Florida, the affected producers need relief. The Oriental Fruit Fly (OFF) Program will provide payments to producers affected by the quarantine. This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment procedures for the OFF Program.

Oriental fruit flies were first detected in Miami-Dade County, Florida, on August 26, 2015. The Oriental fruit fly is considered one of the most destructive of the world's fruit fly pests and attacks more than 430 different fruits, vegetables, and nuts. Population growth can be massive since females can produce hundreds of eggs infesting fruit and rendering it unsuitable for human consumption. The female deposits eggs under the skin of host fruit and the larvae infests the fruit. The detection of multiple flies triggered the State of Florida and Animal Plant Health and Inspection Service (APHIS) to implement a quarantine in the Redland area of Miami-Dade County on August 28, 2015. The quarantine area was established and covered 98.65 square miles authorized in Florida Statute 581.031 and defined in 5B–66 Florida Administrative Code. As part of the effort to eradicate the Oriental fruit fly, producers in the quarantine area were required to sign a compliance agreement that outlines the procedures necessary for the harvesting, handling, and postharvest of crops in the quarantined area. On February 13, 2016, APHIS rescinded the quarantine after three lifecycles elapsed without any new Oriental fruit fly detections. Therefore, the quarantine was necessary and successful in eradicating the Oriental fruit fly. Due to the timing of the State of Florida and APHIS implemented quarantine, crops were

negatively affected during the 2015 and 2016 crop growing seasons and producers suffered revenue losses.

Crops were negatively affected in the following ways:

(1) Host crops within a 200-meter radius of an Oriental fruit fly find had to be stripped, double bagged, transported, and disposed of in a landfill.

(2) Host crops within ½ mile radius of an Oriental fruit fly find were only allowed to be harvested and sold if a post-harvest treatment plan was implemented. This option was expensive and unfeasible, as there were no post-harvest treatment facilities in Miami-Dade County, Florida.

(3) Host crops within the quarantine area, but outside the 200 meter and ½ mile radius were required to follow a 30-day pre-harvest treatment plan or post-harvest treatment plan to be harvested and sold. The pre-harvest treatment plan was expensive and sometimes impractical, as the treatment method involved a 30-day pre-harvest treatment of pesticide at 6 to 10-day intervals. Therefore, crops suffered revenue losses due to crop drop, spoilage, reduced post-harvest shelf life, and costly methods to complete pre- or post-harvest treatment.

(4) Producers within the quarantine area, may have been prevented from planting an annual crop in the 2015 or 2016 season as a response to the perceived risk of the Oriental fruit fly outbreak.

Producer Eligibility for the OFF Program

To be eligible for the OFF Program, the producer must have been actively producing and marketing crops from August 28, 2015, through February 13, 2016, and also be affected by the State of Florida and APHIS implemented quarantine. Producers will not be required to be in the business of producing and marketing agricultural products at the time of the OFF Program application.

OFF Program Application Process

Producers must submit OFF Program applications to their administrative FSA county office by the deadline that will be announced by an FSA press release and FSA notice, by DAFP. A complete OFF Program application consists of filing an FSA–438, Oriental Fruit Fly Program (OFF) Application. If not already on file with FSA, applicants must also submit AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification; CCC–902, Farm Operating Plan for Payment Eligibility; CCC–901 Member Information for Legal Entities, if applicable; CCC–941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; and CCC–942 Certification of Income from Farming, Ranching and Forestry Operations, if applicable. Actively engaged in farming requirements, cash rent tenant rules, and rules for foreign persons will not apply.

The producer's self-certified gross revenue for the applicable calendar years entered on the FSA–438 is subject to compliance spot-check and based on their verifiable or reliable documentation that substantiate the information provided by the producer on FSA–438. Gross revenue is income from crop sales received during the applicable calendar years for the crops that suffered a loss due to the Oriental fruit fly quarantine.

The following is an example of how an OFF Program payment will be calculated:

Calendar Year 2014 Gross Revenue = $200,000
Calendar Year 2015 Gross Revenue = $150,000
Calendar Year 2016 Gross Revenue = $160,000
$200,000 − $150,000 = $50,000 (2015 Gross Revenue Loss)
$200,000 − $160,000 = $40,000 (2016 Gross Revenue Loss)
$90,000 (Total 2015 & 2016 Gross Revenue Loss)
× 70% OFF Program Factor = $63,000 (OFF Program Payment)

The following is an example of how an OFF Program payment will be calculated if the producer did not have 2014 revenue. The producer's 2019 revenue will be used in place of the 2014 revenue:

Calendar Year 2019 Gross Revenue = $150,000
Calendar Year 2015 Gross Revenue = $110,000
Calendar Year 2016 Gross Revenue = $90,000
$150,000 − $110,000 = $40,000 (2015 Gross Revenue Loss)
$150,000 − $90,000 = $60,000 (2016 Gross Revenue Loss)
$100,000 (Total 2015 & 2016 Gross Revenue Loss)
× 70% OFF Factor = $70,000 (OFF Program Payment)

After the application period closes, payments will be prorated if the total calculated payments to all eligible producers would exceed funding.

It is possible a producer may not receive a payment if there is no gross revenue loss determined. Below is an example of a zero payment.

Calendar Year 2014 Gross Revenue = $200,000
Calendar Year 2015 Gross Revenue = $220,000
Calendar Year 2016 Gross Revenue = $210,000
$200,000 − $220,000 = $20,000 (2015 Gross Revenue Gain)
$200,000 − $210,000 = $10,000 (2016 Gross Revenue Gain)
$30,000 (Gross Revenue Gain)

There is no revenue loss for calendar years 2015 and 2016, therefore the OFF Program payment will be zero.

Conservation Reserve Program

Under CRP, CCC will enter into contracts with eligible producers to convert eligible land to an approved cover during the contract period in return for financial and technical assistance. A producer must obtain and adhere, for the contract period, to a conservation plan prepared in accordance with CCC guidelines and the other provisions in § 1410.22. The objectives of CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, including, but not limited to, tree planting. FSA administers CRP on behalf of CCC.

Two discretionary requirements that were added to the CRP regulation in 7 CFR part 1410 from an interim rule published on December 6, 2019, are being removed because they limit participation in CRP.

The requirement in § 1410.6(e)(4)(iii) is being removed because it has affected enrollment by reducing the rental payment rate for the acres within the footprint of the resource conservation measures otherwise required by Tribal, State, or other local laws, ordinances, or regulations. Once removed, contracts with reduced payment rates will be modified if CCC and the participant agree to modify the contract under § 1410.33(a)(3) if doing so, in CCC's determination, will facilitate the practical administration of CRP. The contract modification would apply to future contract payments and subsequent years.

The requirement in § 1410.90(c) has the potential of limiting interest and opportunity for potential Conservation Reserve Enhancement Program (CREP) partners, due to the level of the cash matching fund requirement for direct payments. Sixty-seven public comments were received in response to the CRP

interim rule. At this time, FSA is not responding to all comments, but only those regarding the two provisions being amended in this rule. The comments not addressed in this rule will be addressed at a later date.

Summary of Public Comments and FSA Responses for CRP (See 84 FR 66813, December 6, 2019)

FSA received comments on the two provisions in §§ 1410.6(e)(4)(iii) and 1410.90 from non-profit organizations, a coalition of grassroot organizations, and private individuals.

In line with public comments received requesting the removal of § 1410.6(e)(4), this rule is removing § 1410.6(e)(4)(iii)—the language requiring a 25 percent payment reduction. This discretionary reduction was intended, while allowing the land to be eligible, to reduce the payment for land required to be in compliance with resource conservation measures or practices by law, ordinance, or regulation. It would not work to strike the entire section, as that would make all land for which Tribal, State, or other local laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices, to be ineligible to enroll in CRP. Section 1410.6(e)(4)(i) and (ii) provide exceptions to land eligibility, making land requiring resource conserving or environmental protection measures or practices by Tribal, State, or other local laws, ordinances, or other regulations, eligible for enrollment.

This rule is removing part of § 1410.90, as it is likely impeding the opportunity for potential CREP partners to enter into agreements. By eliminating the requirement of at least half of the matching funds be provided in the form of direct payments to participants, potential CREP partners will be able to provide matching funds in other forms, allowing for a more inclusive group of potential partners to participate. Public comments were received in favor of this change, as it is recognized a cash match is difficult for many Tribes, non-profits, and local agencies. As a result of the change made by this rule, partners may provide matching funds in the form of cash, in-kind contributions, or technical assistance.

The following discussion summarizes the issues raised by commenters and FSA's responses to those comments.

Comment: Strike § 1410.6(e)(4) and ensure that CRP provides full support to farmers in complying with state water protection regulations.

Eliminate the 25 percent reduction to the annual rental payment for land for which Tribal, State, or other local laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices, and to provide full annual rental payments through CRP for otherwise eligible land.

Response: This rule is removing § 1410.6(e)(4)(iii), which previously required a 25 percent reduction to the annual rental payment that would have been paid if there were no such Tribal, State, or other law, ordinance, or regulation. The removal of the section will help increase interest in enrollment by not reducing the rental payment due to requirements regarding resource conservating practices and measures, and ensure participation in CREP. The entire section is not being struck because land for which Tribal, State, or other local laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices, and the owners or operators of such land have been notified in writing of such requirements, is still ineligible for enrollment unless it meets one of the exceptions in § 1410.6(e)(4)(i) or (ii).

Comment: Promote, don't discourage, state, local, and Tribal partnerships. CREP leverages state and other funding to focus CRP contracts where they will do the most good to solve state-level water, soil, and wildlife problems. Instead of adopting high requirements for providing a cash match that would be difficult for many Tribes, non-profits, and local agencies, USDA should actively promote CREP agreements with states and other entities to bring together new conservation funds to address these difficult issues.

Response: This rule is removing § 1410.90 due to it impeding the opportunity for potential CREP partners to participate in matching funds. By eliminating the requirement of at least half of the matching funds being provided as a direct payment to the participants, the CREP partners will be able to provide matching funds in other forms and will allow for a more inclusive group of potential CREP partners to participate.

Notice, Comment, Exemptions, and Effective Date

As specified in 7 U.S.C. 9091, the regulations to implement the DMC Program, DIPP, MAL, and LDP, are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553, and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

As specified in 16 U.S.C. 3846, the regulations to implement CRP are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment, as was done through the CRP interim rule published in the **Federal Register** on December 6, 2019 (84 FR 66813–66833)—this rule includes changes in response to certain comments to the interim rule, and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

In addition, 7 U.S.C. 9091(c)(3) and 16 U.S.C. 3846 direct the Secretary to use the authority provided in 5 U.S.C. 808, which provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule may take effect at such time as the agency determines.

For the OFF Program, the Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date of the provisions do not apply when the rule involves a matter relating to agency management or person to the public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)(2)). This rule involves programs for payments to certain agricultural commodity producers and therefore the exemption applies.

FSA is authorized to provide payments to the producers to comply with the recently enacted Consolidated Appropriations Act, 2021 in providing the Supplemental DMC Payments to dairy producers in the DMC Program. FSA and CCC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act of 1996, FSA and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the **Federal Register**.

Although the OFF Program regulations is exempt from the Administrative Procedure Act public comment requirements, as noted below in the Paperwork Reduction Act section, the 60-day public comment requirements of the Paperwork Reduction Act apply to the information collection request. Therefore, this rule has a 60-day comment period specifically to request input from the public on the information collection request.

In addition, because this rule is exempt from the requirements in 5 U.S.C. 553, it is also exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small

Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the agency being required to issue a proposed rule by section 553 or any other law, further, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on *regulations.gov*.

Cost Benefit Analysis Summary

The Supplemental DMC payments are authorized by the Consolidated Appropriations Act, 2021. The use of 100-percent ''premium and supreme'' [3] hay in the DMC calculation is an administrative change made by FSA. Changes to DIPP are initiated by FSA as a result of PFAS chemical residue cases. The OFF program is authorized by the Consolidated Appropriations Act, 2019. The CRP changes remove discretionary limitations in order to provide greater flexibility to CREP partners and increase payments modestly in situations where state law intersects with CRP. The MAL and LDP provisions are technical changes that implement provisions of the 2018 Farm Bill.

DMC provides eligible dairy producers with a risk management tool that pays producers when the difference between the price of milk and the cost of feed (that is, the margin) falls below a certain level. This determination is based on a formula using the milk price and feed costs (corn, soybean meal, and alfalfa hay). In June 2019 (84 FR 28171, June 18, 2019), the regulation was changed to specifying the alfalfa hay price used in the calculation. Prior to that time, the calculation used only the price of conventional alfalfa hay. The 2019 regulation implemented a factored price, which was based on 50 percent of the premium alfalfa hay price and 50 percent of the conventional alfalfa hay price. Given USDA analysis indicating that the DMC feed cost formula does not adequately capture the costs experienced by dairy producers, 100-percent premium alfalfa hay will be used in the calculation. This change in the DMC margin formula will be retroactive and will start in January 2020. The accrued Fiscal Year (FY) 2021 costs associated with this change, including the retroactive January 2020 through September 2020 payment period, are estimated at $108.47 million (Table 1). A 3-fiscal year (FY 2021 through FY 2023) cost estimate, including the estimate for the first quarter of FY 2024 in the FY 2023 data, is $335.43 million. The 10-year (FY 2021 through FY 2030) cost estimate is $705.32 million.

The Consolidated Appropriations Act, 2021, allows eligible dairy operations with less than 5 million pounds of established milk production history to enroll supplemental pounds of milk in DMC using 2019 actual milk marketings.[4] Participating dairy operations with supplemental production may receive additional payments over and above their currently established production history. Supplemental DMC is available to participating DMC dairy operations starting in January of 2021 and lasting through December 31, 2023. Supplemental DMC payments will be made retroactively, starting in January 2021, for the months when DMC triggered. The Supplemental DMC estimates are calculated using the DMC formula based on 100-percent premium alfalfa hay.

FY 2021 accrued gross costs for Supplemental DMC are estimated at $114.62 million. After subtracting premiums paid by farmers for supplemental milk production enrollment, net costs are estimated at $110.31 million (see Table 1). To provide perspective, DMC gross costs for FY 2021 (prior to Supplemental DMC) are estimated at $1.70 billion.; as a result, supplemental DMC is estimated to increase payments to dairy producers by 6.7 percent ($114.62 million/$1.7 billion) accrued in FY 2021. As indicated above, Supplemental DMC is available to participating operations from January 2021 to December 2023. Total stochastic gross and net outlays for the entirety of the 3-year program are estimated at $661.77 million and $644.52 million, respectively.

The rule also amends DIPP. DIPP is available to dairy farmers and dairy product manufacturers who, through no fault of their own, suffer income losses because milk or milk products were contaminated with harmful pesticide residues, chemicals, toxic substances, or nuclear radiation or fallout. The rule change allows affected farmers and manufacturers to be compensated for their milk or their cows and heifers. The rule:

(1) Amends the duration a dairy claimant under DIPP is eligible to receive indemnification for milk and milk products from 18 months to 3 months (except in cases in which it is shorter when cow indemnity is approved or when case-by-case extensions are granted), and

(2) Allows for indemnification of cows and heifers that are affected by chemical residues and likely to be not marketable long term and will require removal of dairy cows from the farm by depopulation, transport, and disposal.

DIPP accrued costs in FY 2021, relative to what they would have been otherwise, are estimated to increase by $4.19 million due to retroactive payment for depopulated cows that were indemnified for the term of milk indemnity limitation according to the prior regulation. These payments will be made in FY 2022. In the future, the regulatory change will result in savings, rather than outlays.

The Consolidated Appropriations Act, 2019, provides $9 million to FSA to assist producers affected by an Oriental Fruit Fly (Bactrocera dorsalis) quarantine as referenced in House Report 115–232. Producers must have suffered eligible losses due to the quarantine that occurred in the Redland area of Miami-Dade County, Florida, from August 28, 2015, through February 13, 2016. The payment covers 70 percent of the 2015 and 2016 revenue losses suffered relative to 2014 revenue (or 2019 revenue, if the producer does not have access to 2014 revenue). At the close of the OFF sign-up period, a national payment factor may be determined and announced by FSA if the total of calculated payments exceeds the authorized funding of $9 million, less a reserve amount of 3 percent ($270,000). Gross OFF Program outlays in FY 2022 may be as high as in the $23 million range and net outlays are estimated at $8.73 million. Given the

[3] Referred to as ''premium'' for simplicity.

[4] Supplemental DMC allows for enrollment above and beyond what is already enrolled in 2021 DMC.

likelihood of a pro-rate, no payments are assumed for FY 2021.

Changes to CREP program partner percentages do not change the partner's overall contribution and are expected to increase outlays minimally. When state law requires producers to install buffers or take other measures to address water quality issues, CREP payments have been reduced; that payment reduction is now eliminated and outlays are expected to increase modestly. This is because only Vermont has such a law and exposure in that State is limited. The marketing assistance loan changes are technical changes and are not addressed here.

TABLE 1—SUMMARY OF CHANGES AND ESTIMATED FISCAL YEAR OUTLAYS FOR FY 2021–FY 2023

Item	FY 2021 net estimated outlays (in million $)	FY 2022 net estimated outlays (in million $)	FY 2023 net estimated outlays (in million $)
Item 1 Calculate the DMC formula using 100 percent premium alfalfa hay	$108.47	$125.01	[a] $101.95
Item 2 Allow supplemental dairy production to become eligible for DMC payments [b]	110.31	273.66	260.55
Item 3 Implement DIPP changes	4.19	(2.15)	(3.27)
Item 4 Implement a one-time OFF Program	[c] n.a.	[c] 8.73	[c] n.a.
Item 5 Modify certain CRP provisions	[d] n.a.	[d] negligible	[d] negligible
Item 6 Add MAL and LDP housekeeping changes associated with the 2018 Farm Bill	[e] n.a.	[e] n.a.	[e] n.a.
Total	222.97	405.25	359.23

[a] For Items 1 and 2, the FY 2023 net estimated outlays include outlays for October 2023, November 2023, and December 2023. For item 1, net outlays for the first quarter of FY 2024 are included in addition to net outlays for FY 2023 because 2018 Farm Bill provisions for DMC expire at the end of calendar year 2023.

[b] Estimated costs accrued for FY 2021 of $110.31 million do not include costs associated with the first quarter of FY 2021. Total gross and net outlays for the entirety of the 3-year program are estimated at $661.77 million and $644.52 million, respectively.

[c] The OFF Program is a one-time program and all outlays are expected to occur in FY 2022 due to the likelihood of a pro-rata factor after all applications are received. The $8.73 million is calculated for FY 2022 as $9 million less a 3 percent reserve.

[d] Impacts for the CRP rule changes are expected to be quite small; see the discussion in the full Cost Benefit Analysis for the discussion.

[e] These are housekeeping changes and the impacts are similarly not addressed here.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), the FSA regulation for compliance with NEPA (7 CFR part 799), and, because FSA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b).

Although OMB has designated this rule as ''economically significant'' under Executive Order 12866, ''economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' when not interrelated to natural or physical environmental effects (see 40 CFR 1502.16(b)).

The intent of DMC, DIPP, MAL, LDP, and the OFF Program are to compensate producers who have suffered revenue losses. The discretionary aspects of the programs being revised in this rule do not have the potential to impact the human environment. As such, for these programs, the FSA categorical exclusions in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii), (iv) and (vi), as follows: § 799.31(b)(6)(iii), Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost or supply of such commodities or programs of a similar nature or intent (that is, price support programs); and § 799.31(b)(6)(vi), Safety net programs administered by FSA (for DMC, DIPP, MAL, and LDP).

For CRP, the changes proposed are administrative in nature and covered by the USDA categorical exclusion found at 7 CFR 1b.3(a)(2). This categorical exclusion applies to activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and the transfer or reprogramming of funds. While this environmental review evaluates impacts programmatically, it does not substitute for or alter the existing requirement for site-specific environmental reviews for all CRP applications.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances exist (7 CFR 799.33). As such, FSA evaluated the potential for extraordinary circumstances and determined that none apply because the discretionary provisions identified in this final rule are minor and administrative in nature, are intended to clarify the mandatory requirements of the programs, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, an environmental assessment or environmental impact statement will not be prepared for this regulatory action; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. For the Supplemental DMC implementation, Supplemental DMC payments will be made retroactively, starting in January 2021, for the months when DMC triggered. For the DIPP rule changes, a payment to indemnify affected farmers for affected cows due to known chemical residues will be made retroactively, as explained above. For the MAL and LDP changes, the changes were implemented administratively, as discussed above. Therefore, this rule has retroactive effect for MAL and LDP for the 2018 crop year, and as specified by the 2018 Farm Bill and explained in this rule, certain provisions are effective beginning December 20, 2018. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a Government-to-Government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.

USDA recognizes that the Miccosukee Indian Reservation lies in the Northwest corner of Miami-Dade County but was outside of the boundaries of the Oriental fruit fly quarantine. USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about payments, and MAL and LDP assistance and other issues.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act (PRA)

As noted above, the regulations to implement the DMC Program, DIPP, and MAL and LDP Programs are exempt from PRA as specified in 7 U.S.C. 9091 and the regulations to implement CRP is exempt from PRA as specified in 16 U.S.C. 3846.

The following new information collection request that supports the OFF Program was submitted to OMB for emergency approval. FSA will collect and evaluate the application from the producers and other required paperwork for determining the producer's eligibilities and assist in producer's payment calculations. FSA is requesting comments from interested individuals and organizations on the information collection activities related to the OFF Program as described in this rule. Following the 60-day public comment period for this rule, the information collection request will be submitted to OMB for the 3-year approval to ensure adequate time for the information collection for the duration of OFF.

Title: Oriental Fruit Fly (OFF) Program.

OMB Control Number: 0560–New.

Type of Request: New Collection.

Abstract: This information collection is required to support the regulation in 7 CFR part 756 for the OFF Program that establishes the requirements for eligible producers who suffered eligible revenue losses resulting from the Oriental fruit fly quarantine as specified in Public Law 116–6 (the Consolidated Appropriations Act, 2019). The information collection is necessary to evaluate the application and other required paperwork for determining the producer's eligibilities and assist in producer's payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Respondent Burden: Public reporting burden for this information collection is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

Type of Respondents: Producers or farmers.

Estimated Annual Number of Respondents: 750.

Estimated Number of Reponses per Respondent: 1.933.

Estimated Total Annual Responses: 1450.

Estimated Average Time per Response: 0.36.

Estimated Annual Burden on Respondents: 522.

For the OFF Program, the per form estimated burden is:

Form name	Form No.	Number of respondents	Total burden hours
Oriental Fruit Fly Program Application	FSA–438	750	375
Farm Operating Plan for Payment Eligibility	CCC–902	300	24
Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure	CCC–941	300	75
Certification of Income from Farming, Ranching and Forestry Operations, optional	CCC–942	10	3
Member Information for Legal Entities, if applicable	CCC–901	90	45
Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification (exempt from PRA, 16 U.S.C. 3846).	AD–1026	300	24

Federal Assistance Programs

The titles and numbers of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.051—Commodity Loans and Loan Deficiency Payments
10.053—Dairy Indemnity Payment Program
10.069—Conservation Reserve Program
10.127—Dairy Margin Coverage Program
10.134—Oriental Fruit Fly Program

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation,

disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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List of Subjects

7 CFR Part 756

Disaster assistance, Reporting and recordkeeping requirements.

7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

7 CFR Part 1410

Acreage allotments, Agriculture, Environmental protection, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, Wildlife.

7 CFR Part 1421

Barley, Farm Services Agency, Feed grains, Grains, Loan programs—agriculture, Oats, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses, Wheat.

7 CFR Part 1425

Agricultural commodities, Confidential business information, Cooperatives, Reporting and recordkeeping requirements.

7 CFR Part 1427

Cotton, Cottonseeds, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

7 CFR Part 1430

Dairy products, Fraud, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1434

Honey, Loan programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1435

Loan programs—agriculture, Penalties, Reporting and recordkeeping requirements, Sugar.

For the reasons discussed above, CCC and FSA amend 7 CFR parts 756, 760, 1410, 1421, 1425, 1427, 1430, 1434, and 1435 as follows:

■ 1. Add 7 CFR part 756 to read as follows:

Subchapter D—Special Programs

PART 756—ORIENTAL FRUIT FLY PROGRAM

Sec.

756.1 Applicability.
756.2 Administration.
756.3 Definitions.
756.4 Qualifying disaster event.
756.5 Eligible producers.
756.6 Eligible and ineligible causes of revenue loss.
756.7 Time and method of application.
756.8 Calculating OFF Program payments.
756.9 Availability of funds and timing of payments.
756.10 Miscellaneous provisions.
756.12 Payment limitation.
756.13 Estates and trusts; minors.
756.14 Misrepresentation, scheme, or device.
756.15 Death, incompetency, or disappearance.
756.16 Maintenance and inspection of records.
756.17 Appeals.

Authority: Sec. 778, Pub. L. 116–6, 133 Stat. 91.

PART 756—ORIENTAL FRUIT FLY PROGRAM

§ 756.1 Applicability.

(a) The Oriental Fruit Fly (OFF) Program will provide payments to eligible producers who suffered losses due to the Oriental fruit fly quarantine in Miami-Dade County, Florida, in accordance with Public Law 116–6 (the Consolidated Appropriations Act, 2019).

(b) The regulations in this part are applicable to crops affected by the Oriental fruit fly quarantine.

(c) In any case in which money must be refunded to the Farm Service Agency (FSA) in connection with this part, interest will be due to run from the date of disbursement of the sum to be refunded. This paragraph (c) will apply, unless waived by the Deputy Administrator for Farm Programs, FSA, irrespective of any other regulation in this part.

§ 756.2 Administration.

(a) The OFF Program will be administered under the general supervision of the Administrator, FSA, and the Deputy Administrator for Farm Programs, FSA. The OFF Program is carried out by FSA State committees and FSA county committees with instructions issued by the Deputy Administrator.

(b) FSA State committees and FSA county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations in this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any required action not taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; or

(2) Require an FSA county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Deputy Administrator for Farm Programs, FSA, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by an FSA State committee or FSA county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State committees and FSA county committees to waive or modify non-statutory deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the OFF Program.

(f) A representative of FSA may execute applications and related documents only under the terms and conditions determined and announced by FSA. Any document not executed under such terms and conditions, including any purported execution

before the date authorized by FSA, will be null and void.

(g) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, and payment factors established by the OFF Program, are not subject to appeal.

§ 756.3 Definitions.

The definitions in this section apply for all purposes of OFF Program administration.

Administrative county office is the FSA county office where a producer's FSA records are maintained.

APHIS means Animal Plant Health and Inspection Service, U.S. Department of Agriculture.

Application period means the dates established by the Deputy Administrator for producers to apply for OFF Program benefits.

Calendar year means January 1st through December 31st.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA.

FSA means the Farm Service Agency, U.S. Department of Agriculture.

NAP means Non-insured Crop Disaster Assistance Program.

OFF Program means the Oriental Fruit Fly Program.

OFF quarantine period means August 28, 2015, through February 13, 2016.

Oriental fruit fly quarantine means the quarantine put in place during the OFF quarantine period in the quarantine area to protect against the entry and spread of the Oriental fruit fly by requiring strict adherence to treatment or destruction of the host crop.

Prevented planting means when producers chose not to plant an annual crop during the 2015 through 2016 season due to the Oriental fruit fly quarantine.

Producer means a person, partnership, association, corporation, estate, trust, or other legal entity that produces an eligible crop as a landowner, landlord, tenant, or sharecropper.

Program year means the relevant application year. The program year for OFF will be 2015 and include total revenue losses for calendar year 2015 and calendar year 2016.

Quarantine area means the area mapped by The Florida Department of Agriculture and Consumer Services Division, Division of Plant Industry (FDACS–DPI). The map identifies areas where the Oriental Fruit Fly was detected and the associated boundaries of the area quarantined by APHIS. The map is available by contacting FDACS–DPI, The Doyle Conner Building, 1911 SW 34th St., Gainesville, FL 32608–7100 or *https://www.fdacs.gov/Divisions-Offices/Plant-Industry.*

Reliable documentation means evidence provided by the participant that is used to substantiate the amount of revenue reported when verifiable documentation is not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements truck scale tickets, and contemporaneous diaries that are determined acceptable by the FSA county committee. To determine whether the records are acceptable, the FSA county committee will consider whether they are consistent with the records of other producers of the crop in that area.

Revenue means the gross income from crop sales received during the applicable calendar years for the crops that suffered a loss due to the Oriental fruit fly quarantine. Revenue does not mean revenue received for crops grown under contract for crop owners unless the grower had an ownership share of the crop.

RMA means Risk Management Agency.

Secretary means the Secretary of the United States Department of Agriculture, or the Secretary's delegate.

Verifiable documentation means evidence that can be verified by FSA through an independent source.

§ 756.4 Qualifying disaster event.

The OFF Program will provide assistance to eligible producers who suffered revenue losses due to the State of Florida and APHIS implemented quarantine that took place from August 28, 2015, through February 13, 2016, in Miami-Dade County, Florida.

§ 756.5 Eligible producers.

(a) To be an eligible producer, the producer must:

(1) Be an individual person that is a U.S. Citizen or Resident Alien, or a partnership, association, corporation, estate, trust, or other legal entity consisting solely of U.S. Citizens or Resident Aliens that produces an eligible crop as a landowner, landlord, tenant, or sharecropper; and

(2) Comply with all provisions of this part and, as applicable:

(i) 7 CFR part 3—Debt Management;

(ii) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(iii) 7 CFR 400.680, Controlled substance;

(iv) 7 CFR part 1400, adjusted gross income (AGI) provisions:

(A) Program year 2015 will be used to determine AGI for the OFF Program, therefore the AGI will be the average of tax years 2013, 2012, and 2011; and

(B) The OFF Program allows an exception to the $900,000 average AGI limitation if at least 75 percent of the average AGI was derived from farming, ranching, or forestry operations. CCC–942 is used to collect the producer and certified public accountant (CPA) or attorney certification statements;

(v) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(vi) 7 CFR part 718—Provisions Applicable to Multiple Programs; and

(vii) 7 CFR part 1400—Payment Limitation and Payment Eligibility.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust is considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee is the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. OFF Program documents executed by any such person will be accepted by FSA only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive an OFF Program payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute.

(2) A guardian has been appointed to manage the minor's property and the applicable OFF Program documents are signed by the guardian.

(3) Any OFF Program application signed by the minor is cosigned by a person determined by the FSA county committee to be financially responsible.

(d) Foreign person rules in 7 CFR part 1400, subpart E, are not applicable to the OFF Program.

(e) Producers will not be required to be in the business of producing and marketing agricultural products at the time of OFF Program application.

(f) The producer must have been actively producing and marketing agricultural products during the OFF quarantine period.

§ 756.6 Eligible and ineligible causes of revenue loss.

(a) To be eligible for payments under this part the producer must have suffered a loss of revenue due to the Oriental fruit fly quarantine of one or more of the following types:

(1) Revenue loss on crop(s) planted or prevented from being planted within the Oriental Fruit Fly quarantine area during the OFF quarantine period. Crops that suffered a revenue loss due to prevented planting must have a prior history of being planted or be able to provide verifiable or reliable documentation demonstrating legitimate intent to plant the crop during the OFF quarantine period;

(2) Pre or post-harvest treatment costs;

(3) Transportation costs to a post-harvest treatment facility;

(4) Crop quality loss;

(5) Crop spoilage;

(6) Crop drop; or

(7) Reduced post-harvest shelf life.

(b) An ineligible cause of revenue loss under this part will apply to the following:

(1) Losses determined by FSA to be the result of poor management decisions or poor farming practices, such as using non-optimal chemical application, over-tilling, monoculture (growing of same crop year after year), allowing soil erosion, nonoptimal planting time, or poor quality seed selection.

(2) Losses due to conditions or events occurring outside of the applicable growing season for the crop.

(3) Losses due to failure of a power supply or lack of irrigation.

(4) Losses to crops not intended for harvest.

(5) Losses to home gardens for personal use and not intended to market.

(6) Losses to non-fruit bearing ornamental nursery.

(7) Losses caused by theft.

(8) Losses caused by disease or pest infestation other than the Oriental fruit fly.

(9) Losses to purchased crops.

§ 756.7 Time and method of application.

(a) An application for OFF Program payment under this part must be submitted in person, by mail, email, or facsimile to the FSA county office serving as the farm's administrative county office by the close of business 60 calendar days after the signup start date announced by FSA. A National Special Program (SP) Notice will be issued providing OFF program details including signup start date and program requirements.

(b) An application will include only the producer's share of revenue for the crops negatively affected by the Oriental fruit fly quarantine for the applicable calendar years.

(c) Once signed by a producer, the application for payment is considered to contain information and certifications of and pertaining to the producer regardless of who entered the information on the application.

(d) The producer applying for the OFF Program under this part certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application.

(1) All information is subject to verification or spot check by FSA at any time, either before or after payment is issued. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility for the OFF Program. FSA may at any time, including before, during, or after processing and paying an application, require the producer to submit any additional information necessary to implement or determine any eligibility provision of this part. Furnishing required information is voluntary; however, without it, FSA is under no obligation to act on the application or approve payment.

(2) Providing a false certification will result in ineligibility and can also be punishable by imprisonment, fines, and other penalties.

(e) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all required documentation by the application deadline date announced by FSA.

(f) Applicants must submit all eligibility forms as listed on the FSA–438 Oriental Fruit Fly Program (OFF) Application within 60 calendar days from the date of submitting the application if not already on file with FSA.

§ 756.8 Calculating OFF Program payments.

(a) A revenue loss calculation and factor will determine the OFF Program payment.

(1) A factor will be applied to reduce the participant's payment to ensure that total OFF Program payments are no more than 70 percent of the total revenue losses by all eligible OFF Program participants.

(2) If necessary, at the close of the OFF Program sign-up period, a national payment factor may be determined by the Secretary and announced if full payment of all approved OFF Program applications would result in payments in excess of available OFF Program funds, less a reserve amount of 3 percent. A Price Support Division SP Notice will be issued to announce the issuance of OFF and, if applicable, the factored rate.

(b)(1) The OFF Program payment calculation is:

(Calendar year 2014 producer certified gross revenue
− Calendar year 2015 producer certified gross revenue)
+ (Calendar year 2014 producer certified gross revenue
− Calendar year 2016 producer certified gross revenue)
= Total revenue loss for calendar year 2015 and calendar year 2016
× 70%
= OFF Program payment (subject to proration after sign-up, see paragraph (a)(2) of this section)

(2) If the producer did not have 2014 revenue, then 2019 revenue will be used, and the calculation will be:

(Calendar year 2019 producer certified gross revenue
− Calendar year 2015 producer certified gross revenue)
+ (Calendar year 2019 producer certified gross revenue
− Calendar year 2016 producer certified gross revenue)
= Total revenue loss for calendar year 2015 and calendar year 2016
× 70%
= OFF Program Payment (subject to proration after sign-up, see paragraph (a)(2) of this section)

(c) If there is no gross revenue loss determined for calendar year 2015 or calendar year 2016, the payment will be zero.

§ 756.9 Availability of funds and timing of payments.

The total available program funds are $9 million as provided by Public Law 116–6 (the Consolidated Appropriations Act, 2019). OFF Program payments will be issued after all applications are received and FSA has approved the application.

§ 756.10 Miscellaneous provisions.

(a) Producers who are approved for OFF Program payment will not be required to purchase future NAP or crop insurance for those crops affected by the quarantine as is often required by other disaster programs, because the Oriental fruit fly quarantine was not an eligible covered loss by NAP, and RMA does not offer quarantine as an endorsement in Florida.

(b) All persons with a financial interest in a legal entity receiving payments under this part are jointly and severally liable for any refund, including related charges, that is determined to be due to FSA for any reason.

(c) In the event that any application under this part resulted from erroneous information or a miscalculation, the payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of disbursement.

(d) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholding in part 3 of this title apply to payments under this part.

(e) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payment in part 3 of this title.

(f) The regulations in part 11 of this title and part 780 of this chapter apply to determinations under this part.

§ 756.12 Payment limitation.

(a) For the program year 2015, direct or indirect payments made to an eligible person or legal entity, other than a joint venture or general partnership, will not exceed $125,000.

(b) The attribution of payment provisions in 7 CFR 1400.105 will be used to attribute payments to persons and legal entities for payment limitation determinations.

§ 756.13 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate will, for the purpose of this part, be considered to represent the insolvent affected producer or manufacturer and the beneficiaries of the trust, respectively.

(1) The production of the receiver or trustee will be considered to be the production of the represented person.

(2) Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) [Reserved]

§ 756.14 Misrepresentation, scheme, or device.

(a) A producer will be ineligible to receive assistance under the OFF Program if the producer is determined by the FSA State committee or FSA county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the OFF Program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under the OFF Program, then FSA will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the Government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, will be refunded to FSA. The remedies provided in this part are in addition to other civil, criminal, or administrative remedies that may apply.

§ 756.15 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected producer who would otherwise receive an OFF Program payment, such payment may be made to the person or persons specified in the regulations in part 707 of this chapter. The person requesting such payment must file Form FSA–325, ''Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent,'' as provided in part 707.

§ 756.16 Maintenance and inspection of records.

(a) Producers randomly selected for compliance spot checks by FSA must, in accordance with program notice instructions issued by the Deputy Administrator, provide adequate reports of revenue as applicable. The producer must report documentary evidence of crop revenue to FSA together with any supporting documentation to verify information entered on the application. Verifiable documentation is preferred. If verifiable documentation is not available, FSA will accept reliable documentation, if determined to be acceptable by the FSA county committee.

(b) If supporting documentation is not presented to the county FSA office requesting the information within 30 calendar days of the request, producers will be determined ineligible for OFF Program benefits.

(c) The producer must maintain any existing books, records, and accounts supporting any information furnished in an approved OFF Program application for 3 years following the end of the year during which the application for payment was filed.

(d) The producer must permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

§ 756.17 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations in 7 CFR parts 11 and 780.

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 2. The authority citation for part 760 continues to read as follows:

Authority: 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211; Sec. 748, Pub. L. 111–80, 123 Stat. 2131; Title I, Pub. L. 115–123, 132 Stat. 65; Title I, Pub. L. 116–20, 133 Stat. 871; and Division B, Title VII, Pub. L. 116–94, 133 Stat. 2658.

Subpart A—Dairy Indemnity Payment Program

■ 3. The authority citation for subpart A of part 760 continues to read as follows:

Authority: 7 U.S.C. 450j–l.

■ 4. Amend § 760.2 as follows:

■ a. Add the definition for ''Contaminated milk'', ''Depopulation'', and ''Not marketable'' in alphabetical order; and

■ b. Remove the definition of ''Violating Substance'' and add the definition of ''Violating substance'' in its place.

The additions read as follows:

§ 760.2 Definitions.

* * * * *

Contaminated milk means milk containing elevated levels of any violating substance that may affect public health based on tests made by the applicable public agency and resulting in the removal of the milk from the commercial market.

* * * * *

Depopulation means, consistent with the American Veterinary Medical Association (AVMA) [1] definition, the rapid destruction of a population of cows with as much consideration given to the welfare of the animals as practicable.

* * * * *

Not marketable means no commercial market is available for affected cows to be slaughtered, processed, and marketed

[1] The AVMA Guidelines for the Depopulation of Animals is available at: *https://www.avma.org/sites/default/files/resources/AVMA-Guidelines-for-the-Depopulation-of-Animals.pdf.*

through the food chain system as determined by the Deputy Administrator.

* * * * *

Violating substance means one or more of the following, as defined in this section: Pesticide, chemicals or toxic substances, or nuclear radiation or fallout.

* * * * *

■ 5. Revise § 760.3 to read as follows:

§ 760.3 Indemnity payments on milk.

(a) The amount of an indemnity payment for milk, including, but not limited to organic milk, made to an affected farmer who is determined by the county committee to be in compliance with all the terms and conditions of this subpart will be in the amount of the fair market value of the farmer's normal marketings for the application period, as determined in accordance with §§ 760.4 and 760.5, less:

(1) Any amount the affected farmer received for whole milk marketed during the application period; and

(2) Any payment not subject to refund that the affected farmer received from a milk handler with respect to milk removed from the commercial market during the application period.

(b) The eligible period for Dairy Indemnity Payment Program (DIPP) benefits for milk for the same loss is limited to 3 calendar months from when the first claim for milk benefits is approved. Upon written request from an affected farmer on the milk indemnity form authorized by the Deputy Administrator, the Deputy Administrator may authorize, at the Deputy Administrator's discretion, additional months of benefits for the affected farmer for milk due to extenuating circumstances, which may include allowing additional time for public agency approval of a removal plan for cow indemnification and confirmation of site disposal for affected cows. Additionally, the Deputy Administrator has discretion to approve additional months based on issues that are beyond the control of the affected farmer who is seeking cow indemnification, as well as when the affected farmer is following a plan to reduce chemical residues in milk, cows, and heifers to marketable levels.

§ 760.6 [Amended]

■ 6. Amend § 760.6 in paragraph (i) by removing the words ''and the results of any laboratory tests on the feed supply'' and adding ''the results of any laboratory tests on the feed supply, and the monthly milk testing results that detail the chemical residue levels'' in their place.

■ 7. Revise § 760.7 to read as follows:

§ 760.7 Conditions required for milk or cow indemnity.

(a) An indemnity payment for milk or cows (dairy cows including, but not limited to, bred and open heifers) may be made under this subpart to an affected farmer under the conditions in this section.

(b) If the pesticide, chemical, or toxic substance, in the contaminated milk was used by the affected farmer, the affected farmer must establish that each of the conditions in this section are met:

(1) That the pesticide, chemical, or toxic substance, when used, was registered (if applicable) and approved for use as provided in § 760.2(f);

(2) That the contaminated milk was not the result of the affected farmer's failure to use the pesticide, chemical, or toxic substance, according to the directions and limitations stated on the label; and

(3) That the contaminated milk was not otherwise the affected farmer's fault.

(c) If the violating substance in the contaminated milk was not used by the affected farmer, the affected farmer must establish that each of the conditions in this section are met:

(1) The affected farmer did not know or have reason to believe that any purchased feed contained a violating substance;

(2) None of the milk was produced by dairy cattle that the affected farmer knew, or had reason to know at the time they were acquired, had elevated levels of a violating substance; and

(3) The contaminated milk was not otherwise the affected farmer's fault.

(d) The affected farmer has adopted recommended practices and taken action to eliminate or reduce chemical residues of violating substances from the milk as soon as practicable following the initial discovery of the contaminated milk.

■ 8. Amend § 760.9 by revising the section heading and paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 760.9 Payments for the same loss.

* * * * *

(c) For any affected farmer that exceeded 3 months of milk indemnity payments before December 13, 2021 no further payments for milk indemnity will be made for the same loss except as provided in § 760.3(b) and the affected farmer may apply for cow indemnity as specified in this subpart.

(d) An affected farmer that has an approved application for cow indemnity is no longer eligible for milk indemnity payments for the same loss.

(e) Cows purchased or bred after the initial discovery of the milk contamination are not eligible for DIPP benefits due to the same loss.

■ 9. Add § 760.10 to read as follows:

§ 760.10 Indemnity payments for cows.

(a) The Deputy Administrator for Farm Programs (DAFP) will determine eligibility for DIPP indemnification based on if the cows of the affected farmer are likely to be not marketable for 3 months or longer [from the date the affected farmer submits an application for cow indemnification per § 760.13]. The Deputy Administrator will review the following factors in making that determination:

(1) Milk testing results;

(2) Non marketability of affected cows through commercial marketing facilities;

(3) Type and source of chemical residues impacting the milk and animal tissues; and

(4) Projected duration for chemical residue reduction including the actions taken by the affected farmer to reduce the chemical residues to marketable levels since the affected cows were discovered.

(b) See § 760.11 for indemnity payment eligibility for bred and open heifers.

(c) Affected farmers applying for indemnification of cows, including heifers, must develop a removal plan both to permanently remove the affected cows by depopulating the cows.

(1) The removal plan for affected cows for which an affected farmer applies for indemnification under DIPP must be approved by the applicable public agency where the cows are located and must be in accordance with any applicable Environmental Protection Agency (EPA) and public agency depopulation and animal disposal requirements and guidelines, including contaminant disposal requirements, in the State where the affected cows are located.

(2) The approved removal plan must be submitted with the application for indemnification.

(d) The amount of an indemnity payment for cows to an affected farmer who is determined by the Deputy Administrator to be eligible for indemnification and by the county committee to be in compliance with all the terms and conditions of this subpart will be based on the national average fair market value of the cows. DIPP cow indemnification will be based on the 100 percent value of the Livestock Indemnity Program (LIP) rates as applicable for the calendar year for milk

indemnification established for dairy cows, per head. For example, for a 100-cow farm: 100 cows multiplied by $1,300 (2021 LIP rate based on 100 percent value of average cow) = $130,000 payment.

(e) For any cow indemnification payment under this section or § 760.11, the affected farmer has the option to receive 50 percent of calculated payment in advance after application approval with the remaining fifty percent paid after the affected cows have been depopulated and removed. Otherwise, the affected farmer may choose to receive 100 percent of payment after cows have been depopulated and removed. Documented records of depopulation and removal of affected cows must be provided to FSA to the satisfaction of the county committee, before the final payment will be made.

(f) Upon written request from an affected farmer on a form authorized by the Deputy Administrator, the Deputy Administrator may approve, at the Deputy Administrator's discretion, indemnification of additional affected cows as specified in paragraphs (f)(1) through (3) of this section.

(1) The affected cows were depopulated or died above normal mortality rates for cows between approval of the affected farmer's application for the first month of milk indemnity and public agency approval of the affected farmer's removal plan for cow indemnification. Normal mortality rates established annually by the FSA State committee for their state for the following cow and heifer weight groups will be used:

(i) Dairy, nonadult less than 400 pounds;

(ii) Dairy, nonadult 400 pounds or more; and

(iii) Dairy, adult cow.

(2) This request may include both cows that were included in applications for milk indemnity and heifers that were affected from the same loss.

(3) An affected farmer making such a request must submit the information specified in § 760.12(c).

(g) Affected cows that are marketed as cull or for breeding are not eligible for indemnification.

■ 10. Add § 760.11 to read as follows:

§ 760.11 Indemnity payments for bred and open heifers.

(a) Bred (young dairy female in gestation) and open (young dairy female not in gestation) heifers that contain elevated levels of chemical residues as the result of the same loss may be eligible for indemnification through DIPP. For affected bred and open heifers participating affected farmers may receive indemnification if the farmer's dairy cows were determined to be likely not marketable for three months or longer according to § 760.10(a) and the Deputy Administrator determines the bred and open heifers to be eligible under paragraph (b) of this section. Except as provided in this section or otherwise stated in this subpart, the provisions in this subpart for cow indemnity apply equally to bred and open heifers, for example the removal requirements in § 760.10(b).

(b) The county committee will make the recommendation to the Deputy Administrator to determine if eligible bred and open heifers that have been affected by the same loss will likely be not marketable for 3 months or longer from the date the affected farmer submits an application for cow indemnification per § 760.13 because of elevated levels of chemical residues that will pass through milk once lactating. Affected farmers must provide the information specified in § 760.12(a) and (b) for the county committee to make a recommendation of eligibility to the Deputy Administrator. The Deputy Administrator will take into consideration the recommendation of the county committee in making its eligibility determination.

(c) The amount of the cow indemnity for bred and open heifers will be based on the national average fair market value of the non-adult heifers. DIPP bred and open heifer indemnification will be based on the 100 percent value of the Livestock Indemnity Program (LIP) rates as applicable for the calendar year of milk indemnification established for non-adult dairy, by weight range, per head. For example, for an affected farmer with 40 bred or open heifers at different weight ranges: 10 bred heifers at 800 pounds or more multiplied by $986.13 ($9861.30), 10 bred or open heifers at 400 to 799 pounds multiplied by $650.00 ($6500.00), 10 open heifers at 250 to 399 pounds multiplied by $325.00 ($3250.00), and 10 open heifers 250 pounds or less multiplied by $57.65 ($576.50) = $20,187.80 payment.

■ 11. Add § 760.12 to read as follows:

§ 760.12 Information to be furnished for payment on dairy cows, and bred and open heifers.

(a) To apply for DIPP for affected cows, the affected farmer must provide the county committee complete and accurate information to enable the Deputy Administrator to make the determinations required in this subpart in addition to providing the information requested in § 760.6(a), (b), (h), and (i), if not previously provided to FSA in a milk indemnity application. The information specified in this section must be submitted as part of the cow indemnity application and includes, but is not limited to, the following items:

(1) An inventory of all dairy cows as of the date of application including lactating cows, bred heifers, and open heifers on the farm;

(2) A detailed description and timeline of how, where, and when cows will be depopulated and permanently removed from the farm (the removal plan);

(3) Documentation of public agency approval of the removal plan for cow depopulation and cow and contaminate disposal in accordance with any applicable EPA and public agency disposal requirements and guidelines;

(4) Documentation from 2 separate commercial markets stating that such market declined to accept the affected cows through a cull cow market, slaughter facility, or processing facility due to elevated levels of chemical residues;

(5) Documentation of any projected timelines for reducing chemical residues, any actions the affected farmer has taken to reduce chemical residues to marketable levels including any documents verifying steps undertaken, and any professional assistance obtained, including, discussion of strategy with the public agencies; and

(6) Any other documentation that may support the determination that the affected cows or milk from such cows is likely to be not marketable for longer than 3 months; and other documentation as requested or determined to be necessary by the county committee or the Deputy Administrator.

(b) To apply for DIPP for bred and open heifers the affected farmer must provide the information specified in paragraph (a) of this section and: veterinarian records, blood test results, and other testing information requested by the county committee for the recommendation specified in § 760.11(b) and eligibility for indemnification.

(c) To request consideration for indemnification of affected cows and heifers under § 760.10(e), the affected farmer must submit the information specified in paragraphs (c)(1) and (2) of this section to provide an accounting of affected cows and heifers that were depopulated or died above normal mortality rates for cows between approval of the affected farmer's application for the first month of milk indemnity and the public agency approval of the affected farmer's removal plan for cow indemnification.

(1) Herd health record documenting cow and heifer deaths; and

(2) Farm inventory or other record identifying the loss of dairy cows and heifers.

(d) The affected farmer certifies at application that once the cow indemnity application is approved, the affected farmer will dry off all lactating cows in a reasonable timeframe and discontinue milking.

■ 12. Add § 760.13 to read as follows:

§ 760.13 Application for payment of cows.

(a) Any affected farmer may apply for cow indemnity under §§ 760.10 and 760.11. To apply for DIPP for affected cows, the affected farmer must sign and file an application for payment on a form that is approved for that purpose by the Deputy Administrator and provide the information described in § 760.12.

(b) The form must be filed with the FSA county office for the county where the farm headquarters is located by December 31 following the fiscal year end in which the affected farmer's milk was removed from the commercial market, except that affected farmers that have received 3 months of milk indemnity payments prior to December 13, 2021, must file the form within 120 days after December 13, 2021. Upon written request from an affected farmer and at Deputy Administrator's discretion, the deadline for that affected farmer may be extended.

PART 1410—CONSERVATION RESERVE PROGRAM

■ 13. The authority citation for 7 CFR part 1410 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.6 [Amended]

■ 14. Amend § 1410.6 as follows:

■ a. In paragraph (e)(4)(ii), remove ''; and'' and add a semicolon in its place; and

■ b. Remove paragraph (e)(4)(iii).

§ 1410.90 [Amended]

■ 15. Amend § 1410.90 in paragraph (c) introductory text by removing the fourth sentence.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS

■ 16. The authority citation for part 1421 continues to read as follows:

Authority: 7 U.S.C. 7231–7237, 7931–7936, and 9031–40, 15 U.S.C. 714b and c.

Subpart A—General

§ 1421.1 [Amended]

■ 17. Amend § 1421.1 in paragraph (e) by removing the words ''and payment limitation''.

■ 18. Amend § 1421.3 as follows:

■ a. Add definition for ''Commodity certificate exchange'' in alphabetical order; and

■ b. Revise the definition of ''Market loan gain''.

The addition and revision read as follows:

§ 1421.3 Definitions.

* * * * *

Commodity certificate exchange means the exchange, as provided for in § 1421.111, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination.

* * * * *

Market loan gain is the loan rate, minus the repayment rate on loans repaid at a rate that is less than the loan rate. A producer's adjusted gross income must be below the limit as specified in part 1400 of this chapter to receive a market loan gain.

* * * * *

§ 1421.4 [Amended]

■ 19. Amend § 1421.4 by removing paragraph (h).

§ 1421.5 [Amended]

■ 20. Amend § 1421.5 in paragraph (c)(1) by adding the word ''nonrecourse'' after the words ''pledged for a''.

§ 1421.9 [Amended]

■ 21. Amend § 1421.9 in paragraph (f) by adding the words ''or additional commodities as determined by the Deputy Administrator on a crop year basis'' after ''peanuts''.

Subpart B—Marketing Assistance Loans

■ 22. Amend § 1421.102 by revising paragraph (a)(1) to read as follows:

§ 1421.102 Adjustment of basic loan rates.

(a) * * *

(1) For farm-stored commodities, except for peanuts, that exceed acceptable levels of contamination, the loan rate will be discounted to 10 percent of the base county MAL rate if pledged as collateral for a nonrecourse loan. Loan rates for commodities with acceptable levels of contamination will not be adjusted if pledged as collateral for recourse loans.

* * * * *

§ 1421.104 [Amended]

■ 23. Amend § 1421.104 in paragraph (a)(1) by removing the words ''lien searches, and'' and ''law, as'' and adding ''lien searches and'' and ''law as'' in their places, respectively.

■ 24. Add § 1421.110 to read as follows:

§ 1421.110 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lessor of:

(1) The loan rate and charges, plus interest applicable to the loan; or

(2) The prevailing world market price, as determined by CCC, or the alternative repayment rate for all other commodities, as determined by CCC.

(c) Commodity certificate exchanges may not be used when locking in a repayment rate under § 1421.10.

(d) Producers must request a commodity certificate exchange on or before loan maturity in person at the FSA county office that disbursed the marketing assistance loan by:

(1) Completing a written request on the form or providing the information as required by CCC;

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral; or

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

(e) Loan gains realized from a commodity certificate exchange are not subject to AGI provisions specified in part 1400 of this chapter.

§ 1421.112 [Amended]

■ 25. Amend § 1421.112 in paragraph (b) introductory text by removing the word ''effected'' and adding ''affected'' in its place in the second sentence.

■ 26. Amend § 1421.113 by revising paragraph (a) to read as follows:

§ 1421.113 Recourse MALs.

(a) CCC will make recourse MALs available to eligible producers of high moisture corn, high moisture grain sorghum, commodities that fall within acceptable levels of contamination and remain merchantable, and other eligible loan commodities as determined by the Deputy Administrator, Farm Programs.

* * * * *

Subpart C—Loan Deficiency Payments

§ 1421.200 [Amended]

■ 27. Amend § 1421.200 in paragraph (e) by removing the words ''and payment limitation''.

Subpart D—Grazing Payments for Wheat, Barley, Oats, and Triticale

§ 1421.302 [Amended]

■ 28. Amend § 1421.302(d)(1) by removing the words ''and payment limitation''.

§ 1421.304 [Amended]

■ 29. Amend § 1421.304 as follows:
■ a. Remove paragraph (d); and
■ b. Redesignate paragraphs (e) through (g) as paragraphs (d) through (f), respectively.

Subpart E—Designated Marketing Associations for Peanuts

■ 30. Revise § 1421.409 to read as follows:

§ 1421.409 Monitoring AGI.

DMAs are required to monitor their producers' AGIs and may not permit repayments with a market loan gain on peanut MALs or process peanut LDPs for those producers with annual AGI over the allowable limit as specified in part 1400 of this chapter.

■ 31. Amend § 1421.416 by revising paragraph (a)(1) to read as follows:

§ 1421.416 Processing loan deficiency payments.

(a) * * *

(1) In addition to other determinations that are required, the DMA must determine whether the producer exceeds the AGI limits to allow the receipt of the LDP. If the producer is over the AGI limit the DMA cannot process the request.

* * * * *

§ 1421.417 [Amended]

■ 32. Amend § 1421.417 in paragraph (a) by removing the words ''to producers, and'' and adding the words ''to producers and'' in their place.

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

■ 33. The authority citation for part 1425 continues to read as follows:

Authority: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

■ 34. Amend § 1425.4 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 1425.4 Approval.

(a) * * *

(2) A current financial statement, dated within the last year, prepared for the cooperative and accompanied by a letter from an independent Certified Public Accountant, certifying that the financial statement was prepared in accordance with generally accepted accounting principles;

* * * * *

(b) * * *

(2) The CMA's latest financial statement. The financial statement must be dated within the past year and be accompanied by a letter from an independent Certified Public Accountant certifying that the financial statement was prepared in accordance with generally accepted accounting principles.

* * * * *

PART 1427—COTTON

■ 35. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7237, 7931–7936, 9011, and 9031–40, 15 U.S.C. 714b and c.

Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments

§ 1427.1 [Amended]

■ 36. Amend § 1427.1 in paragraph (d) by removing the words ''Adjusted gross'' and adding ''Average adjusted'' in their place.

■ 37. Amend § 1427.3 by adding the definitions of ''Commodity certificate exchange'', ''Commodity loan gain'', ''Exchange rate'', ''Market loan gain'', and ''Turn-around loan'' in alphabetical order to read as follows:

§ 1427.3 Definitions.

* * * * *

Commodity certificate exchange means the exchange of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination.

Commodity loan gain means the difference between the loan principal amount and the adjusted world price (AWP)-value of a commodity certificate used to exchange the loan collateral.

* * * * *

Exchange rate will be the effective AWP for cotton on the date the request to purchase a certificate is received by CCC.

* * * * *

Market loan gain means the loan rate, minus the repayment rate on upland cotton loans repaid at the AWP-value that is less than the loan rate. A producer's adjusted gross income must be below the limit as specified in part 1400 of this chapter to receive a market loan gain.

* * * * *

Turn-around loan is a special designation for a loan that is requested, approved for disbursement, and immediately exchanged with a commodity certificate purchased the same day.

* * * * *

■ 38. Amend § 1427.4 as follows:
■ a. Revise paragraph (a)(2)(iii); and
■ b. In paragraph (g), remove the words ''and payment limitation''.

The revision reads as follows:

§ 1427.4 Eligible producer.

(a) * * *

(2) * * *

(iii) 7 CFR part 1400, subpart F—Average Adjusted Gross Income Limitation;

* * * * *

§ 1427.10 [Amended]

■ 39. Amend § 1427.10 in paragraph (f)(2) by removing the words ''so as'' and adding ''in a manner'' in their place.

§ 1427.11 [Amended]

■ 40. Amend § 1427.11 in paragraph (a) introductory text by adding the word ''electronic'' after the words ''represented by''.

■ 41. Add § 1427.22 to read as follows:

§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan provided for upland cotton, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lesser of:

(1) The loan rate and charges, plus interest applicable to the loan; or

(2) The adjusted world price for upland cotton as determined by CCC.

(c) Producers must request a commodity certificate exchange on or before loan maturity in person at the FSA county office by:

(1) Completing a written request on the form or providing the information as required by CCC:

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral; and

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

(d) Gains realized from a commodity certificate exchange are not subject to

AGI or payment limitation provisions specified in part 1400 of this chapter.

§ 1427.23 [Amended]

■ 42. Amend § 1427.23 in paragraph (d) by removing the words ''and payment limitation requirements'' and adding ''provisions'' in their place.

Subpart D—Recourse Seed Cotton Loans

■ 43. Amend § 1427.160 by revising paragraph (a) to read as follows:

§ 1427.160 Applicability.

(a) This subpart is applicable to crops of upland and extra long staple seed cotton and as otherwise determined appropriate by the Deputy Administrator. This subpart specifies the terms and conditions under which recourse seed cotton loans will be made available by CCC. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are in the note and security agreement that must be executed by a producer in order to receive such loans.

* * * * *

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

§ 1427.1200 [Amended]

■ 44. Amend § 1427.1200 in paragraph (b)(2) by removing ''134'' and adding ''113'' in its place.

§ 1427.1207 [Amended]

■ 45. Amend § 1427.1207 in paragraphs (a)(1) and (2) and (c)(2) by removing ''134'' and adding ''113'' in its place.

PART 1430—DAIRY PRODUCTS

■ 46. The authority citation for part 1430 is revised to read as follows:

Authority: 7 U.S.C. 9051–9060 and 9071 and 15 U.S.C. 714b and 714c.

Subpart D—Dairy Margin Coverage Program

■ 47. Amend § 1430.402 by adding the definitions of ''Supplemental Dairy Margin Coverage payment'' and ''Supplemental production history'' in alphabetical order to read as follows:

§ 1430.402 Definitions.

* * * * *

Supplemental Dairy Margin Coverage payment means a payment made to a participating dairy operation under the DMC Program under the terms of this subpart.

Supplemental production history means the production history determined for a participating dairy operation under this subpart when the participating dairy operation registers to participate in DMC through special enrollment or annual coverage election period.

* * * * *

■ 48. Amend § 1430.403 by adding paragraph (f) to read as follows:

§ 1430.403 Eligible dairy operations.

* * * * *

(f) Dairy operation eligibility for supplemental production history requires the dairy operation to be enrolled in DMC for the applicable calendar year. Dairy operations with less than 5 million pounds of DMC production history are eligible for supplemental production history.

■ 49. Amend § 1430.404 by revising paragraph (a) and adding paragraphs (b)(3), (e)(4), and (h) to read as follows:

§ 1430.404 Time and method of registration and annual election.

(a) A dairy operation may register to participate in DMC by establishing a production history and, if eligible, supplemental production history, according to § 1430.405 on a form prescribed by CCC and also submitting a contract prescribed by CCC. Dairy operations may obtain a contract in person, by mail, or by facsimile from any FSA county office. In addition, dairy operations may download a copy of the forms at *https://www.sc.egov.usda.gov.*

(b) * * *

(3) Dairy operations enrolling supplemental production must establish supplemental production history and apply for supplemental coverage during a special enrollment or coverage election period specified by the Deputy Administrator. Once supplemental production history is established, that history will be permanent and will include previously established production history and subject to coverage elections made by the dairy operation under the lock-in option according to § 1430.407(j) or made by the dairy operation in subsequent annual coverage year enrollments.

* * * * *

(e) * * *

(4) During the 2021 special enrollment period only, for participating dairy operations that had a succession-in-interest occur from January 2, 2021, through the opening of special enrollment, for supplemental production history to be applicable to such successors, the predecessor must first establish supplemental production history. For successions-in-interest when the successor establishes supplemental production history before the predecessor, the successor's supplemental production history will be applicable for 2022.

* * * * *

(h) In addition to meeting requirements in paragraph (g) of this section, the dairy operation must submit a separate form as prescribed by CCC to establish the supplemental production history for the dairy operation. A supplemental production history and a completed contract are both required for a complete submission that is then subject to approval by FSA.

■ 50. Amend § 1430.405 as follows:

■ a. In paragraph (a)(1), add the words ''and supplemental history'' after the words ''the production history'';

■ b. In paragraph (a)(2), add the words ''or 2019 milk marketings'' after the words ''annual milk marketings'' in the second sentence;

■ c. Add paragraph (a)(3);

■ d. In paragraph (f) introductory text, add the words ''and supplemental history'' after the words ''The production history'';

■ e. In paragraph (f)(1), add the words ''and supplemental history, if applicable,'' after the words ''and the production history'';

■ f. In paragraph (f)(2), add the words ''and supplemental history, if applicable,'' after the words ''associated production history''; and

■ g. In paragraph (g), add the words ''and supplemental history, if applicable'' after the words ''production history''.

The addition reads as follows:

§ 1430.405 Establishment and transfer of production history for participating dairy operation.

(a) * * *

(3) A participating dairy operation may establish supplemental production history during the coverage election period preceding the coverage year, except for 2021 when a special enrollment will occur. To determine supplemental production history, the dairy operation production history established according to paragraph (a), (b), or (c) of this section must be subtracted from that dairy operation's actual pounds of 2019 milk production as indicated on the milk marketing statement, with the result multiplied by 75 percent.

* * * * *

■ 51. Amend § 1430.407 as follows:

■ a. In paragraph (a)(2), add the words ''and supplemental history'' after the words ''production history'';
■ b. Revise paragraph (f); and
■ c. Add paragraph (n).

The revision and addition read as follows:

§ 1430.407 Buy-up coverage.

* * * * *

(f) The annual premium due for a participating dairy operation is calculated:

(1) For production history, by multiplying:

(i) The covered production history; and

(ii) The premium per cwt of milk specified in paragraph (e) of this section for the coverage level elected in paragraph (d) of this section by the dairy operation; and

(2) For supplemental production history, by multiplying:

(i) The covered supplemental production history; and

(ii) The premium per cwt of milk in paragraph (e) of this section for the coverage level elected in paragraph (d) of this section by the dairy operation.

* * * * *

(n) The premium rate for supplemental pounds eligible under a multi-year lock in contract maintains the basic rate according to paragraph (e) of this section and will not receive the 25 percent premium discount rate.

■ 52. Amend § 1430.409 as follows:
■ a. In paragraph (b)(2), remove the word ''and'' at the end;
■ b. In paragraph (b)(3), remove the period at the end and add ''; and'' in its place; and
■ c. Add paragraph (b)(4).

The addition reads as follows:

§ 1430.409 Dairy margin coverage payments.

* * * * *

(b) * * *

(4) *Supplemental history.* The supplemental production history of the dairy operation, divided by 12.

* * * * *

■ 53. Amend § 1430.411 by revising paragraph (c)(3) to read as follows:

§ 1430.411 Calculation of average feed cost and actual dairy production margins.

* * * * *

(c) * * *

(3) For alfalfa hay, the full month price received during the month by farmers in the United States for high quality (premium and supreme) alfalfa hay as reported in the monthly Agricultural Prices report by USDA NASS will be used to calculate the hay price.

* * * * *

PART 1434—NONRECOURSE MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR HONEY

■ 54. The authority citation for part 1434 continues to read as follows:

Authority: 7 U.S.C. 7231–7237, 7931–7936, and 9031–40; and 15 U.S.C. 714b and c.

§ 1434.1 [Amended]

■ 55. Amend § 1434.1 in paragraph (a) by removing the words ''payment limitation and''.

PART 1435—SUGAR PROGRAM

■ 56. The authority citation for part 1435 continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj, 7272, and 8110; 15 U.S.C. 714b and 714c.

Subpart B—Sugar Loan Program

§ 1435.101 [Amended]

■ 57. Amend § 1435.101 as follows:

■ a. In paragraph (a), remove the words ''is 18.75 cents per pound'' and add the words ''may be established based on rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, and other factors as applicable'' in their place; and

■ b. In paragraph (b), remove the words ''is equal to 128.5 percent of the loan rate per pound of raw cane sugar'' and add the words ''may be established based on rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, and other factors as applicable'' in their place.

Zach Ducheneaux,

Administrator, Farm Service Agency.

Robert Ibarra,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2021–26827 Filed 12–10–21; 8:45 am]

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DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1003, 1103, 1208, 1240, 1245, 1246, and 1292

[EOIR Docket No. 018–0203; A.G. Order No. 5257–2021]

RIN 1125–AA81

Executive Office for Immigration Review Electronic Case Access and Filing

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: On December 4, 2020, the Executive Office for Immigration Review (''EOIR'') published a notice of proposed rulemaking (''NPRM'' or ''proposed rule''), proposing to amend EOIR's regulations in order to implement electronic filing and records applications for all cases before the immigration courts and the Board of Immigration Appeals (''BIA''). The NPRM also proposed amendments to the regulations regarding law student filing and accompaniment procedures. This final rule responds to comments received in response to the NPRM and adopts the NPRM with changes as described below.

DATES: This rule is effective on February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Notice of Proposed Rulemaking

On December 4, 2020, EOIR published an NPRM in the **Federal Register**, proposing to amend EOIR's regulations in order to implement electronic filing and records applications, known as EOIR's Courts & Appeals System (''ECAS''), for all cases before the immigration courts and the BIA, as well as to update law student filing and accompaniment procedures. *See* Executive Office for Immigration Review Electronic Case Access and Filing, 85 FR 78240 (Dec. 4, 2020).

The NPRM proposed revisions to 8 CFR parts 1001, 1003, 1208, 1240, 1245, 1246, and 1292. These revisions included: (1) Adding or updating relevant definitions; (2) mandating electronic filing, subject to certain

exceptions, for the Department of Homeland Security (''DHS''), attorneys, and accredited representatives, as well as providing for future voluntary use by pro se respondents, applicants, and petitioners; reputable individuals; and accredited officials; (3) providing standards for electronic filing relating to signatures, service of process, system outages, and the filing of classified information; (4) updating fee language to account for electronic payments; (5) removing the in-duplicate filing requirement for electronic filings; (6) revising the procedures for law student and law graduate filing and accompaniment; and (7) making various technical amendments to update outdated references and to conform with EOIR's style guidelines.

The comment period for the NPRM opened on December 4, 2020, and closed on January 4, 2021, with six organizational comments received. The Department summarizes and responds to the public comments below, followed by a description of changes made to the NPRM in this final rule.

II. Public Comments on the Proposed Rule and Responses

The Department received six organizational comments on the NPRM, which are organized by topic below.

A. Law Student or Law Graduate Accompaniment

Comment: One commenter requested that EOIR modify the proposed rule to clarify that supervising attorneys should not be required to be physically present in the same location as the law student or law graduate during a telephonic or video teleconference (VTC) hearing.

Response: After consideration, the Department has determined that the regulations should not specify that the law student or law graduate and the supervising attorney or accredited representative must all be physically present in the same location for each hearing. Instead, the Department has decided to remove the physical presence requirement and leave the determination regarding the parties' manner of appearance to the adjudicator's discretion, as is the case with all other types of representatives. For example, subject to the adjudicator's discretion, the supervising attorney or accredited representative may attend the hearing from a separate location, so long as the supervising attorney or accredited representative is able to proceed with the hearing if necessary. The change is described in more detail in Section III below.

B. System Outages

Comment: One commenter stated that the rule's planned outage standards should match the unplanned outage standards, which automatically moves the filing deadline in the case of an EOIR-recognized unplanned outage. The commenter was concerned about situations in which planned outages are not announced with sufficient notice or where a planned outage is not adequately publicized.

Response: The Department considered the commenter's suggestion and has decided to leave the planned outage process unchanged but will extend the minimum notice of planned outages from three to five days to ensure sufficient notice. The Department believes that this updated planned outage standard provides users with sufficient notice to ensure that filers will be able to complete any filings as necessary.

The rule states that, for any planned outage, EOIR will issue public communications regarding the planned outage. *See* 8 CFR 1003.2(g)(5), 1003.3(g)(2), 1003.31(b). These communications may include email notifications via EOIR's GovDelivery service and postings on EOIR's website, consistent with the standard practice of other court systems. *See, e.g.,* U.S. Ct. of App. for the Fed. Cir., *CM/ECF Scheduled Maintenance Outages, available at http://www.cafc.uscourts.gov/cmecf-scheduled-maintenance-outages* (last visited Feb. 26, 2021).

In addition, any planned outages announced with five or fewer business days prior to the outage will be treated as an unplanned outage and filing deadlines will be adjusted accordingly. *See* 8 CFR 1003.2(g)(5), 1003.3(g)(2), 1003.31(b). Therefore, for any properly noticed planned outage, filers will have at least six business days' notice, which the Department believes is sufficient to allow filers to plan their filings accordingly to meet all applicable filing deadlines.

C. Proof of Fee Payments

Comment: One commenter requested that EOIR clarify that proof of fee payments is sufficient when filing fee receipts, as the commenter stated that DHS is often delayed in providing a fee receipt in a timely manner.

Response: After consideration, the Department has updated the rule to account for situations in which a fee receipt has not been provided to the filer by the deadline set by the immigration court. The specific changes are described in further detail in Section III of this preamble.

D. Email Filings

Comment: One commenter requested clarity on the interaction between EOIR's implementation of electronic filing through this rule and EOIR's use of email filing due to the COVID–19 pandemic. The commenter asked whether the email inboxes would remain after the launch of electronic filing in an immigration court and questioned whether they should remain for pro se respondents.

Response: EOIR created temporary email inboxes to allow for basic electronic filing due to the COVID–19 pandemic. *See* EOIR, *Filing by Email—Immigration Courts, available at https://www.justice.gov/eoir-operational-status/filing-email-immigration-courts* (last updated September 7, 2021). As explained on the website, the email inboxes were intended for use only by non-ECAS users. *See id.* (''If you have opted-in to ECAS, do not use email in lieu of filing through ECAS.''). The email inboxes were intended to support the public and did not create efficiencies for EOIR, as they required court staff to print all filings for paper cases and to manually upload any filings for cases with electronic records of proceedings (''eROPs''). These email inboxes are now discontinued and were not intended to be long-term solutions for electronic filing at EOIR. *Id.* (''Filing by Email Expiration Date'').

Instead, EOIR continues to pursue full implementation of ECAS, a full-fledged electronic filing and records system, which provides filers with a secure portal to electronically view and file documents in eligible cases and sends automatic service notifications from EOIR.

Regarding pro se respondents, EOIR is focused on determining how to securely register them for ECAS, which will then enable willing pro se respondents to use ECAS for electronic filing.

E. Pro Se Access and Registration

Comment: One commenter requested additional information on EOIR's planned steps for providing pro se access to electronic filing. The commenter noted that the electronic filing system should ensure language accessibility for pro se respondents and that any electronic filing should be free of charge. Another commenter provided suggestions on registering pro se users for electronic filing, including using an identity verification system such as *www.login.gov,* or providing an in-person registration code.

Response: This rule creates a framework for allowing pro se respondents to use ECAS, including a

registration requirement and standards for opting in and out of voluntary electronic filing. *See* 8 CFR 1003.2(g)(4), 1003.3(g)(1), 1003.31(a). The Department continues to review options for registering pro se respondents for electronic filing and appreciates commenters' suggestions. Once EOIR determines how best to register pro se respondents, EOIR will provide further guidance as necessary.

Regarding accessibility, EOIR intends to fully comply with the requirements of Executive Order 13166 to provide meaningful access to the immigration courts to limited English proficiency (''LEP'') persons. *See* Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 FR 50121 (Aug. 16, 2000). To date, EOIR has released a language access plan detailing the agency's efforts to comply with Executive Order 13166. *See* EOIR, *The Executive Office for Immigration Review's Plan for Ensuring Limited English Proficient Persons Have Meaningful Access to EOIR Services,* May 31, 2012, *available at https://www.justice.gov/sites/default/files/eoir/legacy/2012/05/31/EOIRLanguageAccessPlan.pdf.* When EOIR implements ECAS for pro se respondents, who are the main EOIR population constituting LEP persons, EOIR will determine if Executive Order 13166 requires any additional changes to its public-facing systems to ensure meaningful access.

Lastly, the rule does not impose any standalone fees for electronic filing.

F. Representative Registration Process

Comment: One commenter requested that EOIR include changes to its eRegistry process by removing the in-person identity verification step.

Response: The Department believes that the request to remove in-person verification from the eRegistry process is outside the scope of this rule, as the rule does not make any changes to the eRegistry process. *See* 85 FR at 78244 (explaining that this rule does not add any additional eRegistry requirements).

G. Change of Address

Comment: One commenter requested that EOIR develop a centralized system for filing the change of address form, Form EOIR–33, in order to provide a simple and reliable process for pro se respondents and representatives.

Response: To the extent that the commenter requests a separate centralized system to submit Form EOIR–33, the Department believes such request is outside the scope of this regulation. Nevertheless, the Department notes that Form EOIR–33 is currently available for electronic filing through ECAS. In addition, as EOIR continues to pursue enhancements to its ECAS system, the agency will consider potential changes to its change of address filing and processing procedures to ensure a simple and efficient process for filers.

H. Service of Process

Comment: One commenter raised concerns about electronic service of process, noting that representatives could miss an email that ends up in a spam folder or is not received due to a technical issue. The commenter was also concerned about electronic service on pro se respondents and respondents who receive only limited representation. As a result, the commenter stated that DHS should be required to paper serve pro se respondents or their representatives in addition to any electronic service of process.

Response: The Department has no concerns regarding electronic service, which is standard practice in most court systems. *See, e.g.,* Ninth Cir. Ct. of App. Fed. R. App. P. 25.5(f)(1) (stating that, subject to some exceptions, ''[w]hen a document . . . is submitted electronically, the Appellate Electronic Filing System will automatically notify the other parties and counsel who are registered for electronic filing of the submission; no certificate of service or service of paper copies upon other parties and counsel registered for electronic filing is necessary.''). In addition, EOIR has been successfully piloting ECAS since June 2018, including by sending email notifications to filers. In general, representatives should vigilantly monitor their email inboxes, including any spam folders, for service notifications from EOIR, just as a person would for any important email communication.

Regarding cases involving pro se respondents who choose not to use ECAS, the rule requires DHS to complete service outside of the ECAS system consistent with current practice. *See, e.g.,* 8 CFR 1003.32(c). The Department also notes that EOIR currently does not allow for limited representation aside from bond hearings. If a respondent retains a representative for a proceeding before EOIR, that representative will be required under this rule to electronically file and receive electronic service so long as they have a valid Form EOIR–27 or EOIR–28 on file, as applicable. If the immigration court or BIA later grants the representative's withdrawal from the proceeding, the respondent becomes pro se, and the electronic filing and service procedures no longer apply.

Lastly, in response to the suggestion that DHS be required to complete paper service in all cases in addition to any electronic service, the Department declines to create additional service requirements for DHS that would not be similarly required of the opposing party. The Department is confident in the electronic service process, and requiring duplicative paper service would only reduce the efficiencies of the electronic filing and service process.

I. Electronic Filing for Existing Paper Cases

Comment: One commenter requested that EOIR allow for electronic filing in existing paper cases to increase usage among willing representatives.

Response: The Department appreciates the commenter's suggestion and enthusiasm for electronic filing. However, EOIR is unable to provide electronic filing in existing paper cases at this time due to resource constraints surrounding the digitization of existing case files. In the future, EOIR may consider converting paper records to eROPs, depending on cost, technological feasibility, and agency operational requirements. In addition, the Department believes that applying this rule prospectively to newly initiated cases will also help ensure a smooth transition into electronic filing and eROPs.

J. Signature Requirements

Comment: One commenter requested clarity regarding ink signatures on forms that require ink signatures and how those should be handled through electronic filing. Another commenter requested that EOIR allow for digital signatures on paper filings.

Response: As stated in the NPRM, the rule's signature requirements are subject to any form requirements regarding signatures. *See* 85 FR at 78246. Therefore, if a form requires an ink signature, the user must follow the form requirements. The user may then electronically file a scanned copy of the ink-signed form through ECAS, so long as the user maintains the original document for inspection upon request. *Id.* (''In practice, if the user was electronically filing, the user would sign the application in ink and then scan and electronically file the application with EOIR.'').

Second, the rule already also allows for the use of electronic and encrypted digital signatures on documents filed in paper. *See* 85 FR at 78246 (''First, EOIR proposes to accept documents with original, handwritten ink signatures,

encrypted digital signatures, or electronic signatures, whether filing electronically or on paper.'').

K. Transition Period

Comment: One commenter stated that EOIR should implement a transition period before making electronic filing mandatory for attorneys and accredited representatives in order for representatives to ensure they have the necessary staffing, training, and file storage.

Response: After consideration, the Department declines to implement an explicit transition period for attorneys and accredited representatives. The Department believes that electronic filing is standard practice in most court systems and that most, if not all, users should already be familiar with uploading documents electronically. EOIR has devoted resources to developing the EOIR Case Portal, an updated electronic filing portal that features an intuitive user interface for electronically filing documents at the immigration courts and the BIA and will be providing training materials and technical support to filers as necessary. For example, users can currently view training materials, including infographics and videos on how to upload and download documents, on EOIR's website. *See* EOIR, *Resources—Attorneys and Accredited Representatives, available at https://www.justice.gov/eoir/ecas/attorney-and-ar-resources* (last updated Aug. 25, 2021). This rule also includes a 60-day waiting period before it becomes effective, which provides additional time for filers to familiarize themselves with ECAS. Moreover, ECAS has been in production at many pilot courts for more than two years without issue, evincing a stable electronic filing system. *See* EOIR Electronic Filing Pilot Program, 83 FR 29575 (June 25, 2018).

In addition, this rule only applies to cases initiated after the ECAS release in a specific court or the BIA. *See* 8 CFR 1001.1(cc) (defining ''case eligible for electronic filing''). Therefore, attorneys and accredited representatives will only be required to electronically file documents in newly initiated cases, which will act as a de facto transition period.

L. Interaction with Other EOIR Proposed Rules

Comment: One commenter raised concerns about the rule's interaction with the September 30, 2020 NPRM entitled, ''Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances,'' 85 FR 61640 (Sept. 30, 2020) (''September NPRM''). The commenter requested clarification on the interaction between electronic filing under this rule and the September NPRM and recommended that the comment period be reopened to allow commenters additional time to explore potential interactions between the two rules.

Response: The Department finds it unnecessary to extend the comment period as requested because this rule and the September NPRM address two different, though admittedly related, topics. In the September NPRM, the Department proposed a new manner of appearance before the immigration courts and the BIA: Document assistance that would not trigger the full range of responsibilities and obligations required for full representation. *See* 85 FR at 61645. This rule establishes electronic filing requirements for attorneys and accredited representatives who have filed a Form EOIR–27 or EOIR–28 and are the representative of record, and creates a system that allows for voluntary and permissible electronic filing in the future by the respondent, applicant, or petitioner; reputable individuals and accredited officials; and any other authorized individuals. As discussed below in Section III, this final rule provides further clarification regarding when the electronic filing requirements apply so that it is clear that only attorneys or representatives who are the representative of record have a mandatory filing requirement. As the Department works to finalize the September NPRM, the Department will include any further clarity or provisions as needed in that final rule.

In addition, the Department notes that, as a general matter under the current system requirements, only representatives with a valid EOIR–27 or EOIR–28 entry of appearance on file for a specific case may view and file documents electronically for that case through ECAS.

M. Electronic Filing System

Comment: One commenter stated that EOIR should study other courts' electronic filing systems to serve as a model, including CM/ECF and those of other agencies and state courts.

Response: EOIR considered many existing court electronic filing systems in designing ECAS and will continue to solicit feedback from users in an effort to continually improve the system. *See* EOIR, *Contact—Attorneys and Accredited Representatives, available at https://www.justice.gov/eoir/ecas/attorney-and-ar-contact* (last updated Jan. 25, 2021) (providing an email inbox to submit ECAS-related suggestions).

N. Comment Period

Comment: Commenters raised concerns with the rule's 30-day comment period, stating that the comment period was too short in light of the holiday season, the COVID–19 pandemic, and EOIR's other pending proposed rules. Commenters requested that EOIR reopen the comment period for further comment.

Response: The Department believes the 30-day comment period on the NPRM was sufficient to allow for meaningful public input. *See, e.g., Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania,* 140 S. Ct. 2367, 2385 (2020) (''The object [of notice and comment], in short, is one of fair notice.'' (citation omitted; alteration in the original)).

The Administrative Procedure Act (''APA'') does not require a specific comment period length. *See generally* 5 U.S.C. 553(b)–(c). Although Executive Orders 12866 and 13563 recommend a comment period of at least 60 days, no specific length is required by executive order or statute. *See Vt. Yank. Nucl. Power Corp.* v. *NRDC,* 435 U.S. 519, 524 (1978) (explaining that, aside from ''extremely rare'' circumstances, the APA ''established the maximum procedural requirements which Congress was willing to have the courts impose upon agencies in conducting rulemaking procedures'').

Federal courts have found 30 days to be a reasonable comment period length. For example, the D.C. Circuit has stated that ''[w]hen substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.'' *Nat'l Lifeline Ass'n* v. *FCC,* 921 F.3d 1102, 1117 (D.C. Cir. 2019) (citing *Petry* v. *Block,* 737 F.2d 1193, 1201 (D.C. Cir. 1984)). Further, litigation has mainly focused on the reasonableness of comment periods shorter than 30 days, often in the face of exigent circumstances. *See, e.g., North Carolina Growers' Ass'n.* v. *United Farm Workers,* 702 F.3d 755, 770 (4th Cir. 2012) (analyzing the sufficiency of a 10-day comment period); *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 629–30 (D.C. Cir. 1996) (15-day comment period); *Northwest Airlines, Inc.* v. *Goldschmidt,* 645 F.2d 1309, 1321 (8th Cir. 1981) (7-day comment period).

Here, the Department decided that this rule, which codifies straightforward standards for electronic filing, was not overly complex or so ''substantial'' such that it necessitated a lengthy comment period. *Nat'l Lifeline Ass'n,* 921 F.3d at

1117. The NPRM did not present a novel concept with which commenters would have been entirely unfamiliar. In the last three years, the Department has published a notice in the **Federal Register** announcing pilot programs for electronic filing, 83 FR 29575; begun more than 40 pilot programs at immigration court locations across the country; and developed a robust website and portal, including technical support contacts, infographics, video tutorials, and user manuals. *See generally* EOIR, *EOIR Courts & Appeals System (ECAS)—Online Filing, available at https://www.justice.gov/eoir/ECAS* (last updated July 11, 2021). For these reasons, the Department finds it unnecessary to extend the comment period beyond the 30 days provided.

Moreover, the Department does not believe that the COVID–19 pandemic, the holiday season, or EOIR's other proposed rulemakings should have precluded the use of a 30-day comment period. Regarding the COVID–19 pandemic, proposed rulemakings allow for electronic comment submissions, and employers around the country have adopted telework flexibilities to the greatest extent possible, which reduces potential hardships from the COVID–19 pandemic. In addition, holidays within a comment period are unavoidable throughout much of the year, and commenters are expected to plan accordingly. Lastly, this rule is unrelated to any other proposed rules that EOIR issued during the same time period, and the Department does not believe that unrelated NPRMs provide cause for extending comment periods.

III. Final Rule

After reviewing public comments on the NPRM, the Department now adopts the NPRM as written with the following changes: (1) Removing the regulatory requirement that supervising attorneys or accredited representatives be physically present in the same location as the law students or law graduates they supervise for purposes of representation before EOIR, and instead leaving the determination regarding the parties' manner of appearance to the adjudicator's discretion; (2) correcting a scrivener's error regarding the supervisor requirements for law graduates; (3) allowing filers to include proof of fee payment with DHS when DHS has not provided a fee receipt within the filing deadline set by the immigration judge; (4) including language requiring sealed medical records to be filed in paper and not electronically; (5) broadening immigration judge discretion to accept paper filings from parties otherwise required to file electronically under this rule; (6) modifying the process for fee waiver denials at the BIA; (7) extending the minimum notice requirement for planned outages from three to five days; (8) removing duplicative examples of improper filings; (9) clarifying to whom the filing requirements apply; (10) clarifying the registration procedures for permissive electronic filers; and (11) making additional minor technical amendments to update outdated references.

First, the final rule modifies 8 CFR 1292.1(a)(2)(iv) so that supervising attorneys or accredited representatives are not required by regulation to be physically present in the same location as the law students or law graduates they supervise for purposes of representation before the immigration court or the BIA, and instead leaves the determination regarding the parties' manner of appearance (*e.g.,* video teleconference; in-person) subject to the adjudicator's discretion. This clarification enhances flexibility for supervising attorneys or accredited representatives of law students or law graduates while maintaining the requirement that the supervising attorney or accredited representative be able to participate fully and be prepared to proceed with the case, including in-person appearance when required. *See* 8 CFR 1003.10(b).

Second, the final rule amends 8 CFR 1292.1(a)(2)(iii) to correct a scrivener's error that excluded the requirement that law graduates appear under the supervision of an EOIR-registered licensed attorney or accredited representative. While the Department included this requirement in the NPRM at 8 CFR 1292.1(a)(2)(ii) as applied to law students appearing before EOIR, and indicated its clear intent that law students and law graduates be subject to the same supervision requirements through the paragraph regarding filings by law students and law graduates, it inadvertently excluded the supervisors' registration requirement in the paragraph regarding law graduates. Because the supervisors of both law students and law graduates must be able to proceed with the case at all times, 8 CFR 1292.1(a)(2)(iv), it is logical that the supervisors in both circumstances must be EOIR-registered. Indeed, the Department indicated its intent in the NPRM that law graduates' supervisors be registered in the same manner as law students' supervisors. *See* 85 FR at 78243 (''Further, this rulemaking proposes that law graduates, currently required to have 'supervision' under the regulations, 8 CFR 1292.1(a)(2)(iii), would also need to file through an attorney or accredited representative registered with EOIR.'')

Third, the final rule modifies 8 CFR 1001.1(dd)(2), 1003.23(b)(1)(ii), 1003.31(g), and 1103.7(a)(3) to allow filers to submit proof of fee payment made to DHS in the event that filers are not provided a fee receipt within the applicable filing deadline set by the immigration judge. This change will provide flexibility when filers cannot meet EOIR filing deadlines through no fault of their own. However, the rule makes clear that the filer must still submit the actual fee receipt within a later deadline set by the immigration judge or, if no deadline is set, within 45 days of the submission of the underlying filing.

Fourth, the final rule modifies 8 CFR 1003.2(g)(7), 1003.3(g)(4), and 1003.31(e) to add an additional requirement that sealed medical records must be filed in paper and not electronically. Most commonly, respondents are required to submit a sealed Form I–693 when applying for adjustment of status. *See* 8 CFR 1245.5; U.S. Citizenship and Immigration Services, Form I–693—Instructions for Report of Medical Examination and Vaccination Record, *available at https://www.uscis.gov/sites/default/files/document/forms/i-693instr.pdf* (explaining that the completed form will be returned if not sealed when submitted). Since documents in sealed envelopes cannot be electronically transmitted, respondents in these cases must submit the sealed Form I–693 medical report in paper to ensure the integrity of the record, which the immigration judge will open and scan into the electronic record of proceeding. This modification will provide clarification to ensure that the confidentiality of these medical records is maintained and that the medical records are not erroneously opened by the parties and filed electronically.

Fifth, the final rule modifies 8 CFR 1003.31(b) to broaden the ability of immigration judges to accept paper filings in all cases. The NPRM provided the BIA full discretion to accept paper filings as necessary but limited immigration judges to situations involving (1) rebuttal or impeachment; (2) good cause shown, provided that the filing is otherwise admissible and the immigration judge finds that any applicable filing deadline should be excused; or (3) when the opposing party does not object to the paper filing. By updating this language in the final rule, the Department recognizes that providing immigration judges with maximum discretion to accept paper filings will help provide the necessary

flexibility to receive evidence as the immigration judge deems necessary and will provide consistency between the immigration courts and the BIA.

Sixth, the final rule modifes 8 CFR 1001.1(dd), 1003.8(a)(3), and 1003.24(d) to update the fee waiver denial process at the BIA. The NPRM changed the existing BIA fee waiver process so that, if the BIA denied a fee waiver request, the BIA would hold the underlying filing in a pending state while allowing the filer a 10-day cure period to submit the required fee or to submit a new fee waiver request, which would also serve to toll any applicable filing deadlines. However, after further review, the Department has decided to modify this language to more closely match the existing process, while retaining the filing deadline tolling period. The final rule states that, if a fee waiver request is denied, the BIA will reject the filing consistent with existing practice but allow the filer 15 days to re-file the document with the proper payment or a new fee waiver request. Any applicable filing deadlines will be tolled during this 15-day period. The Department believes this modification provides a more standardized process for filings at the BIA and will prevent any issues stemming from the BIA needing to hold any filings in a pending state while waiting for a fee payment or new fee waiver.

Seventh, the final rule modifies 8 CFR 1003.2(g)(5), 1003.3(g)(2), and 1003.31(b) to extend the minimum notice for planned system outages from three to five days. As a result, any planned outages announced with five or fewer days' notice will be treated as an unplanned outage and filing deadlines will be extended until the first day of system availability that is not a Saturday, Sunday, or legal holiday. For planned outages with more than five days' notice, filers must electronically file documents during system availability within the applicable filing deadline or paper file documents within the applicable filing deadline. Extending the notice period will further ensure that filers have sufficient time to account for planned outages when filing their documents.

Eighth, the final rule removes proposed 8 CFR 1001.1(dd)(2), which provided a non-exhaustive list of improper filings subject to rejection by the immigration courts and the BIA. The requirements for proper filings are contained within various statutory and regulatory provisions. *See, e.g.,* INA 240(c)(4)(B), 8 U.S.C. 1229a(c)(4)(B) (requiring compliance with application instructions); 8 CFR 1003.31 (fee requirements), 1003.32 (proof of service and document formatting requirements), 1003.33 (document translation requirements). The proposed language in the NPRM was non-exhaustive and risked duplication and confusion with these and other similar provisions. Therefore, the Department has removed the language from the final rule.

Ninth, this rule amends the provisions at 8 CFR 1003.2(g)(4), 1003.3(g)(1), and 1003.31(a) regarding parties that are either required to or allowed to electronically file documents with EOIR. Specifically, this rule adds a qualifier that the mandatory electronic filing requirement for attorneys and accredited representatives applies only in those cases in which the attorney or accredited representative has entered an appearance on a Form EOIR–27 or a Form EOIR–28. This rule also amends the explanation of who may permissively file documents electronically so that it is clear that reputable individuals and accredited officials may also do so in those cases in which they have entered an appearance on a Form EOIR–27 or a Form EOIR–28. Finally, this rule includes a catchall that ''other authorized individuals'' may file documents electronically. For example, depending on sytem development, EOIR may authorize third-party electronic filing akin to the current availability of courier services.

Tenth, the final rule modifies 8 CFR 1003.2(g)(4), 1003.3(g)(1), and 1003.31(a) regarding the requirement for parties who may permsissibly and voluntarily participate in electronic filing with the immigration courts and the BIA. Previously, the proposed rule stated that such parties must first register with EOIR ''in conformity with 8 CFR 1292.1(f).'' That paragraph, however, only sets out registration procedures for attorneys and accredited representatives who appear before EOIR. Accordingly, the final rule replaces these references to 8 CFR 1292.1(f) with a general requirement that unrepresented respondents, reputable individuals, accredited officials, and any other authorized persons must first register with EOIR as a prerequisite to being able to electronically file documents with the immigration courts and the BIA. This amendment does not change the Department's expectation, as explained in the NPRM, that the registration procedures for these officials, once available, will mimic those that are set out in 8 CFR 1292.1(f) and that currently apply to attorneys and accredited representative. 85 FR at 78242 (''EOIR will adapt its current registration system as appropriate to allow pro se respondents, applicants, or petitioners and reputable individuals and accredited officials to register in order to be able to utilize ECAS.'').

Lastly, the final rule includes two additional technical amendments to correct additional outdated references to the Immigration and Naturalization Service in 8 CFR 1214.2 and 1245.21.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

The Department has reviewed this rule in accordance with the Regulatory Flexibility Act and has determined that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This rule regulates attorneys and accredited representatives, most of whom qualify as ''small entities'' under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(3)–(4), (6). However, all attorneys and accredited representatives already are required to enroll in eRegistry in order to practice before EOIR. Thus, they are already eligible to participate in the electronic filing system, which is currently being made available in many locations through a voluntary pilot program. This rule mandates electronic filing in eligible cases. The Department anticipates that the adoption of electronic filing will lead to substantial net cost savings for these attorneys and accredited representatives because they will no longer be required to bear the burdens and expenses of mailing or serving paper copies in each of their cases for filings submitted to the immigration court or to the BIA or for service of process on opposing counsel. Therefore, this rule will not have an adverse economic effect on attorneys or accredited representatives; instead the Department expects it to result in net cost savings. A more detailed analysis of the costs and benefits of this rule are detailed in Section IV.D of this preamble.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C.

804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The Department will report to Congress and to the Comptroller General as required by 5 U.S.C. 801(a).

D. Executive Order 12866 and Executive Order 13563 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). The Office of Information and Regulatory Affairs of the Office of Management and Budget (''OMB'') has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. It will neither result in an annual effect on the economy greater than $100 million nor adversely affect the economy or sectors of the economy. It does not pertain to entitlements, grants, user fees, or loan programs, nor does it raise novel legal or policy issues. It does not create inconsistencies or interfere with actions taken by other agencies. Accordingly, this rule is not a significant regulatory action subject to review by OMB pursuant to Executive Order 12866.

Executive Order 13563 directs 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, and other advantages; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 13563.

1. ECAS-Related Costs and Savings

The Department estimates that implementation of ECAS will result in a total savings of $68,103,621 over the first 10 years of its implementation.[1] Specifically, the Department estimates that electronic filing will cost EOIR $32,897,808 over 10 years, primarily due to increased technology costs to implement and maintain the new technology infrastructure. These costs are outweighed, however, by the predicted savings to the public—$101,001,429, which primarily relate to cost savings from no longer having to file documents via mail or in person. These costs and savings for EOIR and the public are discussed in further detail individually below.

TABLE 1—OVERVIEW OF TOTAL COST AND SAVINGS: EOIR AND THE PUBLIC[2]

Entity	Savings/costs
EOIR	($32,897,808)
OCIJ	12,910,888
BIA	2,710,950
OIT	(51,275,937)
OGC	2,757,920
Public	101,001,429
Total	68,103,621

Despite the financial cost to EOIR to develop and maintain the technology for ECAS, the Department believes that electronic filings will be a net benefit for the agency. During the electronic filing pilot program, EOIR has already begun to realize efficiencies in case processing. For example, in Fiscal Year (''FY'') 2019 DHS initiated 37,074 cases electronically (out of 465,790 cases initiated in the same time period), and 161 bond proceedings were initiated electronically. According to internal pilot metrics, charging documents filed electronically at the pilot sites are being processed nearly 10 times faster than charging documents filed in paper. Similarly, the time it takes to receive and process a non-charging supporting document is approximately 25 percent faster than processing a paper-filed supporting document. This represents a significant savings in terms of court staff time and in terms of the overall processing time for the 2,574 electronically filed motions that EOIR has received during the ECAS pilot program from its inception to the end of January 2020. This rule will only increase these time savings when all attorneys and accredited representatives begin filing documents electronically.

a. Office of the Chief Immigration Judge

The Department estimates that implementation of the rule will reduce the immigration courts' costs by the equivalent of approximately $12.9 million over the first 10 years of implementation. This reduction includes the cost of labor that will be reallocated to other tasks due to the more efficient processing of electronic documents. Cost changes for the courts will be realized primarily in initial case processing; individual hearing processing; and processing and shipping costs for changes of venue, appeals, and records retirement.

To reach its estimates, the Department determined the costs for adjudicating a typical case after the implementation of the rule. Using this methodology, the Department identified and analyzed three separate scenarios: (1) Legacy paper ROPs that were started but not completed before this rule; (2) eROPs for *pro se* respondents that are submitted in paper and scanned by court staff; and (3) eROPs for represented respondents that are completely electronic.

The Department then estimated the economic impact of the rule on the immigration courts for each of the next 10 years by calculating the average costs for each of the three scenarios above; multiplying each scenario's average cost by the expected annual number of cases received for the immigration courts and expected annual hearings for the immigration courts in each scenario over the next decade; separately calculating the baseline cost (*i.e.,* the cost without mandatory electronic filing), using existing time estimates and labor rates, for the next 10 years; and subtracting the post-regulation cost from the baseline cost for each of the next 10 years.

This economic impact reflects labor hours that will be saved in terms of dollars. In actuality, labor can be reallocated to higher-impact tasks, and more efficient labor usage could offset future hiring and resource needs, which may lead to more quantifiable realized savings. As shown in Table 2, the expected cost savings increase every year. This is a result of legacy paper ROPs leaving the system as cases are adjudicated and a higher percentage of the future pending cases having

[1] All dollar amounts cited in this discussion are calculated to correspond with what would have been the value in December 2016 using the U.S. Bureau of Labor Statistics (BLS) Consumer Price Index inflation calculator found at *https://www.bls.gov/data/inflation_calculator.htm* (last visited Mar. 1, 2021).

[2] Savings listed are an overestimation as they include all filings, rather than only those filings that can be done electronically at this time (*i.e.,* the savings include filings by pro se respondents who cannot yet use ECAS). In addition, the Department notes that any differences in the amount of cost and benefits listed herein from those noted in the NPRM are the result of changes in when the Department applied rounding in the calculation for consistency and not due to substantive changes in the calculations.

mandatory eROPs as a result of this regulation.

TABLE 2—OFFICE OF THE CHIEF IMMIGRATION JUDGE COST SAVINGS

Year	Expected cost savings
1	$140,304
2	526,622
3	816,841
4	1,115,708
5	1,320,399
6	1,500,104
7	1,666,355
8	1,816,269
9	1,947,925
10	2,060,361
Total	12,910,888

Since all paper-filed documents, per this new regulation, will be scanned and maintained in an eROP, initial case processing is estimated to become marginally more expensive as court staff must scan the paper documents into the eROP. However, this increase in cost will be outweighed by the time savings, calculated in terms of the cost of labor, for individual hearing processing and change of venue processing, as filing becomes more expeditious for court staff in each individual case. Additionally, annual shipping costs will be reduced, since changes of venue, appeals, and records retirement transfers will occur electronically instead of manually shipping the paper ROP to another court, the BIA, or the Federal Records Center.

Cost changes have been calculated with the assumption that all other processes remain the same. However, eROPs enable the possibility of further cost savings through more efficient case adjudication. For example, widely available eROPs may enable immigration judges to hear a case via video teleconference (''VTC'') almost instantly. Under the current paper ROP system, the ROP needs to be shipped to the immigration judge's location before a VTC hearing can be held. In contrast, an eROP could enable a judge to open any eROP and hear a case immediately. This new paradigm has the potential to improve the efficiency of workload adjudication by judges and their staff members.

EOIR may also realize savings through the reduced growth of storage requirements at court locations. EOIR currently stores paper ROPs at immigration courts, utilizing valuable storage space in courtrooms, offices, and hallways. Conversion to an eROP system may ease the strain on the system as new pending cases will have an eROP that will not require physical storage space. With the information currently available, storage space utilization and savings cannot be specifically calculated. However, this regulation will likely reduce costs for the immigration courts by allowing current space to be used for functional purposes, rather than storage.

b. Board of Immigration Appeals

The Department also estimates that implementation of the rule will reduce the BIA's costs by approximately $2.7 million over the first 10 years of implementation. Cost changes for the BIA will be realized in three main process areas: Scanning pro se ROPs; receiving ROPs from the immigration courts; and returning ROPs to the immigration courts.

TABLE 3—BIA COSTS SAVINGS

Year	Expected cost savings
1	($23,064)
2	176,822
3	201,808
4	250,818
5	285,414
6	314,243
7	342,112
8	367,098
9	388,240
10	407,459
Total	2,710,950

The impacts to the BIA largely mirror the immigration courts in that scanning paper filings into the eROP is likely to increase costs by increasing staff workload. Further, the largest cost savings are likely to come from reduced shipping. The BIA's process requires that all ROPs sent to the BIA from the immigration court must be shipped back to the court upon completion of the appeal. Shipping costs will be eliminated for future eROPs because they will be transferred electronically, reducing costs for the BIA.

c. Office of Information Technology

The Department estimates that the implementation of the rule will increase EOIR's Office of Information Technology's (''OIT'') costs by a total of approximately $51.3 million across the first 10 years of implementation. These costs are due to the additional effort required to develop, deploy, and maintain the electronic infrastructure that serves as the backbone for electronic filing.

Because OIT developed the tools and processes necessary for the implementation of mandatory electronic filing throughout EOIR, it is the largest driver of quantifiable costs from mandatory electronic filing implementation. The deployment and training for mandatory electronic filing will be particularly resource-intensive for OIT, as it will be responsible for the deployment and maintenance of the hardware and software necessary to digitize and store documents along with delivering training to court staff. Costs related to electronic filing deployment are estimated to be approximately $21.7 million, including $2.3 million in hardware purchases, $1.7 million in travel to deliver training and install systems, and $3.4 million in external services, software, and licensing for necessary cloud computing services.

TABLE 4—OIT ELECTRONIC FILING DEPLOYMENT COSTS

Category	Year 1	Year 2	Total
External Services (*e.g.,* MS Azure Premier Access)	$999,429	$999,429	$1,998,858
Software	625,988	726,171	1,352,159
Travel	830,295	830,295	1,660,590
Labor/Hardware [3]	11,316,689	5,355,028	16,671,717
Support Labor:			
Program Support	1,717,020	900,298	2,617,318
Training	754,782	431,820	1,186,602
Service Desk/Operations	482,417	482,417	964,834
Product Labor:			
eROP	2,699,130	1,322,681	4,021,811
Electronic Filing	3,741,362	1,833,416	5,574,778

TABLE 4—OIT ELECTRONIC FILING DEPLOYMENT COSTS—Continued

Category	Year 1	Year 2	Total
Hardware	1,921,978	384,396	2,306,374
Total	13,772,401	7,910,923	21,683,324

Costs are estimated to be highest in the first year of the deployment, as hardware is purchased, software systems are finalized and implemented, and training is delivered to court staff. Costs are estimated to decrease by over 40 percent in the second deployment year as OIT completes training court staff and transitions to a steady state of software and hardware maintenance. The cost reductions in the second year of deployment will be driven by a 47 percent reduction in labor costs and an 80 percent reduction in hardware costs.

Once training and deployment are complete, OIT's costs will stabilize. While OIT will no longer incur costs related to training court staff, OIT will be using more labor than before mandatory electronic filing. This is due to the additional staff necessary to provide help desk support to the courts and IT services related to the electronic filing system. OIT will also continually accrue expenses for cloud computing platform licensing and hardware repairs, upgrades, and replacements required to support electronic filing. OIT estimates that overall costs will increase by approximately 1 percent each year, primarily driven by increases in labor costs. These ongoing expenses will represent the new steady state for OIT. The eight years following completion of the deployment phase are estimated to cost an additional $29.6 million due to mandatory electronic filing.

TABLE 5—OIT ELECTRONIC FILING STEADY STATE COSTS

Category	Year 3	Year 4	(4)	Year 10	Total
External Services (*e.g.,* MS Azure Premier Access)	$999,429	$999,429	.....	$999,429	$7,995,432
Software	366,521	366,521	.....	366,521	2,932,168
Travel	0	0	.....	0	0
Labor/Hardware	2,227,541	2,255,993	.....	2,445,561	18,666,644
Support Labor:					
Program Support	239,564	239,564	.....	239,564	1,916,512
Training	172,728	172,728	.....	172,728	1,381,824
Service Desk/Operations	482,417	482,417	.....	482,417	3,859,336
Products Labor:					
eROP	466,808	480,812	.....	574,115	4,151,015
Electronic Filing	481,628	496,076	.....	592,341	4,282,793
Electronic Filing Hardware	384,396	384,396	.....	384,396	3,075,168
Total	3,593,491	3,621,943	.....	3,811,510	29,594,242

As mandatory filing is implemented and electronic filing progresses, the Department anticipates that this will lead to significant additional efficiencies in case processing. This may include more expeditious case scheduling and adjudication, improved data quality, increased performance monitoring and tracking, augmented data analytics capabilities, and better alignment with information storage best practices. There may also be further impacts to EOIR's internal data-informed decision-making process, as the digitization of the data may allow for increased analysis of the relationship between various practices, procedures, and outcomes.

d. Office of the General Counsel

The Department estimates that the implementation of the rule will increase efficiencies for the EOIR Office of the General Counsel (''OGC'') programs. For example, digitization of files will allow for more expeditious compliance with Freedom of Information Act (''FOIA'') and other requests for information, reducing the time burden of such activities on EOIR staff. Specifically, the Department estimates that costs associated with FOIA compliance will decrease by approximately $2.8 million across the first 10 years of implementation. These savings will be realized through reduced shipping costs in the FOIA response process as more ROPs are accessible electronically instead of requiring storage retrieval and shipping.

As electronic filing becomes more widespread, the proportion of FOIA requests that can be satisfied through electronic records searches will proportionally increase. A higher percentage of the future pending caseload will have mandatory eROPs as a result of this regulation, which will cause the ratio of eROPs to paper ROPs, and thus expected cost savings, to increase over time, as detailed in Table 6.

TABLE 6—OGC COST SAVINGS

Year [5]	Expected cost savings
1	$0
2	0
3	60,052
4	203,084
5	295,661
6	360,279
7	404,478
8	443,370
9	479,318

[3] Labor/Hardware represents a total of the individual categories of support labor, product labor, and hardware.

[4] Years 5 through 9 are not included in this visual, but are factored into the totals calculations. OIT estimates that labor costs will increase by 3 percent per year. Non-labor costs, such as hardware, software, and external services, remain constant through each year.

TABLE 6—OGC COST SAVINGS—Continued

Year [5]	Expected cost savings
10	511,678
Total	2,757,920

The public may also see the added qualitative benefit of more expeditious FOIA compliance, as OGC will not have to wait for records to be shipped between locations to satisfy FOIA requests and will instead be able to search and access the records electronically.

e. The Public

The benefits to the public are high as well. Parties will be able to file documents at any time of day from any location with internet, thereby reducing postage costs and the need to physically appear at an immigration court during business hours. For many parties, this will be a substantial benefit, as the nearest immigration court may be hours away. The parties will also be able to view the eROP electronically, providing instant access to necessary documents and eliminating the need to appear at the immigration court to view the paper record. Further, parties will save on paper and toner costs required to print copies of filings, and costs associated with required process service.

The Department believes that the biggest savings to the parties before EOIR will be from reduced costs associated with mailing or hand-delivering filings that would have been incurred without the implementation of electronic filing. In FY 2018, EOIR's immigration courts received 311,761 paper filings and 2,555 electronic filings,[6] and the BIA received 49,522 paper filings.[7] While EOIR does not keep data regarding what methods (*e.g.,* Federal Express (''FedEx''), United States Postal Service (''USPS''), hand delivery by an attorney's office or a pro se party, or local courier) are used to file paper documents with EOIR and to serve those filings on the opposing party, anecdotal evidence points to filings with the immigration courts and the BIA and service on the opposing party typically being sent using FedEx or courier to ensure filings are timely. This is particularly true for filings with the BIA, because the filer must ensure actual receipt by the BIA in Falls Church, Virginia, no later than the close of business of the clerk's office on the established deadline.

To analyze the public cost savings associated with electronic filing, EOIR considered the average costs of sending filings through FedEx and USPS, the hourly rates for couriers and immigration attorneys, and the time savings from avoiding use of the immigration courts' intra-office mailing systems. Based on these preliminary estimates and filings from the previous year, if filers used FedEx for one-third of filings and used USPS for two-thirds of filings, electronic filing would have saved filers $38,780.64 in FedEx and USPS costs in the five pilot courts in FY 2018.[8] This is compared to a cost of $1,958,898.28 in FedEx costs [9] and $2,772,594.49 in USPS filing costs [10] (assuming one-third filings via FedEx and two-thirds filings via USPS) in the other 55 courts. These estimates are based on an $18.85 average FedEx filing rate ($8.57 average Express Saver cost + $20.03 average second day cost + $27.97 overnight cost, divided by three) and a $13.34 average USPS filing rate ($7.75 average priority mail + $28.59 average priority mail express + $3.68 first-class parcel, divided by three). The Department notes that this savings is likely an underestimate due to the tendency for many filers to use next-day service.

According to the U.S. Bureau of Labor Statistics, the mean hourly wage for couriers, such as those individuals law firms may hire to deliver documents to the immigration court, is $14.13. U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2018: 43–5021 Couriers and Messengers, available at https://www.bls.gov/oes/2018/may/oes435021.htm* (last visited Aug. 28, 2021).[11] Further, if an attorney makes the trip to the immigration court or to the BIA to handle the filing, the average cost would be $66.54 for one hour of work.[12] Assuming that approximately one-quarter of paper filings are handled via a courier, one-quarter of paper filings are handled via an attorney,[13] and one-half are filed using USPS or FedEx, with two-thirds of those via USPS and one-third via FedEx, the cost savings to the public of eFiling in the five pilot courts was approximately $70,916.15 ($8,026.96 for FedEx [14] + $11,361.23 for USPS [15] + $42,502.43 for the attorneys [16] + $9,025.54 for the couriers [17]).

Overall, the Department's estimates predict an annual savings to the public from electronic filing before the immigration courts and the BIA of approximately $10,100,142.88 ($70,916.15/2,555 filings = $27.76; $27.76 * (311,761 + 2,555 + 49,522 = 363,838 total filings)). Over the course of 10 years, these savings would equal $101,001,428.80 if the annual number of filings remains constant. The Department, however, expects that the true savings will be higher as EOIR hires additional immigration judges and opens additional immigration courts, expanding the annual case processing capacity. *See, e.g.,* EOIR, *Adjudication Statistics: New Cases and Total Completions,* July 8, 2021, *available at https://www.justice.gov/eoir/page/file/1060841/download* (showing that initial case completions increased from 195,127 in FY 2018 to 276,984 in FY 2019). Further, additional savings are expected based on gas and tolls, paper, toner, and other office supplies.

[5] FOIA volume is estimated at 50,000 per year, an approximation based on EOIR's FY 2018 FOIA volume.

[6] These numbers represent the paper and electronic filing of initial Forms I–862, Notice to Appear, and I–863, Notice of Referral to the Immigration Judge, by DHS at the immigration courts nationwide for the fiscal year. EOIR does not have data regarding the number of paper vs. electronic filings directly by respondents in proceedings or their representatives, such as the relative number of paper vs. electronically filed motions, applications for relief or protection, or evidence packets. Accordingly, this analysis uses the number of electronic and paper filings by DHS as a proxy for those by the respondents and their representatives since EOIR does not have similar data for that population but would expect the percentage of paper and electronic to be the same for both.

[7] *See* EOIR, *Statistics Yearbook: Fiscal Year 2018,* Aug. 30, 2019, *available at https://www.justice.gov/eoir/file/1198896/download.* As with the immigration courts, the Department uses the number of cases filed at the BIA as a proxy for the number of filings at the BIA because the Department does not have specific data regarding the number of individual filings by the parties.

[8] 852 filings * $18.85 average FedEx cost + 1,703 filings * $13.34 average USPS cost.

[9] 103,920 filings * $18.85 average FedEx cost.

[10] 207,841 filings * $13.34 average USPS cost.

[11] $14.72 in May 2018 is equivalent to $14.13 in December 2016.

[12] U.S. Bureau of Labor Statistics, *Occupational Employment Statistics: Occupational Employment and Wages,* May 2018: 23–1011 Lawyers, *available at https://www.bls.gov/oes/2018/may/oes231011.htm* (last visited Mar. 1, 2021) (stating the mean hourly wage in May 2018 was $69.34). $69.34 in May 2018 is equivalent to $66.54 in December 2016.

[13] This calculation further assumes that the filings would require one hour of time by the attorney or courier.

[14] 426 filings * $18.85 average FedEx cost.

[15] 852 filings * $13.34 average USPS cost.

[16] 639 filings * $66.54 mean hourly attorney wage.

[17] 639 filings * $14.13 mean hourly courier wage.

TABLE 7—COST AND SAVINGS FOR PUBLIC
[FY18]

FedEx envelope rates	FedEx express saver	FedEx 2day	FedEx standard overnight
FedEx Local (0–150 miles)	$7.64	$17.83	$23.53
FedEx Regional (151–600 miles)	8.16	19.34	25.80
FedEx National (601+ miles)	9.90	22.92	34.57
Average Cost	8.57	20.03	27.97
Costs of ⅓ OCIJ Paper Filings (103,920):	890,257.26	2,081,524.28	2,906,651.72
Total Costs of ⅓ BIA Paper Filings (16,507):	141,467.85	330,641.89	457,253.13
Savings from eFilings (2,555):	21,896.35	51,176.65	71,463.35

USPS rates by zone [18]	Priority mail [19]	Priority express [20]	First-class parcel [21]
USPS Zone 1&2 (0–150 miles)	$6.95	$24.43	$3.52
USPS Zone 3 (151–300 miles)	7.28	24.66	3.57
USPS Zone 4 (301–600 miles)	7.42	25.50	3.62
USPS Zone 5 (601–1000 miles)	7.65	28.47	3.66
USPS Zone 6 (1001–1400 miles)	7.83	30.37	3.71
USPS Zone 7 (1401–1800)	8.21	32.27	3.76
USPS Zone 8 (1801+)	8.90	34.45	3.89
Average Cost	7.75	28.59	3.68
Costs of ⅔ OCIJ Paper Filings (207,841):	1,610,765.17	5,942,164.66	764,853.65
Costs of ⅔ BIA Paper Filings (16,507):	255,863.67	943,889.32	121,493.70
Savings from eFilings (2,555):	19,801.25	73,047.45	9,402.40

Documents will also be served by electronic notification where applicable, which will provide near-instantaneous service. This will particularly benefit the parties when EOIR electronically serves orders and decisions on parties participating in electronic filing, as the appeal clock begins to run when the order is sent. This will allow the parties to begin preparing for any potential appeals immediately without having to wait for the order or decision to arrive in the mail as is currently the practice.

These potential benefits are reflected in the private bar's long-standing requests for electronic filing with EOIR. *See, e.g.,* EOIR, *EOIR/AILA Liaison Meeting,* Sept. 26, 2002, *available at https://www.justice.gov/eoir/eoir-aila-sep26-2002* (last updated Feb. 13, 2015) (discussing ''e-filing initiative''). In addition, since the July 2018 launch of the electronic filing pilot program, more than 15,000 attorneys have signed up for ECAS, indicating a strong interest in electronic filing. Moreover, at the pilot sites, approximately half of all active attorneys and accredited representatives in those sites have signed up for the pilot despite having no obligation to participate.

2. Costs and Savings Related to Rules Regarding Law Student and Law Graduate Filings

This rulemaking also proposes changes to law student and law graduate filing and accompaniment rules. First, EOIR believes that there will be minimal, if any, costs associated with requiring the supervisor to electronically file documents with EOIR, rather than the law student or law graduate filing on paper. And, if there are any associated costs, they will be outweighed by the substantial benefits of electronic filing, including immediate access to the eROP and the ability to file at any time of day from any location with internet access without the cost or reliance on mail carriers.

As to the proposed accompaniment change, EOIR does not maintain data on how many law students appear in immigration court or how many of those appear without a supervisor present, though it understands that in most cases, a supervisor does accompany the law student. Moreover, regardless of EOIR's rules, in many cases a supervisor is required to accompany the law student or graduate in order to comply with applicable state bar rules. *See, e.g.,* Cal. R. Ct. 9.42(d)(3) (allowing certified California law students to appear ''on behalf of the client in any public trial, hearing, arbitration, or proceeding, or before any arbitrator, court, public agency, referee, magistrate, commissioner, or hearing officer, to the extent approved by such arbitrator, court, public agency, referee, magistrate, commissioner, or hearing officer,'' provided that, among other requirements, the certified law student ''[p]erforms the activity under the direct and immediate supervision and in the personal presence of the supervising attorney'').

EOIR recognizes that in rare cases in which a law school clinic or similar program does not currently send a supervising attorney to every hearing at which a law student or law graduate appears, there may be some increased cost. EOIR expects those increased costs to be minimal, however, due to the rarity of cases in which law students and law graduates appear unsupervised, the availability of telephonic appearances, and the final rule's modification to allow law students and law graduates to appear from locations separate from their supervisors with adjudicator permission.[22] Further, EOIR

[18] This chart does not include the USPS rates for zone 9 as there are no immigration court locations in the Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands. *See* USPS Office of Inspector General, *Audit Report Management of Postal Zones* 4, Mar. 25, 2020, *available at https://www.uspsoig.gov/sites/default/files/document-library-files/2020/19RG009MS000-20.pdf* (last visited Aug. 26, 2021).

[19] These rates correspond with the USPS priority mail rates for letters, large envelopes, and parcels that do not exceed one pound.

[20] These rates correspond with the USPS priority mail express rates for letters, large envelopes, and parcels that do not exceed 0.5 pound.

[21] These rates correspond with the USPS first class package service rates for retail parcels that do not exceed one ounce.

[22] Due to the current outbreak of COVID–19, many immigration judges have adopted standing orders allowing practitioners to appear by telephone without the need for filing a motion. *See* EOIR Policy Manual, Part II, Ch. 14.1, *available at https://www.justice.gov/eoir/eoir-policy-manual/ii/14/1* (last updated Jan. 13, 2021); EOIR, *Operational Status Map, available at https://www.justice.gov/eoir-operational-status/operational-status-map* (providing standing orders for each immigration

believes that the benefits of ensuring that every case has a single licensed representative responsible for service of process and ultimate representation in the case outweighs the potential costs associated with the increased accompaniment requirements.[23]

E. Executive Order 13132 (Federalism)

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

F. Executive Order 12988 (Civil Justice Reform)

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

G. Paperwork Reduction Act

This rulemaking does not propose new or revisions to existing ''collection[s] of information'' as that term is defined in the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1214

Administrative practice and procedure, Aliens.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1246

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Department amends 8 CFR parts 1001, 1003, 1103, 1208, 1214, 1240, 1245, 1246, and 1292 as follows:

PART 1001—DEFINITIONS

■ 1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101, 1103; Pub. L. 107–296, 116 Stat. 2135; Title VII of Pub. L. 110–229.

■ 2. Amend § 1001.1 by revising paragraph (s) and adding paragraphs (cc), (dd), and (ee) to read as follows:

§ 1001.1 Definitions.

* * * * *

(s) The terms *government counsel* or *DHS counsel,* in the context of proceedings in which DHS has appeared, mean any officer assigned to represent DHS in any proceeding before an immigration judge or the Board of Immigration Appeals.

* * * * *

(cc) The term *case eligible for electronic filing* means any case that DHS seeks to bring before an immigration court after EOIR has formally established an electronic filing system for that court, or any case before an immigration court or the Board of Immigration Appeals that has an electronic record of proceeding. Any reference to a record of proceeding in this chapter shall include an electronic record of proceeding.

(dd) The term *filing* means the actual receipt of a document by the appropriate immigration court or the Board of Immigration Appeals. An electronic filing that is accepted by the Board or an immigration court will be deemed filed on the date it was submitted. A paper filing that is accepted by the Board or an immigration court will be deemed filed on the date it was received by the Board or the immigration court. A filing that is rejected by the Board or the immigration court as an improper filing will not be deemed filed on the date it was submitted or received.

(ee) The term *service* means physically presenting, mailing, or electronically providing a document to the appropriate party or parties; except that an Order to Show Cause or Notice of Deportation Hearing shall be served in person to the alien, or by certified mail to the alien or the alien's attorney, and a Notice to Appear shall be served to the alien in person, or if personal service is not practicable, shall be served by regular mail to the alien or the alien's attorney of record.

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 4. Amend § 1003.1 by revising paragraph (f) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(f) *Service of Board decisions.* The decision of the Board shall be in writing. The Board shall transmit a copy to DHS and serve a copy upon the alien or the alien's representative, as provided in part 1292 of this chapter.

* * * * *

■ 5. Amend § 1003.2 by:

court). Although EOIR cannot predict how long such standing orders will remain in effect, it reiterates that nothing in this proposed rule precludes a law school clinic from filing a motion for a telephonic appearance in order to reduce the need for in-person appearances.

[23] Although most law school clinics and similar programs only take cases at immigration courts that are located in nearby geographic proximity, both to minimize operational and logistical difficulties and to avoid the complications of complying with practice rules for different state jurisdictions, EOIR also recognizes that there may be unique situations in which a law school clinic takes a case that requires atypical travel arrangements. In that situation, coupled with the similarly unique situation of an unsupervised law student appearing alone on behalf of a respondent, EOIR acknowledges there may be an increase in cost associated with this rule because it would require the supervisor to accompany the student to those courts, but the benefit of the rule outweighs any cost associated with this highly unlikely situation. In addition, the final rule has been modified to allow law students and law graduates to appear from locations separate from their supervisor with the adjudicator's permission, which would diminish the potential for the scenario described. *See* 8 CFR 1292.1(a)(2)(iv).

■ a. Revising paragraph (g) introductory text, (g)(1), and (g)(2)(i) through (iii); and
■ b. Adding paragraphs (g)(4) through (9).

The revisions and additions read as follows:

§ 1003.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(g) *Filing procedures.* This paragraph applies to the filing of documents related to reopening and reconsideration before the Board.

(1) *English language and entry of appearance.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If the moving party, other than DHS, is represented, Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the motion.

(2) * * *

(i) A motion to reopen or motion to reconsider a decision of the Board pertaining to proceedings before an immigration judge shall be filed directly with the Board. Such motion must be accompanied by a payment in a manner authorized by EOIR or fee waiver request in satisfaction of the fee requirements of § 1003.8. The record of proceeding pertaining to such a motion shall be forwarded to the Board upon the request or order of the Board.

(ii) A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of DHS shall be filed with the officer of DHS having administrative control over the record of proceeding.

(iii) If the motion is made by DHS in proceedings in which DHS has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. If such motion is filed directly with an office of DHS, the entire record of proceeding shall be forwarded to the Board by the DHS officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs.

* * * * *

(4) *Filing parties.* DHS and all attorneys and accredited representatives of record for respondents, applicants, or petitioners are required to electronically file all documents with the Board through EOIR's electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents, applicants, or petitioners; reputable individuals and accredited officials who are the representatives of record; other authorized individuals; and practitioners filing an EOIR–60, may electronically file documents with the Board through EOIR's electronic filing application in cases eligible for electronic filing. An unrepresented respondent, applicant, or petitioner; reputable individual; accredited official; other authorized individual; or practitioner filing an EOIR–60, who elects to use EOIR's electronic filing application shall be required to register with EOIR as a condition of using that application. If a party not required to file electronically opts to use EOIR's electronic filing application for a case, the individual must electronically file all documents with the Board for that case unless the Board, only upon a motion filed by the individual with good cause shown, grants leave to opt out of using the electronic filing application. Such an indvidual who has been granted leave to opt out of using EOIR's electronic filing application for a case may not subsequently opt in again to use that application for the same case.

(5) *Filing requirements.* Parties must make the originals of all filed documents available upon request to the Board or the opposing party for review. If EOIR's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline or paper file documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced five or fewer business days prior to the start of the outage will be treated as an unplanned outage. The Board retains discretion to accept paper filings in all cases.

(6) *Classified information.* Notwithstanding any other provision of this chapter, classified information is never allowed to be electronically filed.

(7) *Sealed medical documents.* Notwithstanding any other provision of this chapter, parties are not permitted to file electronically any sealed medical documents.

(8) *Signatures.* All documents filed with the Board that require a signature must have an original, handwritten ink signature, an encrypted digital signature, or an electronic signature. Electronic filings submitted through EOIR's electronic filing application that require the user's signature may have a conformed signature. This paragraph (g)(8) is subject to the requirements of the application or document being submitted.

(9) *Service.* The service of filings with the Board depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(i) *Service of electronic filings.* If all parties are using EOIR's electronic filing application in a specific case, the parties do not need to serve a document that is filed through EOIR's electronic filing application on the opposing party. EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties by email. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (g)(9)(ii) of this section. If one or more parties are not filing through EOIR's electronic filing application in a specific case, the parties must follow the service procedures in paragraph (g)(9)(iii) of this section.

(ii) *Valid email address.* Use of EOIR's electronic filing application requires a valid email address for electronic service. The Board will use the email address provided through eRegistry for electronic service on participating parties. Users must immediately update their eRegistry account if their email address changes. Representatives must additionally file a new Form EOIR–27 with the Board if their email address changes. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

(iii) *Service of paper filings.* If electronic filing is not being used in a particular case, the party filing with the Board must serve a copy of the filing on the opposing party and include a certificate of service showing service on the opposing party with their filing. If the moving party is not DHS, service of the motion shall be made upon the ICE Office of the Principal Legal Advisor for the field location in which the case was completed before the immigration judge.

* * * * *

■ 6. Amend § 1003.3 by revising paragraphs (a)(2) and (3) and (c)(2) and adding paragraph (g) to read as follows:

§ 1003.3 Notice of appeal.

(a) * * *

(2) *Appeal from decision of a DHS officer.* A party affected by a decision of a DHS officer that may be appealed to the Board under this chapter shall be

given notice of the opportunity to file an appeal. An appeal from a decision of a DHS officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer (Form EOIR–29) directly with the DHS office having administrative control over the record of proceeding within 30 days of the service of the decision being appealed. An appeal is not properly filed until it is received at the appropriate DHS office, together with all required documents, and the fee provisions of § 1003.8 are satisfied.

(3) *General requirements for all appeals.* The appeal must be accompanied by a payment in a manner authorized by EOIR or fee waiver request in satisfaction of the fee requirements of § 1003.8. If the respondent or applicant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR–27) must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

* * * * *

(c) * * *

(2) *Appeal from decision of a DHS officer.* Briefs in support of or in opposition to an appeal from a decision of a DHS officer shall be filed directly with the DHS office having administrative control over the file. The alien and DHS shall be provided 21 days in which to file a brief, unless a shorter period is specified by the DHS officer from whose decision the appeal is taken, and reply briefs shall be permitted only by leave of the Board. Upon written request of the alien, the DHS officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a DHS office, shall include proof of service on the opposing party.

* * * * *

(g) *Filing.* This paragraph applies to the filing of documents related to appeals before the Board.

(1) *Filing parties.* DHS and all attorneys and accredited representatives of record for respondents, applicants, or petitioners are required to electronically file all documents with the Board through EOIR's electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents, applicants, or petitioners; reputable individuals and accredited officials, who are the representatives of record; other authorized individuals; and practitioners filing an EOIR–60, may electronically file documents with the Board through EOIR's electronic filing application in cases eligible for electronic filing. An unrepresented respondent, applicant, or petitioner; reputable individual; accredited official; other authorized individual; or practitioner filing an EOIR–60, who elects to use EOIR's electronic filing application shall be required to register with EOIR as a condition of using that application. If a party not required to file electronically opts to use EOIR's electronic filing application for a case, the individual must electronically file all documents with the Board for that case unless the Board, only upon a motion filed by the individual with good cause shown, grants leave to opt out of using the electronic filing application. Such an individual who has been granted leave to opt out of using EOIR's electronic filing application for a case may not subsequently opt in to use that application for the same case.

(2) *Filing requirements.* Parties must make the originals of all filed documents available upon request to the Board or to the opposing party for review. If EOIR's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline or paper file documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced five or fewer business days prior to the start of the outage will be treated as an unplanned outage. The Board retains discretion to accept paper filings in all cases.

(3) *Classified information.* Notwithstanding any other provision of this chapter, classified information is never allowed to be electronically filed.

(4) *Sealed medical documents.* Notwithstanding any other provision of this chapter, parties are not permitted to file electronically any sealed medical documents.

(5) *Signatures.* All documents filed with the Board that require a signature must have an original, handwritten ink signature, an encrypted digital signature, or an electronic signature. Electronic filings submitted through EOIR's electronic filing application that require the user's signature may have a conformed signature. This paragraph is subject to the requirements of the application or document being submitted.

(6) *Service.* The service of filings with the Board depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(i) *Service of electronic filings.* If all parties are using EOIR's electronic filing application in a specific case, the parties do not need to serve a document that is filed through EOIR's electronic filing application on the opposing party. EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties by email. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (g)(6)(ii) of this section. If one or more parties are not filing through EOIR's electronic filing application in a specific case, the parties must follow the service procedures in paragraph (g)(6)(iii) of this section.

(ii) *Valid email address.* Use of EOIR's electronic filing application requires a valid email address for electronic service. The Board will use the email address provided through eRegistry for electronic service on participating parties. Users must immediately update their eRegistry account if their email address changes. Representatives must additionally file a new Form EOIR–27 with the Board if their email address changes. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

(iii) *Service of paper filings.* If electronic filing is not being used in a particular case, the party filing with the Board must serve a copy of the filing on the opposing party and include a certificate of service showing service on the opposing party with their filing.

■ 7. Amend § 1003.8 by revising the last sentence of paragraph (a)(3) to read as follows:

§ 1003.8 Fees before the Board.

(a) * * *

(3) * * * If the fee waiver request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed, provided the Board grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and

tolls any applicable filing deadline during the 15-day cure period.

* * * * *

§ 1003.13 [Amended]

■ 8. Amend § 1003.13 by removing the definitions of ''Filing'' and ''Service''.

■ 9. Amend § 1003.17 by revising paragraph (a) to read as follows:

§ 1003.17 Appearances.

(a) In any proceeding before an immigration judge in which the alien is represented, the attorney or representative shall file a Notice of Entry of Appearance on Form EOIR–28 with the immigration court, and shall serve a copy of the Notice of Entry of Appearance on DHS as required by § 1003.32. The entry of appearance of an attorney or representative in a custody or bond proceeding shall be separate and apart from an entry of appearance in any other proceeding before the immigration court. An attorney or representative may file a Form EOIR–28 indicating whether the entry of appearance is for custody or bond proceedings only, any other proceedings only, or for all proceedings. Such Notice of Entry of Appearance must be filed and served even if a separate Notice of Entry of Appearance(s) has previously been filed with DHS for appearance(s) before DHS.

* * * * *

■ 10. Amend § 1003.23 by revising paragraph (b)(1)(ii) to read as follows:

§ 1003.23 Reopening or reconsideration before the immigration court.

* * * * *

(b) * * *

(1) * * *

(ii) *Filing.* Motions to reopen or reconsider a decision of an immigration judge must be filed with the immigration court having administrative control over the Record of Proceeding. If necessary under § 1003.32, a motion to reopen or a motion to reconsider shall include a certificate showing service on the opposing party of the motion and all attachments. If the moving party is not DHS, service of the motion shall be made upon the ICE Office of the Principal Legal Advisor for the field location in which the case was completed. If the moving party, other than DHS, is represented, a Form EOIR–28, Notice of Appearance as Attorney or Representative Before an Immigration Judge must be filed with the motion. For any motion requiring a fee, that motion must be accompanied by a fee receipt, an alternate proof of payment consistent with § 1103.7(a)(3), or a fee waiver request pursuant to § 1103.7(c). If filed in paper, the motion must be filed in duplicate with the immigration court.

* * * * *

■ 11. Amend § 1003.24 by revising the last sentence of paragraph (d) to read as follows:

§ 1003.24 Fees pertaining to matters within the jurisdiction of an immigration judge.

* * * * *

(d) * * * If the request for a fee waiver is denied, the application or motion will not be deemed properly filed, provided the immigration judge grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and tolls any applicable filing deadline during the 15-day cure period.

■ 12. Revise § 1003.31 to read as follows:

§ 1003.31 Filing documents and applications.

This section applies to the filing of all documents, including motions and applications, before the immigration courts.

(a) *Filing parties.* DHS and all attorneys and accredited representatives of record for persons appearing before the immigration courts are required to electronically file all documents, including charging documents, with the immigration courts through EOIR's electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents or applicants; reputable individuals and accredited officials who are representatives of record; other authorized individuals; and practitioners filing an EOIR–61, may electronically file documents with the immigration courts through EOIR's electronic filing application in cases eligible for electronic filing. An unrepresented respondent or applicant; reputable individual; accredited official; other authorized individual; or practitioner filing an EOIR–61, who elects to use EOIR's electronic filing application shall be required to register with EOIR as a condition of using that application. If a party not required to file electronically opts to use EOIR's electronic filing application for a case, the individual must electronically file all documents with the immigration courts for that case unless an immigration judge, only upon a motion filed by the individual with good cause shown, grants leave to opt out of using the electronic filing application. Such an individual who has been granted leave to opt out of using EOIR's electronic filing application for a case may not subsequently opt in to use that application for the same case.

(b) *Filing requirements.* If EOIR's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline or paper file documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced five or fewer business days prior to the start of the outage will be treated as an unplanned outage. In all other situations in cases eligible for electronic filing, an immigration judge retains the discretion to accept paper filings in all cases.

(c) *Originals.* Parties must make the originals of all filed documents available upon request to the immigration court or the opposing party for review.

(d) *Classified information.* Notwithstanding any other provision of this chapter, classified information is never allowed to be electronically filed.

(e) *Sealed medical documents.* Notwithstanding any other provision of this chapter, parties are not permitted to file electronically any sealed medical documents.

(f) *Where to file.* All documents that are to be considered in a proceeding before an immigration judge must be filed with the immigration court having administrative control over the Record of Proceeding.

(g) *Fees.* Except as provided in § 1240.11(f) of this chapter, all documents or applications filed with the immigration courts requiring the payment of a fee must be accompanied by a fee receipt from DHS, alternate proof of payment consistent with § 1103.7(a)(3) of this chapter, or a fee waiver request pursuant to § 1103.7(c). Except as provided in § 1003.8, any fee relating to immigration judge proceedings shall be paid to, and accepted by, any DHS office authorized to accept fees for other purposes pursuant to § 1103.7(a).

(h) *Filing deadlines.* The immigration judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived.

(i) *Filing under seal.* DHS may file documents under seal by including a cover sheet identifying the contents of the submission as containing information which is being filed under seal. Documents filed under seal shall only be examined by persons with authorized access to the administrative record.

(j) *Signatures.* All documents filed with the immigration courts that require a signature must have an original, handwritten ink signature, an encrypted digital signature, or an electronic signature. Electronic filings submitted through EOIR's electronic filing application that require the user's signature may have a conformed signature. This paragraph is subject to the requirements of the application or document being submitted.

■ 13. Revise § 1003.32 to read as follows:

§ 1003.32 Service and size of documents.

The service of filings with the immigration courts depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(a) *Service of electronic filings.* If all parties are using EOIR's electronic filing application in a specific case, the parties do not need to serve a document that is filed through EOIR's electronic filing application on the opposing party. If all parties are using EOIR's electronic filing application in a specific case, EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (b) of this section. If one or more parties are not filing through EOIR's electronic filing application in a specific case, the parties must follow the service procedures in paragraph (c) of this section.

(b) *Valid email address.* Use of EOIR's electronic filing application requires a valid email address for electronic service. The immigration courts will use the email address provided through eRegistry for electronic service on participating parties. Users must immediately update their eRegistry account if their email address changes. Representatives must additionally file a new Form EOIR–28 with the immigration court if their email address changes. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

(c) *Service of paper filings.* If electronic filing is not being used in a particular case, the party filing with the immigration court must serve a copy of the filing on the opposing party and include a certificate of service showing service on the opposing party with their filing. The immigration judge will not consider any documents or applications that do not contain a certificate of service unless service is made on the record during a hearing.

(d) *Size and format of documents.* Unless otherwise permitted by the immigration judge, all written material presented to immigration judges including offers of evidence, correspondence, briefs, memoranda, or other documents must be submitted on 8½″ x 11″ size pages, whether filed electronically or in paper. The immigration judge may require that exhibits and other written material presented be indexed, paginated, and that a table of contents be provided.

■ 14. Amend § 1003.37 by revising paragraph (a) to read as follows:

§ 1003.37 Decisions.

(a) A decision of the immigration judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the immigration judge in the presence of the parties and a memorandum summarizing the oral decision shall be served on the parties. If the decision is in writing, it shall be served on the parties by personal service, mail, or electronic notification.

* * * * *

■ 15. Amend § 1003.38 by revising paragraph (b) to read as follows:

§ 1003.38 Appeals.

* * * * *

(b) The Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) shall be filed directly with the Board of Immigration Appeals within 30 calendar days after the stating of an immigration judge's oral decision or the mailing or electronic notification of an immigration judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR–26) may not be filed by any party who has waived appeal.

* * * * *

■ 16. Amend § 1003.63 by revising the last sentence in paragraphs (f)(1) and (2) to read as follows:

§ 1003.63 Applications.

* * * * *

(f) * * *

(1) * * * A comment or recommendation not sent to the Director electronically must include proof of service on the applicant.

(2) * * * All responses must be filed with the Director and include proof of service of a copy of such response on the commenting party.

■ 17. Amend § 1003.64 by revising the last sentence in paragraph (b) introductory text to read as follows:

§ 1003.64 Approval and denial of applications.

* * * * *

(b) * * * The written notice shall be served at the address provided on the application unless the applicant subsequently provides a change of address pursuant to § 1003.66, or shall be transmitted to the applicant electronically.

* * * * *

■ 18. Amend § 1003.65 by revising the first sentence in paragraph (d)(3) to read as follows:

§ 1003.65 Removal of a provider from the List.

* * * * *

(d) * * *

(3) * * * The provider may submit a written answer within 30 days from the date the notice is served or is sent to the provider electronically. * * *

* * * * *

■ 19. Amend § 1003.106 by revising the second sentence in paragraph (a)(2)(ii) and the seventh sentence in paragraph (b) to read as follows:

§ 1003.106 Right to be heard and disposition.

(a) * * *

(2) * * *

(ii) * * * When designating the time and place of a hearing, the adjudicating official shall provide for the service of a notice of hearing on the practitioner or the authorized officer of the recognized organization and the counsel for the government. * * *

* * * * *

(b) * * * The adjudicating official shall provide for service of a written decision or memorandum summarizing an oral decision on the practitioner or, in cases involving a recognized organization, on the authorized officer of the organization and on the counsel for the government. * * *

* * * * *

PART 1103—APPEALS, RECORDS, AND FEES

■ 20. The authority citation for part 1103 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

■ 21. Amend § 1103.7 by revising paragraph (a)(3) to read as follows:

§ 1103.7 Fees.

(a) * * *

(3) *All other fees payable in connection with immigration proceedings.* Except as provided in 8 CFR 1003.8, the Executive Office for Immigration Review does not accept the payment of any fee relating to Executive Office for Immigration Review proceedings. Instead, such fees, when required, shall be paid to, and accepted by, an office of the Department of Homeland Security authorized to accept fees, as provided in 8 CFR 103.7(a)(1). The Department of Homeland Security shall return to the payer, at the time of payment, a receipt for any fee paid, and shall also return to the payer any documents, submitted with the fee, relating to any immigration proceeding. The fee receipt and the application or motion shall then be submitted to the Executive Office for Immigration Review. If the payer has paid any required fee but has not received the fee receipt from the Department of Homeland Security by the deadline set by the immigration judge, the payer must instead provide to the immigration court a copy of proof of the payment to the Department of Homeland Security with the filing. The payer must then submit a copy of the fee receipt by a new deadline set by the immigration judge. If the immigration judge does not set a deadline, the alien must submit the fee receipt no later than 45 days after the date of filing of the application. Remittances to the Department of Homeland Security for applications, motions, or forms filed in connection with immigration proceedings shall be payable subject to the provisions of 8 CFR 103.7(a)(2).

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 22. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; Pub. L. 115–218.

■ 23. Amend § 1208.4 by revising the fifth sentence of paragraph (a)(2)(ii) to read as follows:

§ 1208.4 Filing the application.

* * * * *

(a) * * *

(2) * * *

(ii) * * * For cases before the immigration court, the application is considered to have been filed on the date it is received by the immigration court. * * *

* * * * *

PART 1214—REVIEW OF NONIMMIGRANT CLASSES

■ 24. The authority citation for part 1214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

§ 1214.2 [Amended]

■ 25. Amend § 1214.2 by:

■ a. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraph (a);

■ b. Removing the words ''Service custody'' and adding in their place the words ''DHS custody'' in paragraph (a); and

■ c. Removing the words ''the Service'' and adding in their place the word ''DHS'', wherever they appear.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 26. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

■ 27. Amend § 1240.2 by:

■ a. Revising the section heading;

■ b. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraph (a), wherever they appear;

■ c. Removing the words ''Service attorney'' and adding in their place the words ''DHS counsel'' in paragraph (b), wherever they appear; and

■ d. Removing the words ''the Service'' and adding in their place the word ''DHS'', wherever they appear.

The revision reads as follows:

§ 1240.2 DHS Counsel.

* * * * *

§ 1240.10 [Amended]

■ 28. Amend § 1240.10 by:

■ a. Removing the words ''an Service counsel'' and adding in their place the words ''DHS counsel'' in paragraph (d); and

■ b. Removing the words ''the Service'' and adding in their place the word ''DHS'' in paragraphs (d) and (e).

§ 1240.11 [Amended]

■ 29. Amend § 1240.11 by:

■ a. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraphs (c)(3)(iv) and (c)(4); and

■ b. Removing the words ''the Service'' and adding in their place the word ''DHS'' in paragraph (e), wherever they appears.

§ 1240.13 [Amended]

■ 30. Amend § 1240.13 by removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraphs (a) through (c), wherever they appear.

§ 1240.26 [Amended]

■ 31. Amend § 1240.26 by:

■ a. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraph (b)(2);

■ b. Removing the words ''the Service'' and adding in their place the word ''DHS'' in paragraphs (a), (b)(3)(i) introductory text, (b)(3)(i)(B), and (b)(3)(ii);

■ c. Removing the words ''The Service'' and adding in their place the word ''DHS'' in paragraph (b)(3)(ii), wherever they appear, and in paragraph (c)(2).

§ 1240.32 [Amended]

■ 32. Amend § 1240.32 by:

■ a. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraph (c);

■ b. Removing the words ''the Service'' and adding in their place the word ''DHS'' in paragraph (c), wherever they appear; and

■ c. Removing the words ''The Service'' and adding in their place the word ''DHS'' in paragraph (c).

§ 1240.33 [Amended]

■ 33. Amend § 1240.33 by removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraphs (c)(4) and (d).

§ 1240.48 [Amended]

■ 34. Amend § 1240.48 by:

■ a. Removing the words ''the Service'' and adding in their place the word ''DHS''; and

■ b. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel''.

§ 1240.49 [Amended]

■ 35. Amend § 1240.49 by:

■ a. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraphs (c)(4)(iv) and (c)(5); and

■ b. Removing the words ''the Service'' and adding in their place the word ''DHS'' in paragraph (e); and

§ 1240.51 [Amended]

■ 36. Amend § 1240.51 by removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraphs (a) and (b).

■ 37. Amend § 1240.53 by revising paragraph (a) to read as follows:

§ 1240.53 Appeals.

(a) *Appeal to the Board.* Pursuant to 8 CFR part 1003, an appeal shall lie from a decision of an immigration judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Form EOIR–26, Notice of Appeal, fees, and briefs are set forth in §§ 1003.3, 1003.31, and 1003.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing or electronic notification of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board. The reasons for the appeal shall be stated in the Form EOIR–26, Notice of Appeal, in accordance with the provisions of § 1003.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 1003.1(d)(2) of this chapter.

* * * * *

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 38. The authority citation for part 1245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Pub. L. 105–100, 111 Stat. 2160, 2193; section 902, Pub. L. 105–277, 112 Stat. 2681; Title VII of Pub. L. 110–229.

§ 1245.21 [Amended]

■ 39. Amend § 1245.21 by:

■ a. Removing the words ''The Service'' and adding in their place the word ''DHS'' in paragraphs (a) introductory text, (b)(1) introductory text, (d)(2), and (m)(2) and (4), wherever they appear;

■ b. Removing the words ''the Service'' and adding in their place the word ''DHS'' in paragraphs (b)(1)(i), (c), (d) introductory text, (d)(2) and (4), (h) through (l), and (m)(2) through (4), wherever they appear;

■ c. Removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'' in paragraph (c);

■ d. Removing the words ''the Service's'' and adding in their place the word ''DHS's'' in paragraphs (j) and (m)(2); and

■ e. Removing the words ''Service files'' and adding in their place the words ''DHS files'' in paragraph (g)(3).

PART 1246—RECISSION OF ADJUSTMENT OF STATUS

■ 40. The authority citation for part 1246 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

§ 1246.5 [Amended]

■ 41. Amend § 1246.5 by removing the words ''Service counsel'' and adding in their place the words ''DHS counsel'', in paragraph (a), wherever they appear.

PART 1292—REPRESENTATION AND APPEARANCES

■ 42. The authority citation for part 1292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362.

■ 43. Amend § 1292.1 by revising paragraphs (a)(2)(ii) through (iv) and adding paragraph (a)(2)(v) to read as follows:

§ 1292.1 Representation of others.

(a) * * *

(2) * * *

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of an EOIR-registered licensed attorney or accredited representative, in a legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of an EOIR-registered licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iv) When the law student or law graduate appears before the immigration court or the Board of Immigration Appeals, the law student or law graduate is supervised by an attorney or accredited representative who must appear simultaneously at the same hearing. The accompanying attorney or accredited representative must be authorized to practice before EOIR and be prepared to proceed with the case at all times; and

(v) All filings by law students and law graduates are made through an EOIR-registered attorney or accredited representative.

* * * * *

Dated: December 4, 2021.

Lisa O. Monaco,

Deputy Attorney General.

[FR Doc. 2021–26853 Filed 12–10–21; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1066; Project Identifier AD–2021–01189–R; Amendment 39–21859; AD 2021–26–01]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 505 helicopters. This AD was prompted by a report of chafing of the right forward tail rotor (T/R) control cable. This AD requires inspecting the right forward T/R cable and, depending on the results, removing the cable assembly from service. This AD also requires measuring the clearance between the right forward T/R control cable and the roller bracket cut out and, depending on the results, adjusting the height of the roller bracket assembly position. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 28, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 28, 2021.

The FAA must receive comments on this AD by January 27, 2022.

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 Bell service information identified in this final rule, contact Bell Textron

Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* For S–TEC Corporation service information identified in this final rule, contact S–TEC Corporation, One S–TEC Way, Mineral Wells Municipal Airport, Mineral Wells, TX 76067; telephone (817) 215–7600. 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 (812) 222–5110. Service information that is incorporated by reference is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1066.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1066; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hye Yoon Jang, Aerospace Engineer, Delegation Oversight Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5190; email *hye.yoon.jang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA is adopting a new AD for certain serial-numbered Bell Textron Canada Limited Model 505 helicopters that have S–TEC Corporation HeliSAS stability augmentation system and autopilot installed under Supplemental Type Certificate SR09758DS. The FAA received a report that, during an inspection, chafing was discovered on the right forward T/R control cable due to contact with the autopilot yaw servo bracket, which is part of the HeliSAS stability augmentation system. Additional review revealed that the installation instructions did not include a minimum clearance limit between the right forward T/R control cable and the autopilot yaw servo bracket, which allowed the positioning of the autopilot yaw servo bracket such that it did not prevent contact and chafing. Since this discovery, S–TEC revised the installation instructions to specify a minimum cable clearance limit.

This condition, if not addressed, could result in failure of the right forward T/R control cable, loss of T/R control, and subsequent loss of control of the helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin 505–21–27, dated October 7, 2021 (ASB). This ASB specifies inspecting the right forward T/R control cable in the area of the roller bracket assembly for any signs of contact and ensuring there is minimum clearance between the right forward T/R control cable and the roller bracket cut out. Depending on the results, this ASB specifies reporting information to Bell, replacing the cable assembly, and adjusting the height of the roller bracket assembly position.

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

Other Related Service Information

The FAA reviewed S–TEC Corporation Installation Instructions ST–974–II–0001, Revision 2, dated October 6, 2021. This service information contains information necessary for installing a HeliSAS stability augmentation system and autopilot, including information for adjusting the height of the roller bracket assembly position.

AD Requirements

This AD requires inspecting the right forward T/R control cable in the area of the roller bracket assembly for any signs of chafing and, if there is any chafing, removing the cable assembly from service. This AD also requires measuring the clearance between the right forward T/R control cable and the roller bracket cut out and, depending on the results, adjusting the height of the roller bracket assembly position.

Differences Between This AD and the Service Information

If there is chafing, the ASB specifies reporting certain information to Bell, whereas this AD does not.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the affected components are part of an assembly that is critical to the control of a helicopter. In addition, chafing could lead to instantaneous failure before detection. As the FAA has no information pertaining to the extent of chafing of the right forward T/R control cable that may currently exist in helicopters or how quickly the condition may propagate to failure, the actions required by this AD must be accomplished within 25 hours time-in-service or 30 days, whichever occurs first. This compliance time is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, 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, for the same reasons the FAA found good cause to forego notice and comment.

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–2021–1066 and Project Identifier AD–2021–01189–R'' 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 Hye Yoon Jang, Aerospace Engineer, Delegation Oversight Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5190; email *hye.yoon.jang@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.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects up to 76 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the T/R control cable and measuring the clearance takes about 1 work-hour, for an estimated cost of $85 per helicopter and up to $6,460 for the U.S. fleet. Replacing the cable assembly, if required, takes about 8 work-hours and parts cost about $427 for an estimated cost of $1,107 per helicopter. If required, adjusting the height of the roller bracket assembly position takes about 1 work hour for an estimated cost of $85 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

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:

2021–26–01 Bell Textron Canada Limited: Amendment 39–21859; Docket No. FAA–2021–1066; Project Identifier AD–2021–01189–R.

(a) Effective Date

This airworthiness directive (AD) is effective December 28, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 505 helicopters, serial numbers 65011 through 65234 inclusive, 65236 through 65348 inclusive, 65350, and 65352 through 65359 inclusive, with an S–TEC Corporation HeliSAS stability augmentation system and autopilot installed under Supplemental Type Certificate SR09758DS.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of chafing of the right forward tail rotor (T/R) control cable caused by contact with an autopilot yaw servo bracket. The FAA is issuing this AD to detect and prevent chafing of the T/R control cable. The unsafe condition, if not addressed, could result in failure of the right forward T/R control cable, loss of T/R control, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 25 hours time-in-service or 30 days, whichever occurs first after the effective date of this AD, accomplish the following:

(1) Using a flashlight, visually inspect the right forward T/R control cable assembly part number M207–20M489–041 in the area of the roller bracket assembly for signs of chafing. Move the T/R pedals through the full range of motion and inspect the T/R control cable for chafing. If there is any chafing, before further flight, remove cable assembly part number M207–20M489–041 from service.

(2) Measure the clearance between the right forward T/R control cable and the roller bracket cut out as shown in Figure 1 of Bell Alert Service Bulletin 505–21–27, dated October 7, 2021. If the clearance is less than 0.3″ (7.6 mm), before further flight, adjust the height of the roller bracket assembly position until the clearance is a minimum of 0.3″ (7.6 mm).

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO 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 (i) of this AD. Information may be emailed to: *9-ASW-190-COS@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

For more information about this AD, contact Hye Yoon Jang, Aerospace Engineer, Delegation Oversight Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5190; email *hye.yoon.jang@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Bell Alert Service Bulletin 505–21–27, dated October 7, 2021.

(ii) [Reserved]

(3) For Bell service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.*

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

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

Issued on December 6, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–27008 Filed 12–9–21; 4:15 pm]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2021–0043]

RIN 0960–AI65

Extension of Expiration Dates for Four Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Cardiovascular System, Digestive System, Skin Disorders, and Immune System Disorders. We are making no other revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

DATES: This final rule is effective on December 13, 2021.

FOR FURTHER INFORMATION CONTACT: Michael J. Goldstein, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020.

For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in Part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in Part B of the listings when we assess your impairment(s). If the criteria in Part B do not apply, we may use the criteria in Part A when those criteria consider the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending the dates on which the listings for the following four body systems will no longer be effective as set out in the following chart:

Body system listings	Current expiration date	New expiration date
Cardiovascular System 4.00 and 104.00	February 4, 2022	February 6, 2026.
Digestive System 5.00 and 105.00	February 4, 2022	February 6, 2026.
Skin Disorders 8.00 and 108.00	February 4, 2022	February 6, 2026.
Immune System Disorders 14.00 and 114.00	February 4, 2022	February 6, 2026.

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.[2] We intend to update the four listings affected by this final rule as necessary based on medical advances as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration date. Therefore, we are extending the expiration dates listed above.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provides prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are

[1] We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

[2] We last extended the expiration dates of the four body system listings affected by this final rule on November 26, 2019 (84 FR 64993). We published a Noticed of Proposed Rulemaking (NPRM) revising the medical criteria for evaluating Digestive Disorders and Skin Disorders on July 25, 2019 (84 FR 35936).

impracticable, unnecessary, or contrary to the public interest.

We determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which the four body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations [3] provide that we may extend, revise, or promulgate the body system listings again. Therefore, we determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration date for these listings, we will not have the criteria we need to assess medical impairments in these four body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

[3] See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 in the introductory text by revising items 5, 6, 9, and 15 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

5. Cardiovascular System (4.00 and 104.00): February 6, 2026.

6. Digestive System (5.00 and 105.00): February 6, 2026.

* * * * *

9. Skin Disorders (8.00 and 108.00): February 6, 2026.

* * * * *

15. Immune System Disorders (14.00 and 114.00): February 6, 2026.

* * * * *

[FR Doc. 2021–26884 Filed 12–10–21; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

[Docket No. ETA–2020–0006]

RIN 1205–AC00

Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States, Implementation of Vacatur

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This Final Rule effectuates a Federal district court order vacating a January 14, 2021 Final Rule.

DATES: This rule is effective December 13, 2021. As of December 13, 2021, the Final Rule published on January 14, 2021, at 86 FR 3608, delayed on March 12, 2021, at 86 FR 13995, and further delayed May 13, 2021, at 86 FR 26164, is withdrawn. The Final Rule published on May 13, 2021, at 86 FR 26164, is also withdrawn.

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

SUPPLEMENTARY INFORMATION:

I. Background and Basis for Removal of Regulations

On October 8, 2020, the Department of Labor (Department) published an Interim Final Rule [1] (IFR or October 2020 IFR), amending Employment and Training Administration (ETA) regulations governing the prevailing wages for employment opportunities that U.S. employers seek to fill with foreign workers on a permanent or temporary basis through certain employment-based immigrant visas or through H–1B, H–1B1, or E–3 nonimmigrant visas. The Department published the October 2020 IFR with an

[1] *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States,* 85 FR 63872 (Oct. 8, 2020).

immediate effective date, bypassing pre-promulgation notice and comment, but requesting public input during a post-promulgation 30-day public comment period. Four groups of plaintiffs separately challenged the Department's IFR and, on December 1, 3, and 14, 2020, respectively, the IFR was set aside or enjoined by three district courts on procedural grounds.[2] Subsequently, on January 14, 2021, the Department published a Final Rule [3] in the **Federal Register** (Final Rule or January 2021 Final Rule), which adopted changes to the IFR. Although the Final Rule contained an effective date of March 15, 2021, the Department also included two sets of transition periods under which adjustments to the new wage levels would not begin until July 1, 2021. The Department twice delayed the effective date of the Final Rule,[4] and, on June 23, 2021, before the Final Rule took effect, the U.S. District Court for the Northern District of California entered an order vacating and remanding the Final Rule.[5] In light of the court's order, the Department has already announced that the operative version of the Code of Federal Regulations (CFR) at 20 CFR 656.40 and 20 CFR 655.731 continues to be the text in place on October 7, 2020, prior to the publication of the IFR.[6] However, changes to the regulatory text resulting from the now-vacated rulemaking are still reflected in the CFR at 20 CFR parts 655 and 656.

This rule removes from the CFR the regulatory text that the Department promulgated through the rulemaking in October 2020, and restores the regulatory text to appear as it did before the IFR's effective date.

The Department is not required to provide notice and comment or delay the effective date of this rule, because the changes made simply implement the courts' orders, including the vacatur of the January 2021 Final Rule, and restore the regulatory text so that it correctly reflects the operative regulatory text in place prior to publication of the now-vacated rulemaking. Moreover, good cause exists here for bypassing any otherwise applicable requirements of notice and comment and a delayed effective date. Notice and comment and a delayed effective date are unnecessary for the implementation of the court's order vacating the rule and would be contrary to public interest in light of the agency's need to implement the final judgment. *See* 5 U.S.C. 533(b)(B), (d). The Department believes that delaying the ministerial act of restoring the regulatory text in the **Federal Register** is contrary to the public interest because it could lead to confusion, particularly among the regulated public, as to the applicable prevailing wage methodology. The Department has concluded that each of those three reasons—that notice and comment and a delayed effective date are unnecessary, impracticable, and contrary to the public interest—independently provides good cause to bypass any otherwise applicable requirements of notice and comment and a delayed effective date.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Australia, Chile, Employment, Employment and training, Immigration, Labor, Migrant labor, Wages.

20 CFR Part 656

Administrative practice and procedure, Employment, Foreign workers, Labor, Wages.

Department of Labor

Accordingly, for the reasons stated in the preamble, the Department of Labor amends parts 655 and 656 of chapter V, title 20, Code of Federal Regulations, as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Amend § 655.731 by revising paragraphs (a)(2)(ii) introductory text, (a)(2)(ii)(A) introductory text, and (a)(2)(ii)(A)(*2*) to read as follows:

§ 655.731 What is the first LCA requirement, regarding wages?

* * * * *

(a) * * *

(2) * * *

(ii) If the job opportunity is in an occupation which is not covered by paragraph (a)(2)(i) of this section, the prevailing wage shall be the arithmetic mean of the wages of workers similarly employed, except that the prevailing wage shall be the median when provided by paragraphs (a)(2)(ii)(A), (b)(3)(iii)(B)(*2*), and (b)(3)(iii)(C)(*2*) of this section. The prevailing wage rate shall be based on the best information available. The following prevailing wage sources may be used:

(A) *OFLC National Processing Center (NPC) determination.* Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests, but shall do so in accordance with these regulatory provisions and Department guidance. On or after January 1, 2010, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. Upon receipt of a written request for a PWD on or after January 1, 2010, the NPC will determine whether the occupation is covered by a collective bargaining agreement which was negotiated at arm's length, and, if not, determine the arithmetic mean of wages of workers similarly employed in the area of intended employment. The wage component of the Bureau of Labor Statistics Occupational Employment Statistics survey shall be used to

[2] *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States,* 86 FR 3608, 3612 (Jan. 14, 2021) (discussing cases).

[3] 86 FR 3608.

[4] 86 FR 13995 (Mar. 12, 2021); 86 FR 26164 (May 13, 2021).

[5] *See* Order Granting Defendants' Motion for Voluntary Remand with Vacatur, *Chamber of Commerce, et al.* v. *Dep't of Homeland Sec., et al.,* No. 20–cv–07331 (N.D. Cal. June 23, 2021), ECF No. 139.

[6] Announcements, *OFLC Announces Updates to Implementation of the Final Rule Affecting Wages for H–1B and PERM Workers; District Court's Order Vacating Final Rule* (June 29, 2021), available at *https://www.dol.gov/agencies/eta/foreign-labor/news.*

determine the arithmetic mean, unless the employer provides an acceptable survey. The NPC shall determine the wage in accordance with secs. 212(n) and 212(t) of the INA. If an acceptable employer-provided wage survey provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity. In making a PWD, the Chicago NPC will follow 20 CFR 656.40 and other administrative guidelines or regulations issued by ETA. The Chicago NPC shall specify the validity period of the PWD, which in no event shall be for less than 90 days or more than 1 year from the date of the determination.

* * * * *

(*2*) If the employer is unable to wait for the NPC to produce the requested prevailing wage for the occupation in question, or for the CO and/or the BALCA to issue a decision, the employer may rely on other legitimate sources of available wage information as set forth in paragraphs (a)(2)(ii)(B) and (C) of this section. If the employer later discovers, upon receipt of the PWD from the NPC, that the information relied upon produced a wage below the final PWD and the employer was paying the NPC-determined wage, no wage violation will be found if the employer retroactively compensates the H–2B nonimmigrant(s) for the difference between the wage paid and the prevailing wage, within 30 days of the employer's receipt of the PWD.

* * * * *

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 3. The authority citation for part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec.122, Public Law 101–649, 109 Stat. 4978; and Title IV, Public Law 105–277, 112 Stat. 2681.

■ 4. Amend § 656.40 by revising paragraphs (a) and (b)(2) and (3) to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) *Application process.* The employer must request a PWD from the NPC, on a form or in a manner prescribed by OFLC. Prior to January 1, 2010, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests in accordance with the regulatory provisions and Department guidance in effect prior to January 1, 2009. On or after January 1, 2010, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. The NPC will provide the employer with an appropriate prevailing wage rate. The NPC shall determine the wage in accordance with sec. 212(t) of the INA. Unless the employer chooses to appeal the center's PWD under § 656.41(a) of this part, it files the Application for Permanent Employment Certification either electronically or by mail with the processing center of jurisdiction and maintains the PWD in its files. The determination shall be submitted to the CO, if requested.

(b) * * *

(2) If the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraph (b)(3) of this section, of the wages of workers similarly employed in the area of intended employment. The wage component of the DOL Occupational Employment Statistics Survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey under paragraph (g) of this section.

(3) If the employer provides a survey acceptable under paragraph (g) of this section that provides a median and does not provide an arithmetic mean, the prevailing wage applicable to the employer's job opportunity shall be the median of the wages of workers similarly employed in the area of intended employment.

* * * * *

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021–26660 Filed 12–10–21; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2021–N–0575]

Medical Devices; Neurological Devices; Classification of the Temporary Coil Embolization Assist Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the temporary coil embolization assist device into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the temporary coil embolization assist device's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective December 13, 2021. The classification was applicable on April 24, 2019.

FOR FURTHER INFORMATION CONTACT: Xiaolin Zheng, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4224, Silver Spring, MD 20993–0002, 301–796–2823, *Xiaolin.Zheng@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the temporary coil embolization assist device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section

510(k) of the FD&C Act (21 U.S.C. 360(k) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act (21 U.S.C. 360c(a)(1)). Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

For this device, FDA issued an order on May 29, 2017, finding the Comaneci Embolization Assist Device not substantially equivalent to a predicate not subject to a premarket approval application. Thus, the device remained in class III in accordance with section 513(f)(1) of the FD&C Act when we issued the order.

On September 28, 2017, Rapid-Medical Ltd. submitted a request for De Novo classification of the Comaneci Embolization Assist Device. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 24, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 882.5955.[1] We have named the generic type of device temporary coil embolization assist device, and it is identified as a prescription device intended for temporary use in the neurovasculature to mechanically assist in the embolization of intracranial aneurysms with embolic coils. The device is delivered into the neurovasculature with an endovascular approach. This device is not intended to be permanently implanted and is removed from the body when the procedure is completed.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—TEMPORARY COIL EMBOLIZATION ASSIST DEVICE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Infection	Sterilization validation, Pyrogenicity testing, Shelf life testing, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation.
Tissue or vessel damage:	Non-clinical performance testing, Clinical performance testing, and Labeling.
• Dissection	
• Perforation	
• Hemorrhage	
• Vasospasm	
Thromboembolic event	Non-clinical performance testing, Clinical performance testing, and Labeling.
Coils ensnarement	Non-clinical performance testing, Clinical performance testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, temporary coil embolization assist devices are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 882.5955 to subpart F to read as follows:

§ 882.5955 Temporary coil embolization assist device.

(a) *Identification.* A temporary coil embolization assist device is a prescription device intended for temporary use in the neurovasculature to mechanically assist in the embolization of intracranial aneurysms with embolic coils. The device is delivered into the neurovasculature with an endovascular approach. This device is not intended to be permanently implanted and is removed from the body when the procedure is completed.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing of the device must demonstrate the device performs as intended for temporary use as an endovascular device to assist in the coil embolization of intracranial aneurysms and must evaluate all adverse events, including tissue or vessel damage that could lead to dissection, perforation, hemorrhage, or vasospasm, thrombo-embolic events, and coil entanglement.

(2) The patient-contacting components of the device must be demonstrated to be biocompatible.

(3) Non-clinical performance testing must demonstrate the device performs as intended under anticipated conditions of use, including:

(i) Mechanical testing to demonstrate the device can withstand anticipated tensile, torsional, compressive, and tip deflection forces;

(ii) Mechanical testing to evaluate the radial forces exerted by the device;

(iii) Simulated use testing to demonstrate the device can be delivered to the target location in the neurovasculature and is compatible with embolic coils;

(iv) Dimensional verification testing;

(v) Radiopacity testing; and

(vi) Performance testing to evaluate the coating integrity and particulates under simulated use conditions.

(4) Animal testing under anticipated use conditions must evaluate all adverse events, including damage to vessels or tissues.

(5) Performance data must support the sterility and pyrogenicity of the device.

(6) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the labeled shelf life.

(7) The labeling must include:

(i) Instructions for use;

(ii) A detailed summary of the device technical parameters, including compatible delivery catheter dimensions and device sizing information;

(iii) A summary of the clinical testing results, including a detailed summary of the device- and procedure-related complications and adverse events; and

(iv) A shelf life.

Dated: December 6, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26926 Filed 12–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2021–N–0898]

Medical Devices; Gastroenterology-Urology Devices; Classification of the Pressure Ulcer Management Tool

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the pressure ulcer management tool into class I. We are taking this action because we have determined that classifying the device into class I will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective December 13, 2021. The classification was applicable on December 20, 2018.

FOR FURTHER INFORMATION CONTACT: Gema Gonzalez, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2530, Silver Spring, MD 20993–0002, 301–796–6519, *Gema.Gonzalez@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the pressure ulcer management tool as class I, which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance

patients' access to beneficial innovation by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On April 3, 2017, FDA received Bruin Biometrics, LLC's request for De Novo classification of the SEM Scanner (Model 200). FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class I if general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(A)). After review of the information submitted in the request, we determined that the device can be classified into class I. FDA has determined that general controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 20, 2018, FDA issued an order to the requester classifying the device into class I. In this final order, FDA is codifying the classification of the device by adding 21 CFR 876.2100.[1] We have named the generic type of device pressure ulcer management tool, and it is identified as a prescription device intended for patients at risk of developing pressure ulcers. The device provides output that supports a user's decision to increase intervention. The device is an adjunct tool for pressure ulcer management that is not intended for detection or diagnostic purposes.

FDA has identified the following risks to health associated specifically with this type of device: Adverse tissue reaction, transmission of infection between patients, electromagnetic interference with patient monitoring equipment, and electrical shock. As previously stated, FDA believes general controls provide reasonable assurance of safety and effectiveness for this device type.

At the time of classification, pressure ulcer management tools are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

Section 510(l)(1) of the FD&C Act provides that a device within a type that has been classified into class I under section 513 of the FD&C Act is exempt from premarket notification under section 510(k), unless the device is of substantial importance in preventing impairment of human health or presents a potentially unreasonable risk of illness or injury (21 U.S.C. 360(l)(1)). Devices within this type are exempt from the premarket notification requirements under section 510(k), subject to the limitations of exemptions in 21 CFR 876.9.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; and the collections of

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

■ 1. The authority citation for part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 876.2100 to subpart C to read as follows:

§ 876.2100 Pressure ulcer management tool.

(a) *Identification.* A pressure ulcer management tool is a prescription device intended for patients at risk of developing pressure ulcers. The device provides output that supports a user's decision to increase intervention. The device is an adjunct tool for pressure ulcer management that is not intended for detection or diagnostic purposes.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 876.9.

Dated: December 8, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26924 Filed 12–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice: 11460]

RIN 1400–AF20

Waiver of Personal Appearance and In-Person Oath Requirement for Certain Immigrant Visa Applicants Due to COVID–19

AGENCY: Department of State.

ACTION: Final rule and temporary final rule.

SUMMARY: This temporary final rule (TFR) provides flexibility for consular officers to waive the personal appearance of certain repeat immigrant visa applicants who were approved for an immigrant visa in the same classification and on the same basis as the current application on or after August 4, 2019. It also gives consular officers discretion to allow this subset of immigrant visa applicants to affirm the accuracy of the contents of their application without appearing in person before a consular officer. This TFR is effective immediately and expires after 24 months. The final rule portion of this document reinstates parts of the regulations with certain updates after the expiration of the TFR.

DATES: Amendments in instructions 2 and 3 in this temporary final rule are effective from December 13, 2021, through December 13, 2023. The amendment in instruction 4 is effective December 13, 2023.

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Acting Senior Regulatory Coordinator, Visa Services Directorate, Bureau of Consular Affairs, Department of State; telephone (202) 485–7586, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION:

I. What changes to 22 CFR 42.62 and 42.67 does this TFR make?

The Department is temporarily authorizing consular officers, for 24 months, to waive, on a discretionary basis, the requirements in 22 CFR 42.62 and 42.67 that an immigrant visa applicant appear in person before and be interviewed by a consular officer for certain repeat immigrant visa applicants. This TFR applies to immigrant visa applicants who were issued a U.S. immigrant visa on or after August 4, 2019, who meet the following additional criteria: Individuals who would be eligible for a discretionary waiver of personal appearance and interview pursuant to this TFR must be seeking an immigrant visa in the same classification (or another classification as the result of automatic conversion due to the death or naturalization of the petitioner of the previously issued immigrant visa) and pursuant to the same approved petition as their previously approved application, and they must continue to qualify for the immigrant visa sought.

Under this TFR, the personal appearance and interview of certain applicants for an immigrant visa may be waived in the discretion of the consular officer, provided that the applicant is willing to affirm under penalty of perjury to the information provided on the Online Immigrant Visa and Alien Registration Application, Form DS–260 (or Form DS–230, Application for Immigrant Visa and Alien Registration if the consular officer authorizes the use of that form). The consular officer may communicate with the applicant by telephone or email, may request that the applicant provide additional information that the consular officer deems necessary, and may request the applicant to appear in person. If the applicant identifies the need to change responses to Form DS–260, the consular officer or other authorized consular staff can reopen the DS–260 for the applicant to make changes to that form and re-sign it under penalty of perjury.

This TFR will automatically expire 24 months after it takes effect. As the TFR is designed to help address the problem of applicants who are unable to travel due to the COVID–19 pandemic and who must meet specific time-limited criteria, this TFR will no longer be necessary as the pandemic becomes less acute and ordinary travel resumes. The Department believes that 24 months is sufficient to process the cases described.

Pursuant to section 222(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1202(a), every immigrant visa applicant must make an application in the form, manner, and place prescribed by regulation. Except as may otherwise be prescribed by regulations, every immigrant visa application must ''be signed by the applicant in the presence of the consular officer and verified by the oath of the applicant administered by the consular officer.'' INA 222(e), 8 U.S.C. 1202(e). Regulations further require immigrant visa applicants to be interviewed by a consular officer. 22 CFR 42.62(b). This TFR provides an exception to these personal appearance and interview requirements pursuant to INA 222(a) and (e), 8 U.S.C. 1202(a) and (e).

II. Why is the Department promulgating this TFR?

A. The COVID–19 Pandemic

On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d) in response to COVID–19.[1] On March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak to control the spread of the virus that causes COVID–19 in the United States.[2] That proclamation declared that the emergency began in the United States on March 1, 2020. In addition to the National Emergency, a variety of Presidential Proclamations have

[1] HHS, *Determination of Public Health Emergency,* 85 FR 7316 (Feb. 7, 2020).

[2] *Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

suspended entry of certain noncitizens into the United States since the public health emergency began. On January 31, 2020, then-President Trump issued Presidential Proclamation 9984, which, subject to limitations, suspended and limited the entry of certain noncitizens who had been physically present in the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau) for the 14-day period prior to their entry into the United States.[3] Similar suspensions of entry were issued under Presidential Proclamation 9992, dated February 29, 2020 (the Islamic Republic of Iran);[4] Presidential Proclamation 9993, dated March 11, 2020 (the Schengen Area);[5] Presidential Proclamation 9996, dated March 14, 2020 (the United Kingdom (excluding overseas territories outside of Europe) and the Republic of Ireland);[6] Presidential Proclamation 10014, dated April 22, 2020 (immigrants who present a risk to the U.S. labor market)[7] (subsequently revoked by Presidential Proclamation 10149, dated February 24, 2021);[8] Presidential Proclamation 10041, dated May 24, 2020 (the Federative Republic of Brazil);[9] Presidential Proclamation 10143, dated January 25, 2021 (the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa);[10] and Presidential Proclamation 10199, dated April 30, 2021 (the Republic of India).[11]

COVID–19 is a communicable disease caused by a coronavirus, SARS–CoV–2. It appears to spread easily and sustainably within communities.[12] The SARS–CoV–2 virus is thought to transfer primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes; it may also transfer through contact with surfaces or objects contaminated with these droplets or by airborne transmission through exposure to virus in small droplets and particles that can linger in the air for minutes to hours.[13] People who are infected but do not show symptoms can also spread the virus to others.[14] The ease of transmission presents a risk of a surge in hospitalizations for COVID–19, which would reduce available hospital capacity.

Symptoms include fever and chills, cough, shortness of breath, fatigue, muscle and body aches, headache, loss of taste or smell, sore throat, congestion or runny nose, nausea, or diarrhea, which typically appear two to 14 days after exposure.[15] Manifestations of severe disease have included pneumonia, hypoxemic respiratory failure/ARDS, sepsis and septic shock, cardiomyopathy and arrhythmia, acute kidney injury, and complications from prolonged hospitalization, including secondary bacterial and fungal infections, thromboembolism, gastrointestinal bleeding, and critical illness polyneuropathy/myopathy.[16] Older adults and people who have severe chronic medical conditions are also at higher risk for more serious COVID–19 illness.[17]

As of November 16, 2021, there were approximately 254,174,536 identified cases of COVID–19 globally, resulting in approximately 5,112,325 deaths; and approximately 46,993,724 identified cases in the United States, and approximately 760,266[18] deaths, with new cases being reported daily.

On March 20, 2020, in response to significant worldwide challenges related to the COVID–19 pandemic, the Department temporarily suspended routine visa services at all U.S. Embassies and Consulates.[19] The Department authorized posts to begin a phased resumption of visa services, on a post-by-post basis, beginning on July 15, 2020, consistent with the Department's guidance for safely returning the Department's workforce to its facilities.[20] The Department noted that local conditions such as medical infrastructure, COVID–19 cases, emergency response capabilities, and restrictions on leaving home may affect when Department facilities can begin to provide routine services.[21] The Department's embassies and consulates are implementing safeguards to keep staff and customers safe, including implementing physical distancing in waiting rooms, scheduling fewer interviews at a time, frequent disinfection of high touch areas, and following local health and safety regulations.[22]

B. Allocation of Limited Consular Resources

Individuals who have been issued an immigrant visa may need to seek a subsequent immigrant visa for a variety of reasons. Immigrant visas have a maximum validity of six months. That means recipients of immigrant visas typically have up to a maximum of six months to travel to the United States and apply for admission with a DHS immigration officer after visa issuance. If admitted, the individual becomes a lawful permanent resident. Individuals who were issued an immigrant visa may have been unable or unwilling to seek admission during the period of validity; they may know that they will be unable to use the visa during the period of

[3] *Proclamation 9984 of January 31, 2020, Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus and Other Appropriate Measures To Address This Risk,* 85 FR 6709 (Feb. 5, 2020).

[4] *Proclamation 9992 of February 29, 2020, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus,* 85 FR 12855 (Mar. 4, 2020).

[5] *Proclamation 9993 of March 14, 2020, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus,* 85 FR 15045 (Mar. 16, 2020).

[6] *Proclamation 9996 of March 11, 2020, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus,* 85 FR 15341 (Mar. 18, 2020).

[7] *Proclamation 10014 of April 22, 2020, Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak,* 85 FR 23441 (Apr. 27, 2020).

[8] *Proclamation 10149 of February 24, 2021, A Proclamation on Revoking Proclamation 10014,* 86 FR 11847 (Mar. 1, 2021).

[9] *Proclamation 10041 of May 24, 2020, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus,* 85 FR 31933 (May 28, 2020).

[10] *Proclamation 10143 of January 25, 2021, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019,* 86 FR 7467 (Jan. 28, 2021).

[11] *Proclamation 10199 of April 30, 2021, Suspension of Entry as Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019,* 86 FR 24297 (May 6, 2021).

[12] CDC, *How COVID–19 Spreads* (May 13, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html.*

[13] *Id.*

[14] *Id.*

[15] CDC, *Coronavirus Disease 2019 (COVID–19)* (Feb. 22, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html.*

[16] CDC, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID–19)* (Feb. 16, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html.*

[17] CDC, *People with Certain Medical Conditions* (Aug. 20, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html.*

[18] Johns Hopkins, COVID–19 Map, (Oct. 5, 2021), *https://coronavirus.jhu.edu/map.html;*

CDC, *Coronavirus Disease 2019 (COVID–19): Cases in U.S.* (Oct. 5, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[19] Department of State, *Suspension of Routine Visa Services* (Mar. 20, 2020), *https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html.*

[20] Department of State, *Phased Resumption of Visa Services,* (Apr. 6, 2021), *https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html.*

[21] *Id.*

[22] *Id.*

validity; or their visa may have been lost or mutilated. Depending on the circumstances, a repeat immigrant visa applicant may be required to submit a new Form DS–260/DS–230, in which case the applicant must submit any required supporting documents and must pay a new fee.[23] This TFR makes no changes to form or fee requirements.

As set forth in 22 CFR 42.62 and 42.67, immigrant visa applicants ordinarily must appear in person before a consular officer to execute their application and subscribe to the contents of their application under oath, and they must be interviewed by a consular officer.

The requirement for immigrant visa applicants to be interviewed by a consular officer and to execute and affirm the information presented on the Form DS–260/DS–230 application before a consular officer provides benefits to the Department and applicants alike. Consular officers have an opportunity to assess the credibility of immigrant visa applicants when they appear in person, while visa applicants are provided an opportunity, if necessary, to correct, any information on their application, which the applicants sign under penalty of perjury. Applicants could face civil and criminal consequences for material misrepresentations. However, there is reduced benefit from requiring the recipient of a previously approved immigrant visa to return to the consular post to execute their application in person, take an in-person oath, and be interviewed for an identical or substantially similar application, and those actions would significantly strain consular resources. Accordingly, in light of current resource considerations due to the COVID–19 pandemic, the Department is temporarily permitting consular officers to waive a second personal appearance and interview at the consular officer's discretion.

Local conditions such as medical infrastructure, COVID–19 cases, emergency response capabilities, and restrictions on leaving home may affect when and the extent to which Department facilities can provide routine services, including scheduling appointments and the ability of applicants to obtain documentation and medical screening appointments. The Department's embassies and consulates are implementing safeguards to keep staff and customers safe, including implementing physical distancing in waiting rooms, scheduling fewer interviews at a time, frequently disinfecting high touch areas, and following local health and safety regulations. The Department is facing a high demand for visa services, and the policy announced in this TFR will help allocate scarce resources to areas where personal appearances by and interviews of visa applicants are relatively more beneficial.

The Department conducted a database query to determine how many individuals may benefit from this rule and determined that nearly 49,000 individuals were issued immigrant visas between August 4, 2019 (180 days before the first Presidential Proclamation suspending entry into the United States of certain immigrants in relation to the COVID–19 pandemic) and September 30, 2021, and have not yet sought admission. Of the individuals issued immigrant visas between August 4, 2019, and May 31, 2021, over 11,000 did not seek admission before their immigrant visas expired. Additionally, according to the Department's database query, at least 244 individuals were refused admission into the United States at a port of entry between August 4, 2019, and September 30, 2021, though it is not certain how many of those refusals of admission were due to suspensions of entry relating to the COVID–19 pandemic. Some individuals in this population may be eligible to benefit from this rule.

This TFR applies to a narrow category of immigrant visa applicants. To qualify for the discretionary in-person waiver, an applicant must:

(1) Have been issued a U.S. immigrant visa on or after August 4, 2019;

(2) Seek an immigrant visa in the same classification and pursuant to the same approved petition as the previously issued immigrant visa, or an immigrant visa pursuant to the same approved petition as the previously issued visa but in a different classification because it was automatically converted due to the death or naturalization of the petitioner of the previously issued immigrant visa;

(3) Qualify for an immigrant visa in the same classification, or another classification as the result of automatic conversion due to the death or naturalization of the petitioner of the previously issued immigrant visa, and pursuant to the same approved petition as the previously issued immigrant visa; and

(4) Have no changed circumstances that could affect the applicant's eligibility for the visa.

This TFR furthers the Department's commitment to the health and safety of consular officers and customers by reducing personal appearances, as appropriate, which could potentially expose consular officers, locally employed staff, applicants, and customers to COVID–19. This will also save time and travel expenses for applicants who wish to apply for another immigrant visa after having been unable or unwilling to use their original visa. This TFR is effective until 24 months following its publication in the **Federal Register**.

III. Regulatory Findings

A. Administrative Procedure Act (APA)

This TFR is being issued without prior notice and opportunity to comment and with an immediate effective date pursuant to 5 U.S.C. 553(a)(1), (b)(A), (b)(B), and (d)(3), the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*

1. Foreign Affairs

This TFR involves a foreign affairs function of the United States. In *Raoof* v. *Sullivan,* the U.S. District Court for the District of Columbia found that the Department properly exercised the foreign affairs exception under the APA when it ''did not engage in formal rule-making'' for the J–1 nonimmigrant visa two-year foreign residence requirement because ''the exchange visitor program—with its statutory mandate for international interaction through nonimmigrants—certainly relates to foreign affairs and diplomatic duties conferred upon the Secretary of State and the State Department.'' 315 F.Supp.3d 34, 44 (D.D.C. 2018). The COVID–19 pandemic has caused considerable disruption to routine visa services. This TFR will help visa-issuing consular posts around the world allocate scarce resources to areas where personal appearances and interviews are more beneficial relative to other areas, including for the protection of U.S. national security. The TFR will also protect embassy and consulate staff, visa applicants, and U.S. citizens seeking consular services from potential exposure to COVID–19 and the serious illness or death that may result from such exposure.

In many countries, the consular section of the U.S. Embassy is the United States' most public-facing direct engagement with a host country's populace. An outbreak of COVID–19 that could be sourced to a U.S. Embassy

[23] 22 CFR part 42 governs immigrant visas. 22 CFR 42.71 governs immigrant visa fees. 22 CFR 42.72 sets the maximum immigrant visa validity period at six months, and 22 CFR 42.74 addresses certain new, replacement, and duplicate visas. Individuals seeking another visa pursuant to 22 CFR 42.74 are not required to submit a new application and are not impacted by this TFR.

consular section waiting room could have an impact on U.S. relations with the host country, particularly if there were mitigating measures that could have been taken that were not.

Recognizing that the Department's continued ability to facilitate visa processing for applicants from any given country has a significant impact on that country's bilateral relationship with the United States, this TFR clearly and directly impacts foreign affairs functions of the United States and ''implicat[es] matters of diplomacy directly.'' *City of N.Y.* v. *Permanent Mission of India to the U.N.,* 618 F.3d 172, 202 (2d Cir. 2010). This TFR reflects changes to U.S. foreign policy, specifically in the context of U.S. visas. In acknowledging its limited consular resources and local conditions, the Department noted that medical infrastructure, COVID–19 cases, emergency response capabilities, and restrictions on leaving home may affect when, and the extent to which, Department facilities can begin to provide routine services. This TFR, by granting greater flexibility to accommodate the immigrant visa process in light of the dynamic conditions posed by the COVID–19 pandemic, will allow the Department to better facilitate immigration of foreign nationals to the United States, a key foreign affairs function of the United States. This TFR, which temporarily provides flexibility to consular officers to issue immigrant visas under limited circumstances, directly relates to the Department's authority to carry out diplomatic duties and inherently involves the Secretary of State's foreign affairs functions.

2. Statement of Department Procedure and Practice

This TFR provides for a temporary change in the Department's procedures and practice regarding the adjudication of certain immigrant visa applications. The APA provides that notice and comment is not required for ''interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). Some individuals who have been issued immigrant visas did not use them for reasons related to the impact of the COVID–19 pandemic, including personal choice, a lack of travel options, or official travel restrictions. Whether such individuals must appear in person to apply for a new immigrant visa or may proceed with the application steps without such an appearance is a matter of Department procedure and practice.

Courts have said that substantive rules ''create new law, rights, or duties'' or ''change existing rights and obligations,'' whereas procedural rules do not ''alter the rights or interests of parties'' but instead only ''the manner in which the parties *present themselves or their viewpoints to the agency.*'' *Time Warner Cable Inc.* v. *FCC,* 729 F.3d 137 (2d Cir. 2013) (emphasis added); *see also Kaspar Wire Works, Inc.* v. *Sec'y of Labor,* 268 F.3d 1123, 1131–1132 (D.C. Cir. 2001) (finding even an agency's approach of imposing per-instance penalties to be a procedural ''agency housekeeping rule''). Whether an applicant for an immigrant visa who had previously been issued a visa in the same classification, pursuant to the same approved petition (or that was automatically converted to another classification due to the death or naturalization of the petitioner of the previously-granted immigrant visa) must appear before a consular officer when re-applying does not alter a visa applicant's rights or the duties of the Department, but merely the manner in which such applicants present themselves to the Department.

3. Good Cause To Forgo Notice and Comment Rulemaking

The APA 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.'' 5 U.S.C. 553(b)(B). The good cause exception for forgoing notice and comment rulemaking ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good cause exception is ''narrowly construed and only reluctantly countenanced,'' *Tenn. Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (D.C. Cir. 1992), the Department invokes that exception for this TFR, for the reasons set forth below.

As discussed earlier in this preamble, as many as 49,000 individuals who were issued an immigrant visa on or after August 4, 2019, may have been unable or unwilling to travel to the United States to seek admission as a lawful permanent resident due to extended travel restrictions and health conditions or concerns related to the COVID–19 pandemic. Those restrictions derived from a series of Presidential Proclamations beginning in January 2020, the National Emergency declared in March 2020, and the Department's suspension of routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates in March 2020. To partially address the concerns of the risks of spreading the virus that causes COVID–19 while simultaneously resuming consular operations to the greatest extent possible, the Department is acting expeditiously to put in place temporary flexibility to provide consular officers with discretion to waive the personal appearance and interview requirements for certain individuals who are submitting another application for an immigrant visa and to allow them to affirm the accuracy of the contents of the application under penalty of perjury rather than in person.

Consistent with the above analysis, notice and comment on this rulemaking would be impracticable and unnecessary. The TFR is narrowly construed to allow for the personal appearance and interview waiver of certain applicants who previously appeared and were issued a visa and who now seek to obtain a new visa to travel to the United States.

This TFR expires 24 months after its publication in the **Federal Register**. This action is temporary in nature and includes appropriate conditions to ensure that it is narrowly tailored to the disruption in travel to the United States related to the COVID–19 pandemic. Considering the public health emergency caused by the spread of the virus associated with COVID–19, delaying implementation of this rule until the conclusion of notice-and-comment procedures would be impracticable and contrary to the public interest due to the need to resume consular operations, and due to the associated COVID–19 transmission risk to consular office staff as well as the public.

4. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). There is a less restrictive standard for the good-cause exception to requirement for a 30-day delayed effective, than for forgoing notice and comment rulemaking due to good cause. *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp.* v. *EPA,* 605 F.2d 283, 289–90 (7th Cir. 1979). An agency shows good cause for eliminating the 30-day delayed effective date when it demonstrates urgent conditions that the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.,* 605 F.2d at 290; *United States* v. *Gavrilovic,* 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons as set forth above, the Department also concludes that it has

good cause to dispense with the 30-day effective date requirement, given that this TFR is necessary to prevent serious risk to the health of consular officers, other embassy and consulate staff, immigrant visa applicants, and other customers due to COVID–19.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires agencies to perform an analysis of the potential impact of regulations on small business entities when regulations are subject to the notice and comment procedures of the APA. Because this TFR is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Therefore, a regulatory flexibility analysis is not required. Furthermore, this TFR will not have a significant economic impact on a substantial number of small business entities.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or Tribal governments, or by the private sector. 2 U.S.C. 1532. This TFR does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or directly affect small governments, including State, local, or Tribal governments, or the private sector. This TFR involves visas for noncitizens, which are administered by federal agencies under federal law, and it does not directly or substantially affect State, local, or Tribal governments, or businesses.

D. Congressional Review Act of 1996

This TFR is not a major rule as defined in 5 U.S.C. 804. This TFR will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

E. Executive Order 12866

The Department has reviewed this TFR to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The policy announced in this TFR will further national security by allowing consular officers to allocate scarce resources to cases that had not been previously adjudicated and issued, where personal appearances and interviews are relatively more beneficial. It will help protect from the spread of COVID–19 embassy and consulate staff worldwide, visa applicants, and U.S. citizens or others seeking consular services who might otherwise come into proximity with immigrant visa applicants. It will also provide time and cost savings to those visa applicants who will not need to travel to a consular post to provide an in-person oath. It will not result in new costs. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action under Executive Order 12866. As such, OMB has reviewed this regulation accordingly.

F. Executive Order 13563

Along with Executive Order 12866, Executive Order 13563 directs agencies to assess 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, distributed impacts, and equity effects). The Department has reviewed the TFR under Executive Order 13563 and has determined that this rulemaking is consistent with the guidance therein.

G. Executive Orders 12372 and 13132—Federalism

This TFR 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. Nor will the TFR have federalism implications relevant under Executive Orders 12372 and 13132.

H. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

I. Executive Order 12988—Civil Justice Reform

The Department has reviewed the TFR in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

J. Paperwork Reduction Act

This TFR does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 42

Administrative practice and procedure, Aliens, Passports and visas.

For the reasons stated in the preamble, the Department amends 22 CFR part 42 as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 108–449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954 (Pub. L. 106–279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111–287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109–162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114–70, 129 Stat. 561).

■ 2. Effective December 13, 2021, through December 13, 2023, revise § 42.62 to read as follows:

§ 42.62 Personal appearance and interview of applicant.

(a) *Personal appearance of applicant before consular officer.* Every applicant applying for an immigrant visa other than an applicant described in paragraph (c) of this section, including an applicant whose application is executed by another person pursuant to § 42.63(a)(2), shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* (1) Every applicant executing an immigrant visa application other than an applicant described in paragraph (c) of this section must be interviewed by a consular officer who shall determine on the basis of the applicant's

representations and the visa application and other relevant documentation—

(i) The proper immigrant classification, if any, of the visa applicant, and

(ii) The applicant's eligibility to receive a visa.

(2) The officer has the authority to require that the alien answer any question deemed material to these determinations.

(c) *Certain repeat applications due to COVID–19.* The personal appearance and interview of any applicant for an immigrant visa may be waived in the discretion of the consular officer until December 13, 2023, provided that—

(1) The applicant was issued a U.S. immigrant visa on or after August 4, 2019, and is:

(i) Seeking an immigrant visa in the same classification and pursuant to the same approved petition as the previously issued immigrant visa; or

(ii) Seeking an immigrant visa pursuant to the same approved petition as the previously issued immigrant visa but in a classification that automatically converted from the classification of the previously issued immigrant visa due to the death or naturalization of the petitioner;

(2) The applicant qualifies for an immigrant visa in the same classification as the previously issued immigrant visa, or in another classification as a result of automatic conversion from the classification of the previously issued immigrant visa due to the death or naturalization of the petitioner, and pursuant to the same approved petition as the previously issued immigrant visa; and

(3) The applicant has not undergone a change in circumstances that could affect the applicant's eligibility for the visa.

■ 3. Effective December 13, 2021, through December 13, 2023, in § 42.67, add paragraph (a)(4) to read as follows:

§ 42.67 Execution of application, registration, and fingerprinting.

(a) * * *

(4) *Form of attestation for certain repeat applications due to COVID–19.* The swearing to or signature of an application before a consular officer by an immigrant visa applicant may be waived in the discretion of the consular officer until December 13, 2023, provided the applicant is willing to affirm under penalty of perjury to the information provided on Form DS–260 or Form DS–230.

* * * * *

■ 4. Effective December 13, 2023, revise § 42.62 to read as follows:

§ 42.62 Personal appearance and interview of applicant.

(a) *Personal appearance of applicant before consular officer.* Every alien applying for an immigrant visa, including an alien whose application is executed by another person pursuant to § *42.63(a)(2)*, shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* (1) Every alien executing an immigrant visa application must be interviewed by a consular officer who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation—

(i) The proper immigrant classification, if any, of the visa applicant, and

(ii) The applicant's eligibility to receive a visa.

(2) The officer has the authority to require that the alien answer any question deemed material to these determinations.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

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BILLING CODE 4710–06–P

DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OAG 173; AG Order No. 5236–2021]

Civil Monetary Penalties Inflation Adjustment for 2021

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after December 13, 2021 with respect to violations occurring after November 2, 2015.

DATES: This rule is effective December 13, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252, RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015) (''BBA''), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101–410 (the ''Inflation Adjustment Act''), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule (''June 2016 interim rule'') to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the Supplementary Information (also known as the preamble) of the Department's June 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments. The June 2016 interim rule was finalized without change by the publication of a final rule on April 5, 2019 (84 FR 13525).

After the initial adjustments in 2016, the BBA also provides for agencies to adjust their civil penalties on January 15 of each year to account for inflation during the preceding year, rounded to the nearest dollar. Accordingly, on February 3, 2017 (82 FR 9131), and on January 29, 2018 (83 FR 3944), the Department published final rules pursuant to the BBA to make annual inflation adjustments in the civil monetary penalties assessed or enforced by components of the Department after those dates, with respect to violations occurring after November 2, 2015.

Most recently, the Department published a final rule on June 19, 2020 (85 FR 37004), to adjust the Department's civil money penalties. The Department did not publish an inflation adjustment rule in 2019, but the 2020 adjustments incorporated the civil penalty adjustments for both 2019 and 2020, so that the current penalty amounts are the same as if two separate rules had been published.

II. Inflation Adjustments Made by This Rule

As required, the Department is publishing this final rule to adjust for

2021 the civil penalties that were most recently adjusted as of June 19, 2020. Under the statutory formula, the adjustments made by this rule are based on the Bureau of Labor Statistics' Consumer Price Index for October 2020. The Office of Management and Budget (OMB) Memorandum for the Heads of Executive Departments and Agencies M–21–10 (Dec. 23, 2020) *https://www.whitehouse.gov/wp-content/uploads/2020/12/M-21-10.pdf* (last visited January 6, 2021), instructs that the applicable inflation factor for this adjustment is 1.01182.

Accordingly, this rule adjusts the civil penalty amounts in 28 CFR 85.5 by applying this inflation factor mechanically to each of the civil penalty amounts listed (rounded to the nearest dollar).

Example

- In 2016, the Program Fraud Civil Remedies Act penalty was increased to $10,781 in accordance with the adjustment requirements of the BBA.
- For 2017, where the applicable inflation factor was 1.01636, the existing penalty of $10,781 was multiplied by 1.01636 and revised to $10,957 (rounded to the nearest dollar).
- For 2018, where the applicable inflation factor is 1.02041, the existing penalty of $10,957 was multiplied by 1.02041 and revised to $11,181 (rounded to the nearest dollar).
- Had an adjustment rule been published in 2019, where the applicable inflation factor was 1.02041, the existing penalty of $11,181 would have been multiplied by 1.02522 and revised to $11,463 (rounded to the nearest dollar).
- For the final rule in 2020 (*in which the ending 2019 penalty amounts were used as the starting penalty amounts for purposes of calculation*) the starting penalty of $11,463 was multiplied by 1.01764 and revised to $11,665 (rounded to the nearest dollar.)
- For this final rule in 2021, where the applicable inflation factor is 1.01182, the existing penalty of $11,665 is multiplied by 1.01182 and revised to $11,803 (rounded to the nearest dollar).

This rule adjusts for inflation civil monetary penalties within the jurisdiction of the Department of Justice for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

III. Effective Date of Adjusted Civil Penalty Amounts

Under this rule, the adjusted civil penalty amounts are applicable only to civil penalties assessed after December 13, 2021, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA.

The penalty amounts set forth in the existing table in 28 CFR 85.5 are applicable to civil penalties assessed after August 1, 2016, and on or before the effective date of this rule, with respect to violations occurring after November 2, 2015. Civil penalties for violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, will continue to be subject to the civil monetary penalty amounts set forth in the Department's regulations in 28 CFR parts 20, 22, 36, 68, 71, 76, and 85 as such regulations were in effect prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016).

IV. Statutory and Regulatory Analyses

A. Administrative Procedure Act

The BBA provides that, for each annual adjustment made after the initial adjustments of civil penalties in 2016, the head of an agency shall adjust the civil monetary penalties each year notwithstanding 5 U.S.C. 553. Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a delayed effective date.

B. Regulatory Flexibility Act

Only those entities that are determined to have violated Federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. *See* 5 U.S.C. 603(a).

C. Executive Orders 12866 and 13563—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, 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).

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the BBA by making an across-the-board adjustment of the civil penalty amounts in 28 CFR 85.5 to account for inflation since the adoption of the Department's final rule published on June 19, 2020.

D. Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 85

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

■ 1. The authority citation for part 85 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.

■ 2. Section 85.5 is revised to read as follows:

§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.

For civil penalties assessed after December 13, 2021, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the eighth column of table 1 to this section. For civil penalties assessed after June 19, 2020, and on or before December 13, 2021, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the seventh column of table 1 to this section. For civil penalties assessed after January 29, 2018, and on or before June 19, 2020, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the sixth column of table 1 to this section. For civil penalties assessed after February 3, 2017, and on or before January 29, 2018, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fifth column of table 1 to this section. For civil penalties assessed after August 1, 2016, and on or before February 3, 2017, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fourth column of table 1 to this section. All figures set forth in this table are maximum penalties, unless otherwise indicated.

TABLE 1 TO § 85.5

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 ($)	DOJ penalty assessed after 2/3/17 ($)	DOJ penalty assessed after 1/29/2018 ($)	DOJ penalty assessed after 6/19/2020 ($) [1]	DOJ penalty assessed after 12/13/2021 [2]
ATF							
18 U.S.C. 922(t)(5)	Brady Law—Nat'l Instant Criminal Check System; Transfer of firearm without checking NICS.		8,162	8,296	8,465	8,831	8,935.
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation.		2,985	3,034	3,096	3,230	3,268.
Civil Division							
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6).	1,893,610	1,924,589	1,963,870	2,048,915	2,073,133.
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day).	28 CFR 85.3(a)(7).	1,893,610	1,924,589	1,963,870	2,048,915	2,073,133.
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing).	28 CFR 85.3(a)(7).	9,468,050	9,622,947	9,819,351	10,244,577	10,365,668.
22 U.S.C. 2399b(a)(3)(A)	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8).	5,500	5,590	5,704	5,951	6,021.
31 U.S.C. 3729(a)	False Claims Act; [3] Violations.	28 CFR 85.3(a)(9).	Min 10,781, Max 21,563.	Min 10,957, Max 21,916.	Min 11,181, Max 22,363.	Min 11,665, Max 23,331.	Min 11,803 Max 23,607.
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a)	10,781	10,957	11,181	11,665	11,803.
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f)	10,781	10,957	11,181	11,665	11,803.
40 U.S.C. 123(a)(1)(A)	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12).	5,500	5,590	5,704	5,951	6,021.
41 U.S.C. 8706(a)(1)(B)	Anti-Kickback Act; Violation Involving Kickbacks [4] (per occurrence)).	28 CFR 85.3(a)(13).	21,563	21,916	22,363	23,331	23,607.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 ($)	DOJ penalty assessed after 2/3/17 ($)	DOJ penalty assessed after 1/29/2018 ($)	DOJ penalty assessed after 6/19/2020 ($) [1]	DOJ penalty assessed after 12/13/2021 [2]
18 U.S.C. 2723(b)	Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day).		7,954	8,084	8,249	8,606	8,708.
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes [5] (per violation).	28 CFR 85.3(c) ..	94,681	96,230	98,194	102,446	103,657.
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; [6] Violation by an individual (per violation).		98,935	100,554	102,606	107,050	108,315.
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; [6] Violation by an organization (per violation).		989,345	1,005,531	1,026,054	1,070,487	1,083,140.
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; [7] Violation (per violation).		12,500	12,705	12,964	13,525	13,685.
Civil Rights Division (excluding immigration-related penalties)							
18 U.S.C. 248(c)(2)(B)(i)	Freedom of Access to Clinic Entrances Act of 1994 (''FACE Act''); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i).	15,909	16,169	16,499	17,161	17,364.
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii).	23,863	24,253	24,748	25,820	26,125.
18 U.S.C. 248(c)(2)(B)(i)	FACE Act; Violation other than a nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i).	23,863	24,253	24,748	25,820	26,125.
18 U.S.C. 248(c)(2)(B)(ii)	FACE Act; Violation other than a nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(2)(ii).	39,772	40,423	41,248	43,034	43,543.
42 U.S.C. 3614(d)(1)(C)(i).	Fair Housing Act of 1968; first violation.	28 CFR 85.3(b)(3)(i).	98,935	100,554	102,606	107,050	108,315.
42 U.S.C. 3614(d)(1)(C)(ii).	Fair Housing Act of 1968; subsequent violation.	28 CFR 85.3(b)(3)(ii).	197,869	201,106	205,211	214,097	216,628.
42 U.S.C. 12188(b)(2)(C)(i).	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i).	89,078	90,535	92,383	96,384	97,523.
42 U.S.C. 12188(b)(2)(C)(ii).	Americans With Disabilities Act; Public accommodations for individuals with disabilities subsequent violation.	28 CFR 36.504(a)(3)(ii).	178,156	181,071	184,767	192,768	195,047.
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i).	59,810	60,788	62,029	64,715	65,480.
50 U.S.C. 4041(b)(3)	Servicemembers Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii).	119,620	121,577	124,058	129,431	130,961.
Criminal Division							
18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.		Min 342, Max 6,834.	Min 348, Max 6,946.	Min 355, Max 7,088.	Min 370, Max 7,395.	Min 374, Max 7,482.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 ($)	DOJ penalty assessed after 2/3/17 ($)	DOJ penalty assessed after 1/29/2018 ($)	DOJ penalty assessed after 6/19/2020 ($) [1]	DOJ penalty assessed after 12/13/2021 [2]
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation [8].		21,563	21,916	22,363	23,331	23,607.
			DEA				
21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a)	19,787	20,111	20,521	21,410	21,663.
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d)	68,750	69,875	71,301	74,388	75,267.
21 U.S.C. 842(c)(1)(A)	Controlled Substances Act (“CSA”); Violations of 842(a)—other than (5), (10), (16) and (17)—Prohibited acts re: Controlled substances (per violation).		62,500	63,523	64,820	67,627	68,426.
21 U.S.C. 842(c)(1)(B)(i)	CSA; Violations of 842(a)(5), (10), and (17)—Prohibited acts re: Controlled substances.		14,502	14,739	15,040	15,691	15,876.
21 U.S.C. 842(c)(1)(B)(ii)	SUPPORT for Patients and Communities Act; Violations of 842(b)(ii)—Failures re: Opioids.				100,000 (Statutory amount of new penalty enacted 10/24/18) [11].	101,764	102,967.
21 U.S.C. 842(c)(1)(C)	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).		500,855	509,049	519,439	541,933	548,339.
21 U.S.C. 842(c)(1)(D)	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).		1,002	1,018	1,039	1,084	1,097.
21 U.S.C. 842(c)(2)(C)	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard [9].		375,613	381,758	389,550	406,419	411,223.
21 U.S.C. 842(c)(2)(D)	SUPPORT for Patients and Communities Act; Violations of 842(a)(5), (10) and (17) by a registered manufacture or distributor of opioids. Failures re: Opioids.				500,000 (Statutory amount of new penalty enacted 10/24/18) [11].	508,820	514,834.
21 U.S.C. 856(d)	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises [10].		321,403	326,661	333,328	374,763	379,193.
			Immigration-Related Penalties				
8 U.S.C. 1324a(e)(4)(A)(i).	Immigration Reform and Control Act of 1986 (“IRCA”); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i).	Min 539, Max 4,313.	Min 548, Max 4,384.	Min 559, Max 4,473.	Min 583, Max 4,667.	Min 590, Max 4,722.
8 U.S.C. 1324a(e)(4)(A)(ii).	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii).	Min 4,313, Max 10,781.	Min 4,384, Max 10,957.	Min 4,473, Max 11,181.	Min 4,667, Max 11,665.	Min 4,722, Max 11,803.
8 U.S.C. 1324a(e)(4)(A)(iii).	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii).	Min 6,469, Max 21,563.	Min 6,575, Max 21,916.	Min 6,709, Max 22,363.	Min 6,999, Max 23,331.	Min 7,082, Max 23,607.

TABLE 1 TO § 85.5—Continued

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 ($)	DOJ penalty assessed after 2/3/17 ($)	DOJ penalty assessed after 1/29/2018 ($)	DOJ penalty assessed after 6/19/2020 ($) [1]	DOJ penalty assessed after 12/13/2021 [2]
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual).	28 CFR 68.52(c)(5).	Min 216, Max 2,156.	Min 220, Max 2,191.	Min 224, Max 2,236.	Min 234, Max 2,332.	Min 237, Max 2,360.
8 U.S.C. 1324a, (note) ...	IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual).	28 CFR 68.52(c)(6).	Min 751, Max 1,502.	Min 763, Max 1,527.	Min 779, Max 1,558.	Min 813, Max 1,625.	Min 823, Max 1,644.
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7).	2,156	2,191	2,236	2,332	2,360.
8 U.S.C. 1324b(g)(2)(B)(iv)(I).	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii).	Min 445, Max 3,563.	Min 452, Max 3,621.	Min 461, Max 3,695.	Min 481, Max 3,855.	Min 487, Max 3,901.
8 U.S.C. 1324b(g)(2)(B)(iv)(II).	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix).	Min 3,563, Max 8,908.	Min 3,621, Max 9,054.	Min 3,695, Max 9,239.	Min 3,855, Max 9,639.	Min 3,901, Max 9,753.
8 U.S.C. 1324b(g)(2)(B)(iv)(III).	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x).	Min 5,345, Max 17,816.	Min 5,432, Max 18,107.	Min 5,543, Max 18,477.	Min 5,783, Max 19,277.	Min 5,851, Max 19,505.
8 U.S.C. 1324b(g)(2)(B)(iv)(IV).	IRCA; Unfair immigration-related employment practices, unfair documentary practices (per individual discriminated against).	28 CFR 68.52(d)(1)(xii).	Min 178, Max 1,782.	Min 181, Max 1,811.	Min 185, Max 1,848.	Min 193, Max 1,928.	Min 195, Max 1,951.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(i).	Min 445, Max 3,563.	Min 452, Max 3,621.	Min 461, Max 3,695.	Min 481, Max 3,855.	Min 487, Max 3,901.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii).	Min 3,563, Max 8,908.	Min 3,621, Max 9,054.	Min 3,695, Max 9,239.	Min 3,855, Max 9,639.	Min 3,901, Max 9,753.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii).	Min 376, Max 3,005.	Min 382, Max 3,054.	Min 390, Max 3,116.	Min 407, Max 3,251.	Min 412, Max 3,289.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv).	Min 3,005, Max 7,512.	Min 3,054, Max 7,635.	Min 3,116, Max 7,791.	Min 3,251, Max 8,128.	Min 3,289, Max 8,224.
FBI							
49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation).	.....	1,591	1,617	1,650	1,722	1,742.
Office of Justice Programs							
34 U.S.C. 10231(d)	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	28 CFR part 2025.	27,500	27,950	28,520	29,755	30,107

[1] The figures set forth in this column represent the penalty as last adjusted by Department of Justice regulation on June 19, 2020.
[2] All figures set forth in this table are maximum penalties, unless otherwise indicated.

[3] Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. Id. The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

[4] Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 41 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than $10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

[5] Section 216(b) of Title 18 provides that the civil penalty should be no more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

[6] Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. Id. The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

[7] The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8.

[8] Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or $10,000. 18 U.S.C. 1956(b)(1). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

[9] Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (11) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than $250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than $250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

[10] Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of $250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

[11] The SUPPORT for Patients and Communities Act, Public Law 115–271 was enacted October 24, 2018.

Dated: November 22, 2021.

Merrick B. Garland,

Attorney General.

[FR Doc. 2021–26817 Filed 12–10–21; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 233

[Docket ID: DOD–2019–OS–0103]

RIN 0790–AK90

Federal Voting Assistance Program (FVAP)

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

ACTION: Final rule.

SUMMARY: DoD is finalizing policy for the Federal Voting Assistance Program (FVAP) based on a March 6, 2020, interim final rule. The FVAP assists overseas Service members and other overseas citizens with exercising their voting rights by serving as a critical resource to successfully register to vote.

DATES: This rule is effective January 12, 2022.

FOR FURTHER INFORMATION CONTACT: David Beirne, (571) 372–0727.

SUPPLEMENTARY INFORMATION:

Background

In the March 6, 2020, interim rule (85 FR 13045), DoD proposed amendments to:

- Include the United States Maritime Administration (MARAD) under agreement with the Department of Transportation and the United States Postal Service (USPS).
- Require DoD components to establish component-wide programs to communicate and disseminate voting information, with the goal of improving communication and clarity for the impacted population.
- Require Federal Agencies to enter into memorandums of understanding (MOU) with DoD to provide accurate, nonpartisan voting information and assistance to ensure military and overseas voters understand their voting rights, how to register and apply for an absentee ballot, and how to return their absentee ballot successfully.

Legal Basis

The FVAP administers the Uniformed and Overseas Citizens Absentee Act (UOCAVA) on behalf of the Secretary of Defense, as the Presidential designee under 52 U.S.C. 20301(a) and Executive Order (E.O.) 12642, ''Designation of Secretary of Defense as Presidential Designee'' (53 FR 21975, June 8, 1988).

United States citizens under UOCAVA include:

- Members and eligible family members of the Uniformed Services (Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, United States Public Health Service Commissioned Corps, and National Oceanic and Atmospheric Administration Commissioned Corps).
- Members of the Merchant Marine.
- U.S. citizens residing outside of the United States.

Under 52 U.S.C. 20506, State voter registration agencies must provide individuals the opportunity to register to vote or to change their voter registration data when they apply for or receive services or assistance. The Secretary of Defense, under 10 U.S.C. 1566, must prescribe regulations to require the Military Services (Army, Navy, Air Force, and Marine Corps) to implement voting assistance programs that comply with DoD directives.

Finally, 52 U.S.C. 22301(c)(1) requires Government departments, agencies, and other entities, upon the Presidential designee's request to distribute balloting materials and cooperate in carrying out UOCAVA.

Additional information regarding internal DoD processes related to this program is contained in DoD Instruction 1000.04, ''Federal Voting Assistance Program (FVAP),'' which is publicly available at *http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100004p.pdf?ver=2017-12-01-105434-817.*

Discussion of Comments

Twelve comments were received on the interim rule. While one comment was not pertinent, a summary of the remaining 11 comments and the Department's responses are below.

Five comments expressed favor for the rule change, with statements ''like it affirms that the government can at least do something right and still protect overseas citizens' and military personnel's right to vote'', ''including people from the military and people who are overseas to participate in voting is a good idea because everyone should have an opportunity to vote even if they don't want to'', and ''would prompt and increase the voting turnout of young voters, who are defending the interests of America . . . finally increase the education of voting to a certain demographic who may not get that form of information on a regular base due to the nature of their work.''

Four comments asked for more participation from the states supporting outreach efforts such as providing more information so voters can learn how to access their Secretary of State or County's web page; ensuring closer collaboration between FVAP and the states to further legislation for voters to apply for a vote by mail ballot online directly; and improving processes to assist Service members and citizens overseas in remote locations where there can be significant communication challenges. One comment in particular, stated the rule should ensure voters on Formosa receive DoD assistance through the American Institute in Taiwan DoD attaches.

FVAP Response: In each Federal election cycle, the FVAP program reaches out to State and local election officials to obtain the most up to date voting information and publishes State specific information at *https://www.fvap.gov/.* It also works with these officials to link the FVAP website with State and local election websites.

FVAP, through the network of DoD and Department of State Voting Assistance Officers, takes the time and makes the effort to ensure military and overseas voters can cast their ballots successfully—from all over the world. The rule already ensures voters in Taiwan receive DoD voting assistance information through the American Institute in Taiwan and the Department of State. For example, the American Institute website provides FVAP's voting assistance information. See *https://www.ait.org.tw/u-s-citizen-services/voting/* and *https://www.ait.org.tw/offices/kaohsiung/messages-for-us-citizens-in-southern-taiwan/.*

Voters may with any questions or requests may also contact the American Institute in Taiwan by email at *VoteTaipei@state.gov.*

One comment noted the overseas voting process includes the voter needing the ability to fill the ballot out, print, sign, and mail it in. This limits those voters that may not have internet access, access to a printer, envelopes, stamps, or access to a post office. Expecting those stationed overseas to be able to keep up with primary elections and the process of registering and how and when to vote is not practical for most military members, as well as citizens who are out of the country.

FVAP Response: As states administer elections in the United States, their statutes and regulations define the rules for acceptance for voter registration requests, absentee ballot requests, and voted ballots. Currently, Federal law mandates states to provide blank ballots to voters electronically upon request. The forms prescribed by FVAP facilitate this process for all Federal elections, inclusive of primary elections.

One comment stated that the Department violated the Congressional Review Act by beginning to implement the rule before the 60-day mandate ended.

FVAP Response: The Department disagrees. The Congressional Review Act defines a major rule as one that has resulted in or is likely to result in:

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

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

(3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

This rulemaking makes a substantive impact upon how the Government will offer voting assistance, but it is not economically significant pursuant to the Congressional Review Act. It does not annually affect the economy in an amount of $100 million or more, does not increase costs to States and localities who administer elections, and does not adversely affect U.S. entity competition with foreign-based enterprises in domestic and export markets. Thus, the 60-day mandate under the Congressional Review Act does not apply.

Summary of Changes and Exception to Notice and Comment

Based on the public comments received, DoD is not making any changes to the interim rule. However, the definition of *Uniformed services* in § 233.3 is being revised to include the ''Space Force,'' as shown in the regulatory text of this final rule.

This regulation can be effective, notwithstanding the general requirement in the Administrative Procedure Act (APA) for advance notice and comment. This rule is exempt from the APA's notice-and-comment requirement, because it satisfies the good-cause exception. 5 U.S.C. 553(b)(B). Specifically, notice-and-comment rulemaking is ''unnecessary,'' *id.,* because adding ''Space Force'' simply recognizes the Title 10 definition of *Uniformed services* that includes the sixth independent U.S. military service branch, which became law December 20, 2019, as part of the 2020 National Defense Authorization Act. DoD has therefore, concluded that there is good cause to dispense with the advanced notice-and-comment rulemaking requirements in 5 U.S.C. 553 to include ''Space Force'' in the definition of *Uniformed services.* The amendment to this definition will ensure that members of the U.S. Space Force are fully aware of their voting rights.

Expected Impact of the Final Rule

Finalizing current policies helps to establish a uniform framework within the Government on how to interact and disseminate communications with impacted populations overseas such as maximizing awareness of UOCAVA eligibility and providing resources to the impacted public populations. Entering into MOUs with other Federal Agencies will allow FVAP to strengthen its communications by expanding its outreach through other Federal Agencies. This will allow agencies to link to the *FVAP.gov* website and augment existing voter assistance information. These efforts boost voter awareness, education, and participation.

For example, including MARAD under agreement with the Department of Transportation will allow the FVAP to better serve Merchant Marine uniformed Service members, because MARAD will directly coordinate FVAP guidance and instructions to better communicate with Merchant Marine members about how to vote absentee under UOCAVA. USPS provides essential services to assure the distribution of balloting materials to eligible voters and voted ballots to election officials.

E.O. 14019, ''Promoting Access to Voting''

On March 7, 2021, the White House released Executive Order 14019 on Promoting Access to Voting. The purpose of the Executive Order is to protect and promote the exercise of the right to vote, eliminate discrimination and other barriers to voting, expand access to voter registration and accurate

election information, and ensure registering to vote and the act of voting be made simple and easy for all those eligible to do so. To accomplish this purpose, with this final rule DoD will facilitate the Executive Order in the following ways:

- Promoting opportunities to register to vote and participate in elections to include civilians working for the Department who vote locally;
- Distributing voter information and use of *vote.gov* in conjunction with *fvap.gov* website and current communications to support a comprehensive approach to voter awareness;
- Creating innovative solutions to reduce barriers and increase voter awareness of their status in the UOCAVA absentee voting process, including increased visibility of overseas ballots;
- Developing materials to support absentee voting by military and overseas U.S. citizens with limited English proficiency.

E.O. 12866, ''Regulatory Planning and Review''; E.O. 13563, ''Improving Regulation and Regulatory Review''

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, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action,'' under Section 3(f) of E.O. 12866 and was not reviewed by the Office of Management and Budget (OMB).

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

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

This rule is not a major rule under the Congressional Review Act.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will the rule affect private sector costs.

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

The DoD certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

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

It has been determined that 32 CFR part 233 does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. These information collections have been approved by OMB under the following control numbers: 0704–0502, ''Federal Write-In Absentee Ballot (FWAB)'' and 0704–0503, ''Federal Post Card Application (FPCA).''

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

It has been determined that this rule does not have a substantial effect on Indian tribal governments. This rule does not impose substantial direct compliance costs on one or more Indian tribes, preempt tribal law, or effect the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 32 CFR Part 233

Civil rights, Elections, Voting rights.

Accordingly, the interim rule amending 32 CFR part 233, which was published at 85 FR 13045, on March 6, 2020, is adopted as a final rule with the following changes:

PART 233—[AMENDED]

■ 1. The authority citation for part 233 continues to read as follows:

Authority: E.O. 12642; 10 U.S.C. 1566a; 52 U.S.C. 20506; 52 U.S.C. Ch. 203.

■ 2. Section 233.3 is amended by revising the definition of ''Uniformed services'' to read as follows:

§ 233.3 Definitions.

* * * * *

Uniformed services. The Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

* * * * *

Dated: December 7, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–26869 Filed 12–10–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 242

[Docket ID: DOD–2020–OS–0047]

RIN 0790–AL01

Admissions Policies and Procedures for the School of Medicine, Uniformed Services University of the Health Sciences

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the DoD regulation which is outdated, contains internal guidance for admissions to the School of Medicine, Uniformed Services University of the Health Sciences, reiterates statutory requirements, and is otherwise subject to the military function exemption to rulemaking.

DATES: This rule is effective on December 13, 2021.

FOR FURTHER INFORMATION CONTACT: Steven J. Weiss, Associate General Counsel, Uniformed Services University of the Health Sciences, (301) 295–3028.

SUPPLEMENTARY INFORMATION: This rule, first published on February 6, 1976 (41 FR 5389), ''establishes policies and procedures and assigns responsibilities to the President of the University and the Secretaries of the Military Departments for the selection of entrants to the School of Medicine of the Uniformed Services University of the Health Sciences.'' Part 242 was amended once on July 28, 1989, in 54 FR 31335 to make administrative

changes and to raise the admission age from 32 to 34 for students who have served on active duty. The rule is outdated, contains internal guidance, reiterates statutory requirements (10 U.S.C. 2101, *et seq.*), and is otherwise subject to the military function exemption to rulemaking.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available in DoD Instruction 5105.45, ''Uniformed Services University of the Health Sciences (USU),'' most recently updated on May 30, 2019, at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/510545p.pdf?ver=2019-05-30-074128-497.* This rule is not significant under Executive Order 12866, ''Regulatory Planning and Review.''

List of Subjects in 32 CFR Part 242

Medical and dental schools, Organization and functions (Government agencies).

PART 242—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 242 is removed.

Dated: December 7, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–26864 Filed 12–10–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0889]

Safety Zones; Alderbrook Resort New Year's Fireworks Display, Hood Canal, Washington

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone surrounding the Alderbrook Resort dock involved in a fireworks display in Hood Canal, WA, from December 31, 2021, through January 1, 2022. This action is necessary to ensure the safety of the maritime public and vessels associated with the fireworks display. During the enforcement period, entry into the safety zone is prohibited, unless authorized by the Captain of the Port Sector Puget Sound or their Designated Representative.

DATES: The regulations in 33 CFR 165.1332 will be enforced for the safety zone identified in the **SUPPLEMENTARY INFORMATION** section below from 5 p.m. on December 31, 2021, through 1 a.m. on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Rob Nakama, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce regulations in 33 CFR 165.1332 for the safety zone established for Annual Fireworks Displays in Hood Canal set forth in 33 CFR 165.1332, from 5 p.m. on December 31, 2021, through 1 a.m. on January 1, 2022, at the following location:

Event name	Location	Latitude	Longitude
Alderbrook Resort & Spa Fireworks	Hood Canal	47°21.033′ N	123°04.1′ W

Under the provisions of 33 CFR 165.1332 entry into, transit through, mooring, or anchoring within the specific race area is prohibited unless authorized by the Captain of the Port Sector Columbia River or their designated representatives. All persons or vessels who desire to enter the race area while it is enforced must obtain permission from the on-scene patrol craft on VHF–FM channel 13 or 16. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via a Broadcast Notice to Mariners and the Local Notice to Mariners.

Dated: December 7, 2021.

P.M. Hilbert,

Captain, U.S. Coast Guard, Captain of the Port Sector Puget Sound.

[FR Doc. 2021–26909 Filed 12–10–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231; FCC 16–17; FR ID 61580]

Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing Inc. Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document corrects a typographical error in the final rules portion of a **Federal Register** document published on September 14, 2021.

DATES: Effective December 13, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, (202) 418–1264, or email: *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document corrects the final rules document published at 86 FR 51013, September 14, 2021.

List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

Accordingly, 47 CFR part 79 is corrected by making the following correcting amendments:

PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

§ 79.1 [Amended]

■ 2. Amend § 79.1 by revising paragraph (j)(1)(i)(A) to read as follows:

§ 79.1 Closed captioning of televised video programming.

* * * * *

(j) * * *

(1) * * *

(i) * * *

(A) That the video programmer's programming satisfies the caption quality standards of paragraph (j)(2) of this section;

* * * * *

[FR Doc. 2021–26871 Filed 12–10–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 16–269; FCC 17–75; FR ID 59347]

Procedures for Commission Review of State Opt-Out Request From the FirstNet Radio Access Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) deletes those rules that it previously adopted to implement the ''opt-out'' provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Act). This is because the Act established the First Responder Network Authority (FirstNet) to oversee the construction and operation of a nationwide public safety broadband network (NPSBN) in the 700 MHz band; gives each state and territory the option to ''opt out'' of using FirstNet's deployment; and no state or territory chose to exercise this option within the statutory timeframe.

DATES: Effective January 12, 2022.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in PS Docket No. 16–269; FCC 19–155, adopted and released on March 6, 2019. The full text of this document is available for public inspection online at *https://www.fcc.gov/document/opt-out-rules-deletion-order.*

Initial Paperwork Reduction Act of 1995 Analysis

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

Congressional Review Act

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

Final Regulatory Review Certification

Under Section 604(a) of the Regulatory Flexibility Act, the Bureau is not required to prepare a final regulatory flexibility analysis because the Order does not require notice-and-comment rulemaking.

Synopsis

On June 22, 2017, the Commission adopted rules, published at 82 FR 48005, on October 16, 2017, implementing the opt-out review process to be conducted by the Commission, pursuant to certain provisions of the Act. Because no state or territory elected to utilize these opt-out procedures (*i.e.,* 47 CFR 90.532(b)–(f)), there is no continued need for these rules, and the Commission hereby deletes them.

An agency may forego notice and comment rulemaking ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [1] We find here that notice and comment rulemaking is unnecessary and contrary to the public interest, because no state or territory has elected to opt-out. As the opt-out rules no longer have any practical or legal effect, removing them from the Code of Federal Regulations will avoid potential confusion about their continuing applicability. Such deletion is also inconsequential to the industry and the public and conducting additional processes would be a waste of public resources and otherwise contrary to the public interest.

[1] 5 U.S.C. 553(b)(B); *see Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001) (stating that notice and comment is ''unnecessary'' when it involves a ''routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public'' (internal quotation marks omitted)); S. Doc. No. 79–248, at 200, 258 (indicating that notice and comment is ''contrary to the public interest'' when the public lacks interest in a rulemaking).

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Private land mobile radio services, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

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

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. 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.

■ 2. Revise § 90.532 to read as follows:

§ 90.532 Licensing of the 758–769 MHz and 788–799 MHz Bands; First Responder Network Authority License and Renewal.

Pursuant to Section 6201 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012), a nationwide license for use of the 758–769 MHz and 788–799 MHz bands shall be issued to the First Responder Network Authority for an initial license term of ten years from the date of the initial issuance of the license. Prior to expiration of the term of such initial license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under the foregoing Act. A renewal license shall be for a term not to exceed ten years.

[FR Doc. 2021–25708 Filed 12–10–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 679, and 680

[Docket No. 211206–0252]

RIN 0648–BK76

Fisheries of the Exclusive Economic Zone Off Alaska; Removal of GOA Sablefish IFQ Pot Gear Tags and Notary Certification Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to modify recordkeeping and reporting requirements to remove pot gear tag requirements in the sablefish Individual Fishing Quota (IFQ) fishery in the Gulf of Alaska (GOA) and remove requirements to obtain and submit a notary certification on various programs' application forms. This action is intended to reduce administrative burden on the regulated fishing industry and the National Marine Fisheries Service (NMFS). This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, or MSA), the Halibut Act, fishery management plans (FMPs), and other applicable laws.

DATES: Effective December 13, 2021.

ADDRESSES: Electronic copies of the Regulatory Impact Review (referred to as the Analysis) and Categorical Exclusion prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Glenn Merrill; and to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by using the search function.

FOR FURTHER INFORMATION CONTACT: Alicia M Miller at 907–586–7228 or *Alicia.m.miller@noaa.gov.*

SUPPLEMENTARY INFORMATION: This final rule implements regulations to modify recordkeeping and reporting requirements to remove pot gear tag requirements in the sablefish Individual Fishing Quota (IFQ) fishery in the Gulf of Alaska (GOA) and remove requirements to obtain and submit a notary certification on various programs' application forms. NMFS published a proposed rule to implement in the **Federal Register** on October 6, 2021 (86 FR 55560) with comments invited through November 5, 2021. All comments submitted on or before November 5, 2021 were considered in the development of this final rule and no substantive changes have been made from the proposed rule in this final rule.

Background

In April 2021, the Council requested NMFS propose regulations pursuant to section 305(d) of the Magnuson-Stevens Act to remove the requirements for sablefish IFQ fishermen using longline pot gear in the GOA to annually register their vessel to participate in this fishery and obtain and mark their gear with pot gear tags, as well as to remove the requirement to obtain a notary certification on IFQ Program application forms. Amendment 101 to the GOA FMP authorized the use of longline pot gear in the sablefish IFQ fishery. The pot gear tag requirements were implemented in the final rule implementing Amendment 101 pursuant to MSA section 305(d), but were not included in the FMP (81 FR 95435, December 28, 2016). This final rule will modify recordkeeping and reporting requirements to remove pot gear tag requirements in the sablefish IFQ fishery in the GOA and remove requirements to obtain and submit a notary certification on application forms submitted under the halibut and sablefish IFQ Program, Charter Halibut Limited Access Program (CHLAP), Community Quota Entity (CQE) Program, License Limitation Program (LLP), and the Crab Rationalization (CR) Program. The primary purpose for requiring a notary certification was to prevent fraud and forgery by requiring the personal presence of the signer and satisfactorily identifying the signer. The Council determined, and NMFS agrees, that both the aforementioned pot gear tag requirements and the notary requirements are unnecessary and administratively burdensome on the fleet and NMFS alike.

The need for this rule and background information on the IFQ Program, CQE Program, CHLAP, LLP, and the CR Program are explained in more detail in the preamble to the proposed rule (October 6, 2021, 86 FR 55560). The purpose and impacts of this rule, as well as the specific provisions included, are summarized in the following sections.

The purpose of this action is to remove recordkeeping and reporting requirements that are no longer necessary. This action is intended to reduce administrative burden on the regulated fishing industry and NMFS by making two types of revisions to Federal regulations. First, this rule removes regulations requiring the use of pot gear tags in the longline pot gear sablefish IFQ fishery in the GOA. Second, this rule removes notary certification requirements for several application forms submitted to NMFS.

Pot Gear Tags

This rule removes the requirement that all pots deployed in GOA sablefish areas have a pot gear tag that is (1) issued by NMFS and (2) assigned by NMFS to a vessel that is licensed by the State of Alaska. Regulations requiring a vessel owner to request and receive pot gear tags by submitting an application to NMFS are removed. NMFS will no longer issue pot gear tags to vessel owners. Vessel owners are no longer required to submit an application to NMFS for the purpose of assigning pot gear tags to the gear used by that vessel, and vessel operators are no longer required to track individual pot gear tags marked with a unique identifier that are assigned to their vessel.

Notary Certification

This rule removes requirements to obtain and submit a notary certification on specific NMFS application forms. All affected application forms submitted to NMFS continue to include a certification attesting to agreement with a statement that the information submitted on the application form is true and correct under penalty of perjury. *See* 28 U.S.C. 1746. This certification is sufficient to deter fraud and forgery, and to adequately enforce fraud and forgery should it occur.

This rule modifies regulations applicable to the halibut and sablefish IFQ Program, CHLAP, CQE Program, LLP, and the CR Program. The notary certification is removed from the following application forms.

IFQ Program

- Application for Eligibility to Receive QS/IFQ;
- Application for Transfer of QS;
- Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ) (this includes: Category A IFQ transfer, surviving beneficiary, Temporary military transfer, and IFQ transfer to CDQ groups during year of low halibut abundance);
- Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity (RQE); and

• Application For Transfer Of Quota Share To Or From A Recreational Quota Entity (RQE).

CQE Program

• Application for a Non-profit Corporation to be Designated as a Community Quota Entity (CQE); and
• Application for Transfer of Quota Share to or From A Community Quota Entity (CQE).

CHLAP

Application For Transfer Of Charter Halibut Permit (CHP).

LLP

Application For Transfer License Limitation Program Groundfish/Crab License.

CR Program

• Application for Transfer of Crab Quota Share (QS);
• Application for Transfer of Crab Processor Quota Share (PQS);
• Application to Become An Eligible Crab Community Organization (ECCO);
• Application for Transfer of Crab QS/IFQ to or from an Eligible Crab Community Organization (ECCO); and
• (Bering Sea and Aleutian Islands (BSAI) Crab Rationalization Program Quota Share (QS) Beneficiary Designation Form.

Regulations

This rule revises regulations at 50 CFR part 300, 50 CFR part 679, and 50 CFR part 680 to (1) to remove pot gear tag requirements in the sablefish IFQ fishery in the GOA and (2) remove requirements to obtain and submit a notary certification on application forms.

Pot Gear Tags

This rule revises §§ 679.7(f)(18) and (19), and 679.42(l)(2) through (l)(5), to remove regulations governing the requirements to request and use pot gear tags when using longline pot gear in the GOA sablefish IFQ fishery.

Notary Certification

This rule revises §§ 300.67, 679.4, 679.41, and 680.41 to remove requirements to obtain and submit a notary certification on application forms submitted under the IFQ Program, CHLAP, CQE Program, LLP, and CR Program.

This rule revises § 300.67(i)(4) to remove the requirement to obtain a notary certification on an application to transfer a CHP.

This rule revises § 679.4(k)(7)(iii) to remove the requirement to obtain a notary certification on an application for transfer of a groundfish or crab LLP.

This rule revises §§ 679.41(c)(3), 679.41(l)(3)(iii)(D), 679.41(m)(3)(v), and 679.41(n)(2)(iii)(D) to remove requirements to obtain a notary certification on the following IFQ Program and CQE Program Application forms:

• Application for Transfer of QS;
• Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ) (This includes: Category A IFQ transfer, surviving beneficiary, Temporary military transfer, and IFQ transfer to CDQ groups during year of low halibut abundance.);
• Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity (RQE);
• Application For Transfer Of Quota Share To Or From A Recreational Quota Entity (RQE);
• Application for a Non-profit Corporation to be Designated as a Community Quota Entity (CQE); and
• Application for Transfer of Quota Share to or From A Community Quota Entity (CQE).

The application for eligibility to receive QS or IFQ requires an applicant to obtain and submit a notary certification. This requirement is not included in regulations and will be removed from the form.

This rule revises §§ 680.41(c)(2)(ii)(F)(2), 680.41(i)(2), 680.41(j)(2)(i)(C), and 680.41(k)(3)(ix) to remove requirements to obtain a notary certification on the following CR Program application forms:

• Application for Transfer of Crab Quota Share (QS);
• Application for Transfer of Crab Processor Quota Share (PQS);
• Application to Become An Eligible Crab Community Organization (ECCO);
• Application for Transfer of Crab QS/IFQ to or from an Eligible Crab Community Organization (ECCO); and
• Application for CR Program Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer.

The BSAI CR Program QS beneficiary designation form is revised to remove the requirement to obtain and submit a notary certification.

This rule also corrects a typographical error in § 680.41(k)(3)(ix)(B)(*1*) to remove the word ''transferor'' and replace it with ''transferee'' consistent with the preceding paragraph heading.

Comments and Responses

NMFS received one comment submission from a member of the public on the proposed rule.

Comment 1: Notary certification requirements should not be removed from Federal regulations and identifying information such as the person's name, address, telephone number, business information, and signature should be legible and verified by a notary to prevent fraud.

Response: NMFS will continue to collect identifying information necessary to verify a person's identity in compliance with Federal law. All application forms submitted to NMFS will continue to include a certification whereby the applicant attests to a statement of agreement that the information submitted on the application form is true and correct under penalty of perjury. *See* 28 U.S.C. 1746. This certification is sufficient to deter fraud and forgery, and to adequately enforce the law should fraud and forgery occur.

Changes From Proposed to Final Rule

There have been no changes in this final rule from the proposed rule.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the Magnuson-Stevens Act. Pursuant to MSA section 305(d), this action is necessary to carry out the BSAI FMP, the GOA FMP, and the Crab FMP, because the aforementioned recordkeeping and reporting requirements are no longer necessary to administer the fishery management programs implemented under these FMPs. The NMFS Assistant Administrator has determined that this rule is consistent with the BSAI FMP, the GOA FMP, the Crab FMP, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the regional council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters, as long as those regulations do not conflict with IPHC regulations. The final action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(d)(1) of the Administrative Procedure Act (APA) to waive the 30-day delay in effectiveness provision of the APA and make this rule effective immediately upon publication in the **Federal Register**. Because this substantive rule relieves a restriction by removing pot gear tag and notary certification requirements, the 30-day delay in effectiveness serves no

purpose. Thus, this rule should not be subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). As previously discussed, this rule removes the requirement that all pots deployed in GOA sablefish areas have a pot gear tag that is (1) issued by NMFS and (2) assigned by NMFS to a vessel that is licensed by the State of Alaska. This rule also removes requirements to obtain and submit a notary certification on specific NMFS application forms.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review

The Regulatory Flexibility Act, as amended, requires an agency to consider the impact of proposed rules on small entities. A Regulatory Impact Review (RIR) was prepared to assess the costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Information Collection Requirements

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0648–0272 (Alaska Pacific Halibut & Sablefish Fisheries: Individual Fishing Quota (IFQ)); 0648–0334 (Alaska License Limitation Program for Groundfish, Crab, and Scallops); 0648–0514 (Alaska Region Crab Permits); and 0648–0575 (Alaska Pacific Halibut Fisheries: Charter).

This final rule also contains information collection requirements subject to review and approval by the OMB under the PRA. NMFS has submitted these requirements to OMB for approval under OMB Control Numbers 0648–0353 (Alaska Region Gear Identification Requirements) and 0648–0665 (Alaska Community Quota Entity (CQE) Program).

OMB Control Number 0648–0272

The notary certification is removed from five forms approved under this control number. No changes are made to the estimated reporting burdens for these applications as the estimates allow for differences in the time needed to complete and submit the applications. Public reporting burden per individual response is estimated to average 200 hours for the Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity (RQE); and 2 hours each for the Application for Eligibility to Receive QS/IFQ, the Application for Transfer of QS, the Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ), and the Application For Transfer Of Quota Share To Or From A Recreational Quota Entity (RQE). Removing the notary certification decreases the cost burden of completing these forms.

OMB Control Number 0648–0334

The notary certification is removed from the Application for Transfer License Limitation Program Groundfish/Crab License. No changes are made to the estimated reporting burden for this application as the estimate allows for differences in the time needed to complete and submit the application. Public reporting burden per individual response is estimated to average one hour. Removing the notary certification decreases the cost burden of completing this form.

OMB Control Number 0648–0514

The notary certification is removed from five forms approved under this control number. No changes are made to the estimated reporting burdens for these applications as the estimates allow for differences in the time needed to complete and submit the applications. Public reporting burden per individual response is estimated to average 2.5 hours for the Application to Become An Eligible Crab Community Organization (ECCO); 2 hours each for the Application for Transfer of Crab Quota Share (QS), Application for Transfer of Crab Processor Quota Share (PQS), Application for Transfer of Crab QS/IFQ to or from an Eligible Crab Community Organization (ECCO); and 30 minutes for the BSAI Crab Rationalization Program Quota Share (QS) Beneficiary Designation Form. Removing the notary certification decreases the cost burden of completing these forms.

OMB Control Number 0648–0575

The notary certification is removed from the Application for Transfer Of Charter Halibut Permit (CHP). No changes are made to the estimated reporting burden for this application as the estimate allows for differences in the time needed to complete and submit the application. Public reporting burden per individual response is estimated to average two hours. Removing the notary certification decreases the cost burden of completing this form.

OMB Control Number 0648–0353

This collection is revised to remove two forms associated with pot gear tags: (1) IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags; and (2) IFQ Sablefish Request for Replacement of Longline Pot Gear Tags. These forms are no longer necessary because this rule removes the requirements for vessel owners participating in the longline pot gear sablefish IFQ fishery in the GOA to register their vessel for this fishery and use pot gear tags. Removing these requirements decreases the time burden and cost to participants in this fishery.

OMB Control Number 0648–0665

This information collection is revised, and NMFS requests extension of this collection for three years. This collection contains the application used by a non-profit entity to be designated as a CQE and contains the applications and reports submitted by CQEs to apply for a CHP permit or LLP license; transfer IFQ, quota share, or guided angler fish; and report and manage their fishing activities. This collection is necessary for NMFS to manage the CQE Program.

Due to this rule, this collection is revised to remove the notary certification from the Application for a Non-profit Corporation to be Designated as a Community Quota Entity (CQE) and the Application for Transfer of Quota Share to or From A Community Quota Entity (CQE). No changes are made to the estimated reporting burdens for these applications as the estimates allow for differences in the time needed to complete and submit the applications. Removing the notary certification decreases the cost burden of completing these forms.

The estimated number of respondents for this collection is 94; the estimated total annual burden hours are 1,620 hours; and the estimated total annual cost to the public for recordkeeping and reporting costs is $895.

Public reporting burden per individual response is estimated to average 200 hours for the Application for Nonprofit Corporation to be Designated as a CQE; 40 hours for the CQE Annual Report; 20 hours for the Application for a CQE to Receive a Non-trawl Groundfish LLP License; 2 hours

each for the Application for Transfer of Quota Share to or from a Community Quota Entity, the Application for a CQE to Transfer IFQ to an Eligible Community Resident or Non-resident, and the Application for Transfer (Lease) Between IFQ and Guided Angler Fish by a Community Quota Entity (CQE); and 1 hour each for the CQE License Limitation Program Authorization letter and the Application for Community Charter Halibut Permit.

Commenting on Information Collections

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. Written comments and recommendations for this information collection should be submitted on the following website: *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function and entering either the title of the collection or the OMB Control Number.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 7, 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 parts 300, 679, and 680 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.67, remove the phrase ''notarized and'' from the first sentence in paragraph (i)(4).

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 4. In § 679.4, remove the phrase ''notarized and'' from the first sentence in paragraph (k)(7)(iii).

■ 5. In § 679.7, remove and reserve paragraphs (f)(18)(ii) and (f)(19).

■ 6. In § 679.41:

■ a. Remove the word ''notarized'' from paragraph (c)(3);

■ b. Revise paragraph (l)(3)(iii)(D);

■ c. Remove paragraph (m)(3)(vi); and

■ d. Revise paragraph (n)(2)(iii)(D).

The revisions read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(l) * * *

(3) * * *

(iii) * * *

(D) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, resumes of management personnel, name of community or communities represented by the CQE, name of contact for the governing body of each community represented, date, name and signature of applicant.

* * * * *

(n) * * *

(2) * * *

(iii) * * *

(D) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, resumes of management personnel, name and signature of applicant; and

* * * * *

■ 7. In § 679.42, remove and reserve paragraphs (l)(2)(i), (l)(2)(ii), (l)(3), and (l)(4), and revise paragraph (l)(5)(iv) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(l) * * *

(5) * * *

(iv) *Longline pot gear used on multiple vessels.* Longline pot gear assigned to one vessel and deployed to fish IFQ sablefish in the GOA must be removed from the fishing grounds, and returned to port before being deployed by another vessel to fish IFQ sablefish in the GOA.

* * * * *

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 8. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 9. In § 680.41:

■ a. Remove and reserve paragraph (c)(2)(ii)(F)(*2*);

■ b. Remove the phrase ''original notarized'' from paragraph (i)(2) and the word ''notarized'' from the first sentence in paragraph (j)(2)(i)(C)(*1*);

■ c. Remove and reserve paragraph (j)(2)(i)(C)(*2*);

■ d. Revise the heading for paragraph (k)(3)(ix);

■ e. Remove and reserve paragraph (k)(3)(ix)(A)(*2*);

■ f. Remove the word ''transferor'' and add in its place the word ''transferee'' in the first sentence in paragraph (k)(3)(ix)(B)(*1*);

■ g. Remove and reserve paragraph (k)(3)(ix)(B)(*2*); and

■ h. Remove and reserve paragraph (k)(3)(ix)(C)(*2*).

The revisions read as follows:

§ 680.41 Transfer of QS, PQS, IFQ and IPQ.

* * * * *

(k) * * *

(3) * * *

(ix) *Certification information*—

* * * * *

[FR Doc. 2021–26831 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 236
Monday, December 13, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2011–0009]

RIN 0579–AE19

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule that would have amended the horse protection regulations with respect to several program practices. We are taking this action to withdraw the proposed rule so that we may reevaluate these program practices based on the findings of research conducted after its publication.

DATES: The Animal and Plant Health Inspection Service is withdrawing the proposed rule published July 26, 2016 (81 FR 49112–49137) as of December 13, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Lance H. Bassage, VMD, Director, National Policy Staff, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; *lance.h.bassage@usda.gov,* (518) 218–7551.

SUPPLEMENTARY INFORMATION: On July 26, 2016, we published in the **Federal Register** (81 FR 49112–49137, Docket No. APHIS–2011–0009) a proposal [1] to amend the regulations relating to the Animal and Plant Health Inspection Service's (APHIS) administration and enforcement of the Horse Protection Act.

We solicited comments concerning the proposed rule for a period of 60 days ending September 26, 2016. We subsequently extended the comment period by an additional 30 days, to October 26, 2016. We also held five public listening sessions prior to the close of the comment period.

We received 130,975 comments on the proposed rule through electronic submission, U.S. mail, and courier, as well as comments included in the transcripts from the public hearings. The comments were from State and Federal elected officials, including current and former U.S. Senators and Representatives, State agricultural agencies, farm bureaus, gaited horse organizations, trotting horse federations and organizations, other domestic and foreign horse industry organizations, veterinarians and veterinary associations, horse rescue and animal welfare advocacy organizations, horse owners and trainers, farriers, small business owners, and the general public. Commenters addressed a wide range of proposal topics, including horse inspection practices and penalties, licensing and training of inspectors, the use of action devices, substances, and other practices.

In 2021, the National Academy of Sciences (NAS) reviewed methods for detecting soreness in horses and published a report [2] of their findings. The report examined the inspection methods that Designated Qualified Persons use for identifying soreness in walking horses, new and emerging approaches for detecting pain, and use of the scar rule in determining compliance with the Horse Protection Act, and made a number of science-based recommendations regarding revisions to APHIS' Horse Protection Act program and associated regulations. We have reviewed the July 26, 2016 proposed rule in light of the NAS report, and determined that the rule does not sufficiently address the report's findings.

Further, it has been more than 5 years since the proposed rule was published and we would likely need to update the underlying data and analyses that supported the proposed rule.

Therefore, for these reasons, we are withdrawing the July 26, 2016 proposed rule referenced above, and will issue a new proposed rule that incorporates more recent findings and recommendations, including the NAS report. The new rulemaking process will allow the public to comment on these and other important issues before the rule is finalized.

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 6th day of December 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–26849 Filed 12–10–21; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the proposed rule, supporting documents, and the comments we received, go to *www.regulations.gov* and enter APHIS–2011–0009 in the Search field.

[2] *A Review of Methods for Detecting Soreness in Horses.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/25949.*

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0005]

RIN 1904–AF09

Energy Conservation Program: Backstop Requirement for General Service Lamps

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

ACTION: Notification of proposed rule; request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to codify in the Code of Federal Regulations the 45 lumens per watt (''lm/W'') backstop requirement for general service lamps (''GSLs'') that Congress prescribed in the Energy Policy and Conservation Act, as amended. DOE proposes this backstop requirement applies because DOE failed to complete a rulemaking regarding general service lamps in accordance with certain statutory criteria. This proposal represents a departure from DOE's previous determination published in 2019 that the backstop requirement was not triggered. DOE welcomes comments on this proposal.

DATES: Written comments and information are requested and will be accepted on or before 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, identified by docket number EERE–2021–BT–STD–0005, by any of the following methods:

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

2. *Email:* To *GSL2021STD0005@ee.doe.gov.* Include docket number EERE–2021–BT–STD–0005 in the subject line of the message.

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

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

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *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/#!docketDetail;D=EERE-2021-BT-STD-0005.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

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

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

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

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I. Introduction

A. Authority

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

EPCA directs DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs.[3] (42 U.S.C. 6295(i)(6)(A)–(B)) For the first rulemaking cycle, EPCA directs DOE to initiate a rulemaking process prior to January 1, 2014, to determine whether: (1) To amend energy conservation standards for GSLs and (2) the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(A)(i)) The rulemaking is not limited to incandescent lamp technologies and must include a consideration of a minimum standard of 45 lumens per watt for GSLs. (42 U.S.C. 6295(i)(6)(A)(ii)) EPCA provides that if the Secretary determines that the standards in effect for GSILs should be amended, a final rule must be published by January 1, 2017, with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) The Secretary must also consider phased-in effective dates after considering certain manufacturer and retailer impacts. (42 U.S.C. 6295(i)(6)(A)(iv)) If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), or if a final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a ''backstop'' under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard. (42 U.S.C. 6295(i)(6)(A)(v))

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

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

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

[3] GSLs are defined in EPCA to include GSILs, compact fluorescent lamps (''CFLs''), general service light-emitting diode (''LED'') lamps and organic light emitting diode (''OLED'') lamps, and any other lamps that the Secretary of Energy (Secretary) determines are used to satisfy lighting applications traditionally served by general service incandescent lamps. (42 U.S.C. 6291(30)(BB)(i)) The term ''general service lamp'' does not include any of the 22 lighting applications or bulb shapes explicitly not included in the definition of ''general service incandescent lamp,'' or any general service fluorescent lamp or incandescent reflector lamp. (42 U.S.C. 6291(30)(BB)(ii))

B. March 2016 Notice of Proposed Rulemaking and October 2016 Notice of Proposed Definition and Data Availability

Pursuant to its statutory authority, DOE published a notice of proposed rulemaking (''NOPR'') on March 17, 2016, that addressed the first question that Congress directed it to consider—whether to amend energy conservation standards for GSLs (''March 2016 NOPR''). 81 FR 14528, 14629–30 (Mar. 17, 2016). In the March 2016 NOPR, DOE stated that it would be unable to undertake any analysis regarding GSILs and other incandescent lamps because of a then-applicable congressional restriction (''the Appropriations Rider''). *See* 81 FR 14528, 14540–14541. The Appropriations Rider prohibited expenditure of funds appropriated by that law to implement or enforce: (1) 10 CFR 430.32(x), which includes maximum wattage and minimum rated lifetime requirements for GSILs; and (2) standards set forth in section 325(i)(1)(B) of EPCA (42 U.S.C. 6295(i)(1)(B)), which sets minimum lamp efficiency ratings for incandescent reflector lamps (''IRLs''). Under the Appropriations Rider, DOE was restricted from undertaking the analysis required to address the first question presented by Congress, but was not so limited in addressing the second question—that is, DOE was not prevented from determining whether the exemptions for certain incandescent lamps should be maintained or discontinued. To address that second question, DOE published a Notice of Proposed Definition and Data Availability (''NOPDDA''), which proposed to amend the definitions of GSIL, GSL, and related terms (''October 2016 NOPDDA''). 81 FR 71794, 71815 (Oct. 18, 2016). Notably, the Appropriations Rider, which was originally adopted in 2011 and readopted and extended continuously in multiple subsequent legislative actions, expired on May 5, 2017, when the Consolidated Appropriations Act, 2017 was enacted.[4]

C. January 2017 Final Rules

On January 19, 2017, DOE published two final rules concerning the definitions of GSL, GSIL, and related terms (''January 2017 Definition Final Rules''). 82 FR 7276; 82 FR 7322. The January 2017 Definition Final Rules amended the definitions of GSIL and GSL by bringing certain categories of lamps that had been excluded by statute from the definition of GSIL within the definitions of GSIL and GSL. DOE used two final rules in 2017 to amend the definitions of GSIL and GSLs by addressing the majority of the definition changes in one final rule and addressing the exemption for IRLs in the second final rule. These two rules were issued simultaneously, with the first rule eschewing a determination regarding the existing exemption for IRLs in the definition of GSL and the second rulemaking discontinuing that exemption from the GSL definition. 82 FR 7276, 7312; 82 FR 7322, 7323. As in the October 2016 NOPDDA, DOE stated that the January 2017 Definition Final Rules related only to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue ''exemptions'' for certain incandescent lamps. 82 FR 7276, 7277; 82 FR 7322, 7324 (*See also* 42 U.S.C. 6295(i)(6)(A)(i)(II)). That is, neither of the two final rules issued on January 19, 2017, established energy conservation standards applicable to GSLs. DOE explained that the Appropriations Rider prevented it from establishing, or even analyzing, standards for GSILs. 82 FR 7276, 7278. Instead, DOE explained that it would either impose standards for GSLs in the future pursuant to its authority to develop GSL standards, or apply the backstop standard prohibiting the sale of lamps not meeting a 45 lm/W efficacy standard. 82 FR 7276, 7277–7278. The two final rules were to become effective as of January 1, 2020.

D. September 2019 Withdrawal Rule and December 2019 Final Determination

On March 17, 2017, the National Electrical Manufacturer's Association (''NEMA'') filed a petition for review of the January 2017 Definition Final Rules in the U.S. Court of Appeals for the Fourth Circuit. *National Electrical Manufacturers Association* v. *United States Department of Energy,* No. 17–1341. NEMA claimed that DOE ''amend[ed] the statutory definition of 'general service lamp' to include lamps that Congress expressly stated were 'not include[d]' in the definition'' and adopted an ''unreasonable and unlawful interpretation of the statutory definition.'' Pet. 2. Prior to merits briefing, the parties reached a settlement agreement under which DOE agreed, in part, to issue a notice of data availability requesting data for GSILs and other incandescent lamps to assist DOE in determining whether standards for GSILs should be amended (the first question of the rulemaking required by 42 U.S.C. 6295(i)(6)(A)(i)).

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

The purpose of the August 2017 NODA was to assist DOE in determining whether standards for GSILs should be amended. (42 U.S.C. 6295(i)(6)(A)(i)(I)) Comments submitted in response to the August 2017 NODA also led DOE to re-consider the decisions it had already made with respect to the second question presented to DOE—whether the exemptions for certain incandescent lamps should be maintained or discontinued. 84 FR 3120, 3122 (*See also* 42 U.S.C. 6295(i)(6)(A)(i)(II)) As a result of the comments received in response to the August 2017 NODA, DOE also re-assessed the legal interpretations underlying certain decisions made in the January 2017 Definition Final Rules. *Id.*

On February 11, 2019, DOE published a NOPR proposing to withdraw the revised definitions of GSL, GSIL, and the new and revised definitions of related terms that were to go into effect on January 1, 2020 (''February 2019 Definition NOPR''). 84 FR 3120. In a final rule published September 5, 2019, DOE finalized the withdrawal of the definitions in the January 2017 Definition Final Rules and maintained the existing regulatory definitions of GSL and GSIL, which are the same as the statutory definitions of those terms (''September 2019 Withdrawal Rule''). 84 FR 46661. The September 2019 Withdrawal Rule revisited the same primary question addressed in the January 2017 Definition Final Rules, namely, the statutory requirement for DOE to determine whether ''the exemptions for certain incandescent lamps should be maintained or discontinued.'' 42 U.S.C. 6295(i)(6)(A)(i)(II) (See also 84 FR 46667). In the rule, DOE also addressed its interpretation of the statutory backstop at 42 U.S.C. 6295(i)(6)(A)(v) and concluded the backstop had not been triggered. 84 FR 46663–46664. DOE reasoned that 42 U.S.C. 6295(i)(6)(A)(iii) ''does not establish an absolute obligation on the Secretary to publish a rule by a date certain.'' 84 FR 46663. ''Rather, the obligation to issue a

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

final rule prescribing standards by a date certain applies if, and only if, the Secretary makes a determination that standards in effect for GSILS need to be amended.'' *Id.* DOE further stated that, since it had not yet made the predicate determination on whether to amend standards for GSILs, the obligation to issue a final rule by a date certain did not yet exist and, as a result, the condition precedent to the potential imposition of the backstop requirement did not yet exist and no backstop requirement had yet been imposed. *Id.* at 46664.

Similar to the January 2017 Definition Final Rules, the September 2019 Withdrawal Rule clarified that DOE was not determining whether standards for GSLs, including GSILs, should be amended. DOE stated it would make that determination in a separate rulemaking. *Id.* at 46662. DOE initiated that separate rulemaking by publishing a notice of proposed determination (''NOPD'') on September 5, 2019, regarding whether standards for GSILs should be amended (''September 2019 NOPD''). 84 FR 46830. In conducting its analysis for that notice, DOE used the data and comments received in response to the August 2017 NODA and relevant data and comments received in response to the February 2019 Definition NOPR, and DOE tentatively determined that the current standards for GSILS do not need to be amended because more stringent standards are not economically justified. *Id.* at 46831. DOE finalized that tentative determination on December 27, 2019. 84 FR 71626 (''December 2019 Final Determination''). DOE also concluded in the December 2019 Final Determination that, because it had made the predicate determination not to amend standards for GSILs, there was no obligation to issue a final rule by January 1, 2017, and, as a result, the backstop requirement had not been imposed. *Id.* at 71636.

Two petitions for review were filed in the U.S. Court of Appeals for the Second Circuit challenging the September 2019 Withdrawal Rule. The first petition was filed by 15 States,[5] New York City, and the District of Columbia. *See New York* v. *U.S. Department of Energy,* No. 19–3652. The second petition was filed by six organizations[6] that included environmental, consumer, and public housing tenant groups. *See Natural Resources Defense Council* v. *U.S. Department of Energy,* No. 19–3658. The petitions were subsequently consolidated. Merits briefing has been concluded, but the case has not been argued or submitted to the Circuit panel for decision. The case has been in abeyance since March 2021, pending further rulemaking by DOE.

Additionally, in two separate petitions also filed in the Second Circuit, groups of petitioners that were essentially identical to those that filed the lawsuit challenging the September 2019 Withdrawal Rule challenged the December 2019 Final Determination. *See Natural Resources Defense Council* v. *U.S. Department of Energy,* No. 20–743; *New York* v. *U.S. Department of Energy,* No. 20–743. On April 2, 2020, those cases were put into abeyance pending the outcome of the September 2019 Withdrawal Rule petitions.

E. Subsequent Review

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

In accordance with E.O. 13990, on May 25, 2021, DOE published a request for information (''RFI'') initiating a re-evaluation of its prior determination that the Secretary was not required to implement the statutory backstop requirement for GSLs (''May 2021 RFI''). 86 FR 28001. DOE solicited information regarding the availability of lamps that would satisfy a minimum efficacy standard of 45 lm/W, as well other information that may be relevant to a possible implementation of the statutory backstop. *Id.*

DOE received comments in response to the May 2021 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO THE MAY 2021 RFI

Commenter(s)	Abbreviation	Commenter type
California Energy Commission	CEC	State Official/Agency.
California Investor Owned Utilities	CA IOUs	Utilities.
National Electrical Manufacturers Association	NEMA	Trade Association.
Appliance Standards Awareness Project, Natural Resources Defense Council, Alliance to Save Energy, American Council for an Energy-Efficient Economy, National Consumer Law Center, Northeast Energy Efficiency Partnerships, Northeast Energy Efficiency Alliance.	Joint Commenters	Efficiency Organizations.
American Lighting Association	ALA	Trade Association.
China WTO/TBT National Notification & Enquiry Center	China	Country Official.
Sierra Club and Earthjustice	SC & EJ	Efficiency Organization.
Connecticut Department of Energy and Environmental Protection	Connecticut DEEP	State Official/Agency.
Montana Environmental Information Center	MEIC	Efficiency Organization.
National Association of State Energy Officials	NASEO	Efficiency Organization.
Utah Clean Energy	UCE	Efficiency Organization.
State of Washington Department of Commerce	WDOC	State Official/Agency.
Climate Smart Missoula	CSM	Efficiency Organization.
Southwest Energy Efficiency Project	SWEEP	Efficiency Organization.

[5] The petitioning States are the States of New York, California, Colorado, Connecticut, Illinois, Maryland, Maine, Michigan, Minnesota, New Jersey, Nevada, Oregon, Vermont, and Washington and the Commonwealth of Massachusetts.

[6] The petitioning organizations are the Natural Resource Defense Council, Sierra Club, Consumer Federation of America, Massachusetts Union of Public Housing Tenants, Environment America, and U.S. Public Interest Research Group.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO THE MAY 2021 RFI—Continued

Commenter(s)	Abbreviation	Commenter type
New Buildings Institute	NBI	Efficiency Organization.
Urban Green Council	UGC	Efficiency Organization.
Signify North America Corporation	Signify	Manufacturer.
State of Rhode Island Office of Energy Resources	OER	State Official/Agency.
Consumer Federation of America, The National Consumer Law Center, and 24 consumer groups listed.	CFA and NCLC	Efficiency Organization.
Oregon Department of Energy	ODOE	State Official/Agency.
Environment America	EA	Efficiency Organization.
VEIC	VEIC	Energy Efficiency Utility.
NW Power and Conservation Council	NW Power and Conservation Council.	Energy Efficiency Utility.
Colorado Energy Office	CEO	State Official/Agency.
Individual Commentor	Johnson	Individual.
Individual Commentor	Anonymous	Individual.
Individual Commentor	Mary	Individual.
Interfaith Power & Light	IP&L	Efficiency Organization.

The comments specific to the 45 lm/W backstop requirement and implementation of the backstop requirement are summarized and addressed in the following section. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[7]

II. Proposed Rule

In this NOPR, DOE proposes a determination that the 45 lm/W backstop requirement for GSLs at 42 U.S.C. 6295(i)(6)(A)(v) has been triggered because of DOE's failure to complete the first phase of rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv). The effect of this failure to complete certain rulemakings would be that DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard. (42 U.S.C. 6295(i)(6)(A)(v))

A. Statutory Backstop Requirement

As described in section I.A of this document, EPCA specifies several criteria that DOE must adhere to in its first rulemaking cycle for GSLs. (*See* 42 U.S.C. 6295(i)(6)(A)(i)–(iv)) If DOE fails to complete a rulemaking in accordance with clauses (i) through (iv) of 42 U.S.C. 6295(i)(6)(A) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, clause (v) requires DOE to prohibit sales of lamps with an efficacy below 45 lm/W ''effective beginning January 1, 2020.''

[7] The parenthetical reference provides a reference for information located in the docket of DOE's re-evaluation of the statutory backstop for GSLs. (Docket No. EERE–2021–BT–STD–0005, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number at page of that document).

1. Prior to the September 2019 Withdrawal Rule

In the March 2016 NOPR proposing energy conservation standards for GSLs, DOE explicitly addressed the backstop provision at 42 U.S.C. 6295(i)(6)(A)(v). 81 FR 14528 (March 17, 2016). Specifically, DOE stated that due to the Appropriations Rider, DOE was unable to perform the analysis required in clause (i) of 42 U.S.C. 6295(i)(6)(A) and as a result, the backstop in 6295(i)(6)(A)(v) is automatically triggered. 81 FR 14528, 14540. DOE reiterated that it was not considering GSILs, including exclusions or exemptions, in the rulemaking due to the Appropriations Rider. 81 FR 14528, 14582. DOE further explained that under 42 U.S.C. 6295(i)(6)(A)(v), if it failed to (1) complete a rulemaking in accordance with clauses (i) through (iv), which included determining whether the exemptions for certain incandescent lamps should be maintained or discontinued, or (2) publish a final rule that would meet or exceed the energy savings associated with the statutory 45 lm/W requirement, then the backstop would be triggered beginning January 1, 2020. *Id.* Thus, in the March 2016 NOPR, DOE assumed that the backstop would be triggered beginning January 1, 2020. *Id.* Further, DOE stated that lamps that meet the proposed GSL definition would be subject to the 45 lm/W efficacy level and estimated an associated energy savings of approximately 3 quadrillion Btu (''quads'') for lamps sold in 2020–2049 and a carbon reduction of approximately 200 million metric tons by 2030. 81 FR 14528, 14534.

In the January 2017 Definition Final Rules, DOE did not interpret paragraph (6)(A) as requiring DOE to establish amended standards for GSLs. 82 FR 7276, 7283. DOE stated that clause (v) expressly contemplates the possibility that DOE would not finalize a rule that develops alternative standards for GSLs. *Id.* In these rules, DOE did not make any determination regarding standards for GSLs. 82 FR 7278, 7316. DOE acknowledged that the backstop would go into effect if DOE failed to complete the rulemaking as prescribed by EPCA by January 1, 2017, or the final rule did not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lm/W. *Id.* While not explicitly stating its assumption that the backstop requirement would be triggered, DOE set a January 1, 2020 effective date for the definitions rule, which coincided with the effective date of the backstop requirement. DOE also noted its commitment to working with manufacturers to ensure a successful transition if the backstop standard went into effect. To that end, on January 18, 2017, DOE issued a ''Statement Regarding Enforcement of 45 LPW General Service Lamp Standard'' (''January 2017 Enforcement Statement'') stating that EPCA requires that, effective beginning January 1, 2020, DOE shall prohibit the sale of any GSL that does not meet a minimum efficacy standard of 45 lm/W.[8] In the enforcement statement, DOE advised that it could issue a policy that provides additional time allowing for the necessary flexibility for manufacturers to comply with the 45 lm/W standard. *Id.*

2. September 2019 Withdrawal Rule and the December 2019 Final Determination

In the September 2019 Withdrawal Rule, DOE concluded that the backstop

[8] Available at *www.energy.gov/sites/default/files/2017/01/f34/Statement%20on%20Enforcement%20of%20GSL%20Standard%20-%201.18.2017.pdf.*

requirement had not been triggered. 84 FR 46661, 46664. DOE stated that it initiated the first GSL standards rulemaking process by publishing a notice of availability of a framework document in December 2013, satisfying the requirements in 42 U.S.C. 6295(i)(6)(A)(i) to initiate a rulemaking by January 1, 2014. 84 46661, 46663. DOE further stated its belief that Congress intended for the Secretary to make a predicate determination about GSILs, and that the obligation to issue a final rule prescribing standards by a date certain applies if, and only if, the Secretary makes a determination that standards in effect for GSILs need to be amended. 84 FR 46661, 46663–46664. Since DOE had not yet made the predicate determination on whether to amend standards for GSILs, DOE found the obligation to issue a final rule by a date certain did not yet exist and, as a result, the condition precedent to the potential imposition of the backstop requirement did not yet exist and no backstop requirement had yet been imposed. *Id.*

In the December 2019 Final Determination, DOE reiterated its interpretation that the statutory deadline for the Secretary to complete a rulemaking for GSILs in 42 U.S.C. 6295(i)(6)(A)(iii) does not establish an absolute obligation on the Secretary to publish a rule by a date certain. 84 FR 71626, 71635. Instead, DOE stated that this deadline applies only if the Secretary makes a determination that standards for GSILs should be amended. *Id.* at 71636. Otherwise, DOE again stated, it could result in a situation where a prohibition is automatically imposed for a category of lamps for which no new standards, much less prohibition, are necessary. *Id.* In the December 2019 Final Determination, since DOE made what it characterized as the predicate determination that standards for GSILs do not need to be amended, DOE found that the obligation to issue a final rule by a date certain did not exist and, as a result, the condition precedent to the potential imposition of the backstop requirement did not exist and no backstop requirement had been imposed. *Id.*

3. Comments to the May 2021 RFI Regarding Operation of the Backstop

In the May 2021 RFI, DOE stated that if it were to determine that it did not fulfill the criteria in paragraphs (i)–(iv) of 42 U.S.C. 6295, the sales prohibition under the backstop requirement would affect any lamp type that is defined as a GSL. 86 FR 28001, 28003. Accordingly, DOE requested information about the lamp types discussed in the following sections, including whether a phased implementation would be appropriate for certain lamp types. Id. In addition to comments and data regarding the efficacy and availability of certain lamps, the Joint Commenters, CA IOUs, and CEC commented on the operation of the backstop, asserting that it has been triggered. (Joint Commenters, No. 19 at p. 13; CA IOUs, No. 22 at p. 2; CEC, No. 23 at pp. 2–4)

The Joint Commenters asserted that the backstop has been triggered because DOE failed to issue a new standard by January 1, 2017. (Joint Commenters, No. 19 at p. 13) The Joint Commenters cited the January 2017 Enforcement Statement in support of their assertion and stated that no subsequent action taken by DOE could change the fact that the 45 lm/W standard has been triggered. (*Id.*) The CA IOUs asserted that the backstop has been triggered as a result of DOE not issuing rulemakings by deadlines specified in EPCA. (CA IOUs, No. 22 at p. 2) CEC asserted that DOE failed to meet the requirements of 42 U.S.C. 6295(i)(6)(A)(i)–(iv). (CEC, No. 23 at p. 2) CEC stated because DOE was unable to consider incandescent lighting technologies when it initiated a rulemaking evaluating GSL standards on December 9, 2013, due to the Appropriations Rider, DOE did not evaluate whether the exemptions for certain incandescent technologies should be maintained or discontinued, as required by section 6295(i)(6)(A)(i)(II). (CEC, No. 23 at p. 3) CEC stated that the U.S. District Court for the Eastern District of California had found that DOE likely failed to meet the requirements of 6295(i)(6)(A)(i)–(iv).[9] *Id.* CEC further commented that because DOE failed to complete a rulemaking in accordance with subclauses (i) through (iv), DOE does not have discretion regarding implementation of the backstop. (CEC, No. 23 at p. 4) CEC noted that EPCA states that if the Secretary fails to complete a rulemaking in accordance with the statutory criteria, the Secretary ''shall'' prohibit GSLs that do not meet the minimum 45 lm/W standards and that the Supreme Court has found the term ''shall'' is ''unmistakably'' mandatory language.[10] *Id.*

4. Proposed Determination Regarding the Backstop Requirement

Congress identified two circumstances that would trigger application of the backstop requirement: (1) If DOE ''fails to complete a rulemaking in accordance with clauses (i) through (iv)'' of section 6295(i)(6)(A); or (2) ''if the final rule'' promulgated under this rulemaking ''does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt.'' 42 U.S.C. 6295(i)(6)(A)(v). DOE preliminarily determines that the backstop requirement has been triggered because both of the foregoing circumstances have occurred.

a. DOE failed to complete the first cycle of rulemaking in accordance with clauses (i) through (iv) of 42 U.S.C. 6295(i)(6)(A) for at least two reasons. The first reason is that DOE failed to complete this first GSL rulemaking timely. The structure of section 6295(i)(6)(A) reflects an expectation by Congress that by January 1, 2017, the outcome of DOE's GSL rulemaking would have been known, and, if either amended standards or the backstop were to be applicable, those would be in place no later than January 1, 2020.

The position DOE advanced in the September 2019 Withdrawal Rule and the December 2019 Determination—namely, that the backstop provision is premised on the Secretary first making a determination that standards for GSILs should be amended and that the statute does not impose a deadline for the GSIL determination—fails to give meaning to all of the surrounding statutory text, as DOE is obligated to do. *See* 84 FR 46661, 46663–46664; 84 FR 71626, 71635; *see also* 42 U.S.C. 6295(i)(6)(A)(iii). In looking at the surrounding context of section 6295(i)(6)(A) and 6295(i)(6)(B), it is clear that Congress intended DOE's first GSL rulemaking to be completed by January 1, 2017—primarily due to Congress providing interested parties a gap of time between the conclusion of this rulemaking and the deadline for compliance, thus giving interested parties time to adjust to any changes.

In section 6295(i)(6)(A), Congress explicitly contemplated two possible outcomes: (1) A final rule amending standards for GSLs, or (2) imposition of the backstop of 45 lm/W. Under the first scenario, DOE would have been obligated to publish a final rule by January 1, 2017, with an effective date no earlier than three years after

[9] The matter cited by CEC was an order denying NEMA's motion for judgment on the pleadings in the U.S. District Court for the Eastern District of California. At issue was whether California regulations were excepted from preemption under 42 U.S.C. 6295(i)(6)(A)(vi). *National Electrical Manufacturers Association* v. *California Energy Commission,* No. 2:17–CV–01625–KJM–AC (E.D. Cal. 2017). In denying NEMA's motion, the Court stated that ''the court cannot conclude as a matter of law that [the January 2017 Definition Final Rules were] 'in accordance with' clause (i), much less clauses (i)–(iv) [of section 6295(i)(6)(A)].'' *Id.* at p. 13.

[10] CEC cited *Washington* v. *Harper,* 494 U.S. 210, 221 (1990), as well as a subsequent opinion by the U.S. Court of Appeals for the Ninth Circuit interpreting the use of ''shall'' in EPCA (*see Natural Resource Defense Council* v. *Perry,* 940 F.3d 1072, 1078 (9th Cir. 2019)). (CEC, No. 23 at p. 4)

publication—thereby giving manufacturers a three-year lead time to prepare for the changed standards. *See* 42 U.S.C. 6295(i)(6)(A)(iii). Under the second scenario, the backstop would come into effect, but not until January 1, 2020—giving manufacturers the same three-year lead time to adjust to the forthcoming efficacy standard of 45 lm/W. *See id.* at 6295(i)(6)(A)(v).

Even if the statute contemplated a third possible scenario—a determination by DOE that standards for GSLs need not be amended under which the backstop was not triggered—it is clear from section 6295(i)(6)(A) that Congress expected this determination would be made no later than January 1, 2017.

This allowance for lead time is reflected in the preemption exception provision in section 6295(i)(6)(A)(vi), which gives California and Nevada the authority to adopt, with an effective date beginning January 1, 2018 or after, either:

(1) A final rule adopted by the Secretary in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv);

(2) If a final rule has not been adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), the backstop requirement under 42 U.S.C. 6295(i)(6)(A)(v); or

(3) In the case of California, if a final rule has not been adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), any California regulations related to ''these covered products'' adopted pursuant to state statute in effect as of the date of enactment of EISA 2007.

This provision allows California and Nevada to implement either a final DOE rule amending standards for GSLs or the 45 lm/w backstop standard on January 1, 2018, two years earlier than the rest of the country. This provision thus assumes that California and Nevada would have to have known whether DOE had completed a final rule amending standards for GSLs by January 1, 2017, so that manufacturers subject to standards in those states would have a practicable one-year lead time to comply.

Lastly, Congress' mandate in 42 U.S.C. 6295(i)(6)(B) that DOE initiate the second cycle of rulemaking by January 1, 2020, coincides with a schedule in which standards are adopted (or the backstop is implicated) by January 1, 2017 with a minimum three-year lead time.

In addition to failing to complete the first cycle of rulemaking timely, the second reason why DOE's rulemaking was not ''in accordance with clauses (i) through (iv)'' of section 6295(i)(6)(A) is because DOE's rulemaking did not ''consider[ ] a minimum standard of 45 lumens per watt for general service lamps.'' 42 U.S.C. 6295(i)(6)(A)(ii)(II). DOE considered GSILs only in the scope of the December 2019 final determination analysis, with lamps having a maximum efficacy less than 45 lumens per watt. 84 FR 71626. While DOE did not analyze lamps other than GSILs in the scope of the December 2019 final determination analysis, DOE did look at the impact on GSIL shipments as a result of consumers choosing to purchase other lamps, such as CFLs and LED lamps, if standards for GSILs were amended as discussed in section VI.A of the December 2019 final determination. Therefore, DOE could not have considered a 45 lumens per watt standard level as part of that rulemaking determination because of the GSIL limited scope.

b. Although DOE's failure to ''complete a rulemaking in accordance with clauses (i) through (iv)'' is itself sufficient to trigger application of the backstop, DOE also did not determine whether its final rule (or rules) in this first cycle of rulemaking produced savings that are ''greater than or equal to the savings from a minimum efficacy standard of 45 lm/W[.]'' 42 U.S.C. 6295(i)(6)(A)(v). That is an independent basis for application of the backstop under section 6295(i)(6)(v). Congress provided that the backstop would be imposed ''if the final rule does not produce energy savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lm/W.'' *Id.* In neither the September 2019 Withdrawal Rule nor the December 2019 Determination did DOE compare whether any energy savings resulting from either rule would produce energy savings that are greater than or equal to a minimum efficacy standard of 45 lm/W.[11]

For the foregoing reasons, DOE preliminarily determines the backstop requirement in 42 U.S.C. 6295(i)(6)(A)(v) was triggered and should have been effective as of January 1, 2020.

B. Scope of Backstop Requirement

Once triggered, the backstop requirement as specified in 42 U.S.C. 6295(i)(6)(A)(v) directs DOE to prohibit the sale of GSLs that do not meet a minimum requirement of 45 lm/W. DOE's current regulatory definition for GSL is consistent with the statutory definition for GSL, which includes GSILs, CFLs, general service LED lamps and OLED lamps, and any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by GSILs as defined in EPCA. 10 CFR 430.2. (*See also,* 42 U.S.C. 6291(30)(BB)(i)) DOE's current regulatory definition of GSL does not include any of the 22 lighting applications or bulb shapes explicitly not included in the definition of GSIL,[12] or any general service fluorescent lamp or IRL. 10 CFR 430.2. (*See also,* 42 U.S.C. 6291(30)(BB)(ii))

By comparison, the definitions of GSL and GSIL as amended by the January 2017 Definition Final Rules were broader than their statutory definitions. On August 19, 2021, DOE published a NOPR to amend the definitions of GSL and GSIL as previously set forth in the January 2017 Definition Final Rules (''August 2021 Definition NOPR''). 86 FR 46611. Specifically, DOE proposed to adopt the definitions of GSL and GSIL as previously adopted in the January 2017 Definition Final Rules by amending the definition of GSL to be a lamp that has an ANSI base; is able to operate at a voltage of 12 volts or 24 volts, at or between 100 to 130 volts, at or between 220 to 240 volts, or at 277 volts for integrated lamps, or is able to operate at any voltage for non-integrated lamps; has an initial lumen output of greater than or equal to 310 lumens (or 232 lumens for modified spectrum general service incandescent lamps) and less than or equal to 3,300 lumens; is not a light fixture; is not an LED downlight retrofit kit; and is used in general lighting applications. 86 FR 46624–46625. Hence, DOE proposed that GSLs include, but not be limited to, GSILs, CFLs, general service LED lamps, and general service OLED lamps. *Id.* Further, DOE proposed to re-adopt the conclusion DOE made in the January

[11] Although DOE did perform various energy savings analyses in the December 2019 Final Determination, it was not the comparison to a 45 lumens per watt efficacy standard required by 42 U.S.C. 6295(i)(6)(A)(v). *See, e.g.,* 84 FR 71632 (''The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards. In this case, the standards case represents energy savings not from the technology outlined in a [trial standard level], but from product substitution as consumers are priced out of the market for GSILs.'').

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

2017 Definition Final Rules that GSLs do not include:

(1) Appliance lamps;
(2) Black light lamps;
(3) Bug lamps;
(4) Colored lamps;
(5) G shape lamps with a diameter of 5 inches or more as defined in ANSI C79.1–2002;
(6) General service fluorescent lamps;
(7) High intensity discharge lamps;
(8) Infrared lamps;
(9) J, JC, JCD, JCS, JCV, JCX, JD, JS, and JT shape lamps that do not have Edison screw bases;
(10) Lamps that have a wedge base or prefocus base;
(11) Left-hand thread lamps;
(12) Marine lamps;
(13) Marine signal service lamps;
(14) Mine service lamps;
(15) MR shape lamps that have a first number symbol equal to 16 (diameter equal to 2 inches) as defined in ANSI C79.1–2002, operate at 12 volts, and have a lumen output greater than or equal to 800;
(16) Other fluorescent lamps;
(17) Plant light lamps;
(18) R20 short lamps;
(19) Reflector lamps that have a first number symbol less than 16 (diameter less than 2 inches) as defined in ANSI C79.1–2002 and that do not have E26/E24, E26d, E26/50x39, E26/53x39, E29/28, E29/53x39, E39, E39d, EP39, or EX39 bases;
(20) S shape or G shape lamps that have a first number symbol less than or equal to 12.5 (diameter less than or equal to 1.5625 inches) as defined in ANSI C79.1–2002;
(21) Sign service lamps;
(22) Silver bowl lamps;
(23) Showcase lamps;
(24) Specialty MR lamps;
(25) T shape lamps that have a first number symbol less than or equal to 8 (diameter less than or equal to 1 inch) as defined in ANSI C79.1–2002, nominal overall length less than 12 inches, and that are not compact fluorescent lamps;
(26) Traffic signal lamps.

See 86 FR 46625.

In the August 2021 Definition NOPR, in re-adopting definitions DOE previously adopted in the January 2017 Final Definition Rules, DOE proposed to amend the definition of GSIL to be a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts. 86 FR 46624. However, this definition does not apply to the following incandescent lamps—

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

Id.

In this document, DOE proposes an interpretation of EPCA by which DOE determines that the backstop provision in 42 U.S.C. 6295(i)(6)(A)(v) has been triggered and thus the sale of GSLs that do not meet the 45 lm/W requirement prescribed by statute is prohibited. DOE recognizes that, if the backstop were implemented, the sales prohibition on GSLs that do not meet a minimum efficacy standard of 45 lm/W would present different implementation challenges than most DOE standards, which are based on the date of manufacture. Specifying a date beyond which certain GSLs could no longer be sold could lead to stranded inventory. DOE recognizes that manufacturers, distributors, and retailers would need time to take steps to account for the supply chain to avoid stranded inventory. As explained above, Congress structured 42 U.S.C. 6295(i)(6)(A)(i)–(v) so as to provide manufacturers with a lead time (with a possible shorter lead time for California and Nevada) to adjust to different efficacy standards—either standards adopted by DOE through rulemaking or the imposition of the statutory backstop. In addition, Congress expressly required DOE to consider phased-in effective dates by considering ''the impact . . . on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, [ ] raw materials,'' and ''the time needed to work with retailers and lighting designers to revise sales and marketing strategies.'' 42 U.S.C. 6295(i)(6)(A)(iv). Therefore, Congress did not intend for there to be an instantaneous imposition of a new 45 lm/W efficacy standard for GSLs. Such a possible outcome exists now only because of DOE's delay in correctly addressing the applicability of the backstop. DOE must balance Congress's intent to facilitate a smooth transition to different efficacy standards through the provision of lead time with the clear intent of Congress that these different efficacy standards were to be in place as of January 1, 2020. 42 U.S.C. 6295(i)(6)(A)(jjj), (v).

To best balance Congress's intent, DOE is proposing a 60-day effective date if the backstop is implemented under DOE's proposed determination as set forth in this notice. However, DOE understands the practicalities associated with the implementation of Congress' backstop that prohibits the sale of GSLs that do not meet a 45 lm/W efficacy standard, and DOE's understanding is informed, in part, by the comments received to the May 2021 RFI. In order to provide for a smooth transition, DOE intends to account for the practicalities of this transition to Congress's backstop efficacy standard through use of its enforcement discretion as further described below. DOE invites comments on these and further considerations relevant to informing DOE's enforcement discretion.

C. Implementation and Enforcement

Were DOE to determine that it did not complete the first cycle of rulemaking in accordance with paragraphs (i) through (iv) of Section 6295, the sales prohibition under the backstop requirement would affect any lamp type that is defined as a GSL. In the May 2021 RFI, DOE requested comment on a number of issues related to potential implementation of the backstop requirement. 86 FR 28001, 28004. Specifically, DOE requested information on the availability of and market for lamps defined as GSLs and lamps excluded from the definition of GSL; and if a lamp type within the definition of GSL or a lamp type excluded from the definition of GSL does not currently have units with an efficacy of at least 45 lm/W, information on whether it is possible to create lamps in that category that perform at such a level and how long it would take for those products to be sold at retail locations. *Id.* DOE also requested comment and information regarding inventory cycles, steps manufacturers/retailers would need to take to avoid stranded inventory for lamps that do not have an efficacy of at least 45 lm/W, and how stranded inventory would be addressed, as well as the associated costs. *Id.*

The Joint Commenters stated that there are a full range of LED products that fall within both the statutory definition and the January 2017 Definition Final Rules. The Joint Commenters stated that these products have a wide range of light outputs (including multiple light levels such as 3-way bulbs), color temperatures (*e.g.,* warm, cool white, daylight), shapes (*e.g.,* all sizes of candle, flame-tip, globe, reflector), and base types (*e.g.,* different-sized screw bases, pin-bases), all from a wide variety of manufacturers; and that

there are also dimming and non-dimming versions and dim-to-warm features which mimic incandescent dimming. (Joint Commenters, No. 19 at pp. 8–9) The Joint Commenters stated that the majority of lighting products sold by home improvement stores are LED products; discount stores and hardware stores also carry a wide variety of LED lamps, with online retailers providing an even wider range; and that stores with less lighting shelf space (*e.g.,* drug, grocery stores) have narrower offerings for both LED and incandescent products. (Joint Commenters, No. 19 at pp. 8–9) The Joint Commenters also stated that the world-wide supply chain of LED GSLs is successfully meeting the growing demand, including 60 percent of lamps sold in the U.S. today and that 27 countries in Europe, California, and Nevada implemented the 45 lm/W standard and were able to meet consumer demand with LED lamps without a problem, demonstrating that demand can also be met in the U.S. (Joint Commenters, No. 19 at p. 12) CEC stated that new LED lamp models with improved quality, energy efficiency, and wide ranges of lumens are constantly being introduced in the market and that retail prices of the lamps have also been declining. (CEC, No. 23 at p. 6)

The CA IOUs stated that they conducted a survey of 14 lighting online retailers and collected information on 75,000 LED lamps, which included a continuous range of power levels, light output both below 310 lumens and above 3,300 lumens, and many different base types. The CA IOUs stated they also identified small, high output lamps which they asserted are the most difficult to convert to LED technology due to miniaturization of electronics and heat management issues. The CA IOUs stated that this indicated that LED technology has matured, and lighting manufacturers can provide LED versions of all GSLs covered under DOE's January 2017 Definition Final Rules. (CA IOUs, No. 22 at p. 4) CEC stated that except for some truly specialty lamps, CEC has not seen major supply issues for lamps compliant with the 45 lm/W standard in California. (CEC, No. 23 at p. 6)

NBI commented that states have been requiring GSLs with an efficacy exceeding 45 lm/W in new residential and multifamily buildings for more than a decade. NBI stated that a high percentage of the country's construction activity is already covered by these lamp efficacy requirements, and that the residential chapter of the 2021 International Energy Conservation Code (IECC) requires all lamps in permanent fixtures to have an efficacy of no less than 65 lm/W and past IECC codes required at least a 45 lm/W requirement. (NBI, No. 15 at pp. 1–2) VEIC stated that California, Nevada, Vermont, Washington, Colorado, Massachusetts, and the District of Columbia have passed lighting standards in the absence of a Federal standard and have not had issues with product availability. VEIC also stated that the absence of a Federal standard supporting the 45 lm/W requirement—requiring states to enact their own legislation and enforcement—is creating confusion in the lighting market. (VEIC No. 29 at p. 2)

NEMA stated that, regarding what it characterized as compliant lamps that are not defined as GSLs, incandescent/halogen lamps have been declining since 2007 except for rough service and vibration service lamps. Regarding GSLs as defined under the existing GSL definition, NEMA stated that, apart from a brief, forecasted spike, incandescent/halogen lamps sales have been declining since 2007 and CFLs have been declining since 2015 with only LED lamps increasing in sales. (NEMA, No. 13 at p. 2) NEMA stated that the decorative CFLs and reflector CFL sales have been declining since 2015 and these lamps are nearly gone from the market and only LED lamps in this category are increasing in sales. (NEMA, No. 13 at pp. 2–3) NEMA further stated that any incandescent/halogen lamps still being used in the commercial sector do not have acceptable LED substitutes. (NEMA, No. 13 at p. 5)

Citing the NEMA Lamp Indices, CEC stated that for the second quarter of 2020, incandescent/halogen lamps accounted for 23.8 percent of A shape lamp shipments. (CEC, No. 23 at p. 7) NEMA stated that, per NEMA Lamp Indices of A shape lamps, almost 75 percent are LED lamps, and NEMA estimated the proportion to grow and last due to the longer LED lamp lifetimes. (NEMA, No. 13 at p. 3) Citing a 2020 Northwest study, VEIC stated that more than half of the general purpose lamp and reflector lamp market was LED lamps. (VEIC, No. 29 at p. 1) Citing the CREED Lighttracker (based on sales data) for 2019, the Joint Commenters stated that LED lamps constitute 60 percent of lighting sales. (Joint Commenters, No. 19 at p. 3; MEIC, No. 7 at p. 1; CFA, NCLC, No. 24 at p. 1) Per this data, the Joint Commenters stated that incandescent/halogen lamps constitute 38 percent of sales (CSM stated 40 percent). (Joint Commenters, No. 19 at p. 3; CSM, No. 12 at p. 1) The Joint Commenters estimated about a billion light sockets in the U.S. still employ incandescent/halogen lamps. The Joint Commenters further stated that, per the CREED Lighttracker, of A shape lamps, candelabra base lamps, globe shape lamps, and reflector shape lamps, respectively, 58, 56, 50 and 84 percent were LED lamps in 2019. Citing the 2015 Lighting Market Characterization report, the Joint Commenters stated that about 3.4 billion light sockets in the U.S. have A shapes and another 2 billion have a lamp type included in the proposed expanded definition. (Joint Commenters, No. 19 at p. 3)

The CA IOUs stated they relied on the CREED Lighttracker data for four popular lamp types (*i.e.,* A shape, candelabra base, globe shape, and reflector) to extrapolate 2020 U.S. lighting sales (excluding California). Based on this assessment, the CA IOUs estimated 334 million U.S. incandescent/halogen lamp sales in 2020 (a decrease of 46 percent in two years). The CA IOUs also estimated that in 2020 one-third of A shape lamps were incandescent/halogen; and of incandescent/halogen sales, 78 percent were A shape lamps and 19 percent were candelabra base lamps and globe shape lamps. The CA IOUs determined that few reflector lamps were incandescent/halogen and that less than 1 percent of new lamp sales were CFLs in 2020. The CA IOUs stated that this analysis showed that inefficient lamps still claim a significant market share for A shape, candelabra base, and globe shape GSLs and, given that LED lamps save about 80 percent or more electricity, there are significant energy saving to be gained from a DOE GSL standard. (CA IOUs, No. 22 at p. 4)

The Joint Commenters cited a 2020 study by the New York State Energy Research and Development Authority that used retailer inventory as a proxy for market share. The Joint Commenters stated that this study estimated that in New York the overall market share of LEDs was 73 percent, with LED lamps comprising 77, 72, 61, and 78 percent respectively of A shape lamps, candelabra base lamps, globe shape lamps, and reflector lamps. The Joint Commenters stated that the report found an increase in LEDs from the previous year and also that one in four lamps were still incandescent lamps. (Joint Commenters, No. 19 at pp. 4–5)

The Joint Commenters stated that big and small manufacturers and retailers continue to promote incandescent lamps because their short lifespan triggers sales sooner than for an LED lamp. (Joint Commenters, No. 19 at p. 5) The CA IOUs stated that the GSL transformation follows an S-shaped curve which means the rate of change

will slow and then stop without the DOE standard. The CA IOUs stated that market forces alone will probably allow for inefficient GSLs to continue to have some share of the lighting market. (CA IOUs, No. 22 at p. 5) Connecticut DEEP stated that although LEDs have approximately 60 percent of the market share, savings will continue to be lost without national standards. (Connecticut DEEP, No. 6 at p. 2)

NEMA stated that GSLs that meet a 45 lm/W standard are essentially all LED lamps or CFLs. NEMA stated that incandescent/halogen lamps with medium screw base, lumens between 310 to 2600 lumens, and that operate between 110–130 volts (V) cannot meet 45 lm/W. NEMA stated that due to the successful development and sales of LED technology, there is no research and development being done on improving the efficacy of incandescent/halogen lamps. (NEMA, No. 13 at p. 2)

NEMA stated that lamps excluded from the GSL definition (*i.e.,* reflector lamps, rough service lamps, shatter-resistant lamps, 3-way lamps, vibration service lamps, larger T lamps greater than 1″ in diameter, and most decorative lamp shapes with medium screw bases) that meet 45 lm/W are also essentially all LED lamps. (NEMA, No. 13 at p. 2) NEMA stated while there has been significant conversion to LED for many excluded lamps including reflector, decorative, and 3-way lamps, the excluded lamp category is small (less than half the size of GSLs). (NEMA, No. 13 at p. 3)

NEMA stated that black light lamps and other ultraviolet (''UV'') lamps, bug lamps, and colored lamps are not tested for efficacy and are not GSLs. NEMA stated that infrared lamps, plant light lamps, and showcase lamps (T8 and smaller) are niche products not appropriate for general lighting applications. NEMA stated that G40 lamps and silver bowl lamps are used in few applications and are exempted because their size or light distributions make them difficult to be used anywhere else. With regards to marine lamps, marine signal service lamps, mine service lamps, R20 short lamps, sign service lamps, and traffic signal service lamps NEMA stated that LED versions of these lamps may not meet required military, transportation, or other specifications. (NEMA, No. 13 at p. 4)

NEMA and Signify stated the biggest limitation of LED technology is its use in high temperature environments (*i.e.,* within fixtures and devices) due to thermal management issues. NEMA commented that while some appliance lamps can have LED replacements, those operated in high temperatures—such as ovens—cannot. (NEMA, No. 13 at p. 3; Signify, No. 18 at p. 3) NEMA stated that appliances with LED light sources are already built in and designed to be protected from the heat. (NEMA, No. 13 at p. 3) NEMA stated that specialty lamps have no acceptable LED replacement because: (1) The LED version is not economically justified due to low sales volumes; (2) the LED version cannot be made in the small form factor; or (3) the LED version is unable to match the lumen output. (NEMA, No. 13 at p. 3) NEMA stated that an LED replacement for a typical pin base halogen (small form factor) that has 600 to 1200 lumens is unable to provide that lumen level in the same small form factor. (NEMA, No. 13 at p. 4) NEMA stated that LED lamps with a small diameter or with shapes such as MR16 and MR11 will continue to have thermal and light output limitations while small quartz halogen lamps can produce significant amount of light within a small form factor and operate at high temperatures. (NEMA, No. 13 at p. 5)

Signify stated that LED replacements for some T4/GY6.35 halogen capsule lamps can only be made with 600 lumens, and LED replacements for T3/R7s linear halogen lamps can match the required lumen outputs but only in larger form factors, which may lead to problems fitting in fixtures or poor optical performance. (Signify, No. 18 at p. 3) Signify stated that the following lamp types cannot meet 45 lm/W and/or are difficult to make with LED technology: Heat (infrared) lamps, blacklight lamps (and any UV lamps), appliance lamps, bug lamps, colored lamps, specialty MR lamps for entertainment, 12 V landscape lighting applications, plant light lamps, marine lamps, marine signal service lamps, mine service lamps, R20 short lamps, sign service lamps, traffic signal replacement lamps, T4 120V halogen capsule lamps with light output higher than 600 lumens, and T3/R7s 120V linear halogen lamps. (Signify, No. 18 at p. 2)

With regard to potential implementation of the backstop, NEMA commented that consideration of timing should not be limited to retail shelf-to-consumer-sale range events as purchasing and business decisions, supply chain, and manufacturing impacts also need to be considered. (NEMA, No. 13 at p. 5) NEMA stated the total time between the retailer's initial factory order and when a consumer can purchase product can be up to 6 months or longer and is dependent, in part, on order sizes and retailer distribution schedules. (NEMA, No. 13 at pp. 5–6) NEMA commented that upstream timing includes an average of three months from the start of the process of procuring raw materials until the release of component shipment to the factory, although the time will vary depending on the source of the materials. (NEMA, No. 13 at p. 6) NEMA stated that lower to medium volume products and larger full container orders can have one to two week lead time and 60–70 day lead times, respectively. NEMA further stated that goods will remain in a retailer's distribution center for two to four weeks until they are shipped to individual store locations. (NEMA, No. 13 at pp. 5–6) Signify stated that LED lamp design typically takes six months, followed by an additional six months to fill the supply chain pipeline. For any new LED lamp that needs to be developed, Signify stated that there may be a shortage of products available to consumers if DOE fails to provide adequate time for manufacturers to prepare for the transition. (Signify, No. 18 at p. 4)

NEMA stated that other factors, such as retailer-specific contracts and ''safety stock,'' may also affect how retailers stock lamps. (NEMA, No. 13 at p. 6) NEMA further commented that review of product assortments by regional and national retail chains varies by retailer and that due to the complicated logistics and labor involved in resetting a physical product assortment across regional and national chains, this process can take 18 to 24 months to finalize and implement, to include normal sell through of product on the shelf. (NEMA, No. 13 at p. 6) NEMA suggested that DOE interview medium and small lighting retailers, many of whom are small businesses, and consider the negative financial impact mid-sized and smaller retailers may face and ensure the final rule provides sufficient time to avoid stranded assets in retail stores of all sizes. (NEMA, No. 13 at p. 6)

ALA stated lighting retail stores and distributors are facing challenges stemming from the COVID–19 pandemic including fluctuating prices as a result of uncertain freight costs as well as supply chain disruptions, as well as from tariffs, emerging government regulations, and growing competition from multiple channels of distribution. (ALA, No. 20, pp. 1–2) ALA further commented that showrooms do not typically have large stockpiles of any one type of lamp on hand, instead having a voluminous variety of lamps in inventory. (ALA, No. 20, pp. 1–2) ALA stated manufacturers have a certain lead time when it comes to the sourcing and

production of products and that DOE must make every effort to put in place safeguards that will protect against any disruptions to the supply chain while production of compliant products increases. (ALA, No. 20, p. 2) ALA also commented that sales of newer, more efficient products are up and sales of affected products are down, and that as this trend continues, a manufacturers' sales ban would give showrooms the flexibility to sell off existing inventory. *Id.*

NEMA stated that in its experience, most retailers have on average three months of inventory between their store and distribution centers to prevent having empty shelf space. NEMA stated that lower to medium demand products and specialty seasonal demand products (*e.g.,* colored lights) may sit on a store shelf between 30 and 90 days, while retailers prefer to maintain at least two weeks of inventory for high demand products. (NEMA, No. 13 at pp. 6–7) NEMA also commented that identifying and sourcing new products for retail can take 6–12 months, including identifying and qualifying the source, setting up the new vendor, product testing time, price negotiation, purchase orders, transit from the source, and initiating new data setup in store registers. (NEMA, No. 13 at p. 7) NEMA further commented that lamp sales are seasonal and affected by scheduled events, which requires manufacturers to prepare several months earlier to have adequate inventory to meet demand. *Id.*

NEMA stated that each manufacturer or retailer would individually decide what to do with stranded inventory, adding that national laws make it difficult to find alternative markets to sell newly restricted products and that the costs associated with disposal will be the cost of each individual lamp, associated labor, and land fill costs. (NEMA, No. 13 at pp. 7, 8) NEMA further stated that any lamp sold in another market will most likely be a high sales volume lamp type and would be sold at break-even or at a loss to exporters. (NEMA, No. 13 at pp. 7–8) Signify stated, as a manufacturer, that any stranded inventory would most likely need to be scrapped. (Signify, No. 18, p. 5) ALA stated that lamp products can often remain in inventory for a considerable amount of time and that nationally the impact of a retail sales ban would create a glut of stranded inventory, piling up at individual showrooms and eventually landfills. (ALA, No. 20, p. 2) ALA further commented that there are no viable options available to retailers under a retail sales ban to unload non-compliant GSLs, which means that lighting retailers will have millions of dollars of stranded product. (ALA, No. 20, p. 2) ALA further stated that retailers will be forced to increase costs on all other products in order to recoup the losses suffered as a result of the retail sales ban. (ALA, No. 20, p. 2)

NEMA commented that it is imperative that DOE provide enough time for manufacturers and retailers to plan an orderly exit from regulated product lines and that failure to provide adequate transition time would cause each manufacturer and each retailer to incur significant unexpected costs to dispose of stranded inventory, and waste material, manufacturing, and transportation resources while providing very little additional energy savings or CO_2 emissions reductions. (NEMA, No. 13 at p. 7) NEMA asserted that the life of incandescent and halogen lamps is very short, and that the lost energy-savings risk of providing adequate time to manufacturers and retailers is very small, while the potential economic damage risk to both large companies and small family-owned retailers alike is large. (NEMA, No. 13 at pp. 7–8)

NEMA recommended that to minimize disruption and provide certainty throughout the supply chain, DOE rely on a two-step approach for manufacturers and retailers to implement the 45 lm/W minimum requirement. (NEMA, No. 13 at p. 7) Specifically, NEMA suggested an approach under which the requirement would apply to GSLs as manufactured beginning one-year after a final rule and to the retail sale of GSLs beginning one year following as-manufactured compliance date. (NEMA, No. 13 at p. 7) NEMA stated that the 2-step approach would be significantly less disruptive to manufacturers and retailers and would be far easier to manage than a blanket 45 lm/W sales ban. (NEMA, No. 13 at p. 7) ALA agreed with NEMA's comments in general and its two-step implementation approach, stating that a phase-in period of at least two years from the publication of a final rule would go a long way to address concerns. (ALA, No. 20, pp. 2–3) Signify stated it can support a minimum efficacy requirement of 45 lm/W for GSLs provided that it has a minimum of 12 months to implement it from the date of publication of any final rule and that it is implemented initially via a manufacturing date/importation ban, followed if necessary with a subsequent retail sales ban. (Signify, No. 18, pp. 2, 4) Signify further commented that a sales ban is difficult to implement and requires end-to-end management of stock and components and can result in high financial liabilities for manufacturers and retailers due to stranded inventory that cannot be sold and must be scrapped and sent to landfills. (Signify, No. 18, p. 4) NEMA and Signify asserted that EISA allows a phase-in approach of additional regulations and that the suggested two-phase approach is sufficient to provide certainty in the marketplace, allow for advanced planning to avoid stranded inventory and empty shelf space, and result in reduced disruption throughout the supply chain. (NEMA, No. 13 at p. 7; Signify, No. 18 at pp. 4–5) China stated that a transition period of at least three years should be given for GSIL provisions and any new categories of products for the minimum efficacy of 45 lm/W. (China, No. 14, p. 3) UGC stated that prohibiting sales of inefficient bulbs now will disproportionately impact small businesses and could lead to a supply shortage of affordable bulbs in low-income communities. (UGC, No. 17 at p. 1)

The CA IOUs, CEC, and Joint Commenters stated that a wide range of compliant GSLs, as defined under the January 2017 Definition Final Rules, are readily available. (CA IOUs, No. 22 at p. 4; CEC, No. 23 at p. 7; Joint Commenters, No. 19 at pp. 8–9) The Joint Commenters stated that the world-wide supply chain for LED GSLs is more than capable of meeting additional LED demand. (Joint Commenters, No. 19 at p. 12) The Joint Commenters asserted that the lighting industry and retailers have known since enactment of the relevant lamp provisions in 2007 that a standard of at least 45 lumens per watt was due to take effect on January 1, 2020. (Joint Commenters, No. 19 at p. 12) The Joint Commenters further stated that equivalent standards have already been implemented in two states (California and Nevada) and across Europe, without disruption, demonstrating that the international supply chain can meet increased U.S. demand for LEDs. (Joint Commenters, No. 19 at p. 2) The CA IOUs stated that CEC staff have reported no major problems regarding the availability of GSLs in California 18 months following implementation by California of a 45 lm/W requirement. (CA IOUs, No. 22, p. 4)

The Joint Commenters stated that the backstop has already been triggered and the standard is non-discretionary and must be implemented as soon as practical. (Joint Commenters, No. 19, p. 7) To accommodate retailers with remaining non-compliant inventory while also avoiding further undue delay, the Joint Commenters recommended that DOE immediately announce that the backstop has been

triggered and that sellers must comply with respect to the highest sales volume lamps within 60 days and that DOE allow 120 days for retailers to sell out slow-selling lamp types. (Joint Commenters, No. 19 at p. 2) The Joint Commenters stated that the sales prohibition deters manufacturers and retailers from importing and stockpiling excess inefficient products, an issue of greater concern in the light bulb context given their much lower unit price than the other products DOE regulates. (Joint Commenters, No. 19, p. 13) The Joint Commenters stated that a date of sale prohibition simplifies any effort to monitor compliance, as all that is needed is to check in a store or website to see if non-compliant lamps are still being offered for sale after the compliance date. (Joint Commenters, No. 19, p. 13) The CA IOUs urged DOE to maintain the ''Date of Sale'' prohibition with as short a period as possible before enforcement to allow retailers to clear inventories of non-compliant GSLs, and that DOE use its enforcement discretion based on information provided in response to the May 2021 RFI and other information to avoid needing to initiate enforcement actions against large numbers of retailers. (CA IOUs, No. 22 at p. 3) CEC stated that because the backstop has been triggered and DOE has a mandatory duty to begin enforcing it, DOE must begin enforcing it immediately. (CEC, No. 23, p. 4) CSM, UGC, and CEO encouraged DOE to implement new standards as soon as practical to allow the minimum amount of time needed for retailers to sell existing inventory. (CSM, No. 12 at p. 1; UGC, No. 16 at p. 1) CEO further stated that prompt implementation of standards will ensure that all customers benefit from up-to-date energy saving technology. (CEO, No. 30 at p. 1)

As discussed, if DOE fails to complete a rulemaking in accordance with clauses (i) through (iv) of Section 6295(i)(6)(A) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, clause (v) provides that DOE ''shall prohibit'' sales of any GSL below the 45 lm/W backstop standard ''effective beginning January 1, 2020.'' As DOE explained in the January 2017 Definition Final Rules, if it is determined that the backstop is triggered, DOE would not have discretion regarding the effective date of the backstop standard. 84 FR 7276, 7283. The language of the statute is clear that Congress intended that the backstop, if triggered, would be effective as of January 1, 2020. DOE notes that clause (v) does not limit the sales prohibition to retail sales.

DOE recognizes the unique circumstances created by the delay in correctly addressing the applicability of the backstop. Were DOE to issue a final determination that the backstop has been triggered, as DOE proposes, DOE proposes to use its enforcement discretion to provide the necessary flexibility to avoid undue market disruption. For example, as part of this discretionary enforcement approach, and as suggested by many of the commenters, DOE would consider a staggered implementation that weighs factors such as the point of manufacture,[13] the point of sale,[14] and the anticipated inventory of different lamp categories. This flexible enforcement approach takes into account the disruptive supply chain effects of stranded inventory and the significant consumer and environmental benefits of full compliance, DOE believes that such an approach would—given the current circumstances—best balance Congress's intent to facilitate a smooth transition with Congress's intent that the different efficacy standards were to be in place as of January 1, 2020. DOE welcomes input on these and additional considerations for enforcement.

D. Consumer and Environmental Impacts

In response to the May 2021 RFI, DOE received several comments regarding the potential impacts of the 45 lm/W backstop. CFA and NCLC commented that consumers are already benefiting from changing to LED technology, but greater savings are achievable with the backstop requirement. CFA and NCLC stated there are broader impacts beyond consumer electricity bills, such as reduced costs for goods and services that result from commercial and industrial sectors having reduced lighting cost. (CFA and NCLC, No. 24 at pp. 1–2) CEC stated that further delay in implementing standards will cost consumers millions and cause unnecessary emission of pollutants. (CEC, No. 23 at p. 7) NASEO commented that states rely on cost-effective federal appliance and equipment energy efficiency standards for products to help them achieve energy affordability, energy system reliability and resilience, and environmental protection. (NASEO, No. 10 at p. 1) UGC stated that practically designed and implemented efficiency standards can benefit consumers and retailers while reducing emissions. (UGC, No. 18 at p. 1)

Commenters presented a range of potential consumer savings resulting from implementation of the backstop: UCE, CEO, MEIC, and SC & EJ stated that each month of delay in implementing standards that should have been implemented in 2020 costs consumers roughly $80 million (UCE, No. 9 at p. 1; CEO, No. 30 at p. 1; MEIC, No. 7 at p. 1; SC & EJ, No. 26 at p. 1); Joint Commenters, WDOC, and Connecticut DEEP, citing a November 2020 ASAP study, stated that each additional month of delay in implementing the standards will cost consumers $300 million over the lifetimes of the incandescent bulbs sold in that month (Joint Commenters, No. 19 at p. 6; WDOC, No. 17 at pp. 1–2; Connecticut DEEP, No. 6 at p. 1); and OER stated that each month of delay costs consumers $3 billion in lost utility bill savings. (OER, No. 25 at p. 1) CFA and NCLC stated that since the beginning of the new administration, consumers will have spent $2.8 billion on inefficient lighting and generated 4.8 million tons of carbon. (CFA, NCLC, No. 24 at p. 1).

OER, CFA, NCLC, VEIC, UCE, NASEO, MEIC, the Joint Commenters, and Connecticut DEEP stated that changing one bulb from incandescent to an LED saves a consumer $40 to $90 over ten years. OER, CFA, NCLC, VEIC, UGC, MEIC, Joint Commenters, and Connecticut DEEP further stated that the savings from this change can result in approximately $3,000 in net savings over ten years for a typical household. (OER, No. 25 at p. 1; CFA, NCLC, No. 24 at p. 1; VEIC, No. 29 at p. 2; UGC, No. 16 at p. 1; UCE, No. 9 at p. 1; NASEO, No. 10 at p. 1; MEIC, No. 7 at p. 1; Joint Commenters, No. 19 at pp. 7–8; Connecticut DEEP, No. 6 at pp. 1–2) CEC stated that any increased incremental cost from implemented standards would be fully offset by energy savings. (CEC, No. 23 at pp. 7–8)

NASEO stated that forgone consumer savings particularly harm low- and moderate-income households, and updated GSL standard implementation will ensure that all consumers benefit from cost- and energy-saving lighting. (NASEO, No. 10 at p. 1) The Joint Commenters, UGC, Connecticut DEEP, CFA, NCLC, and SWEEP stated that the cost of delayed implementation of standards disproportionately affects low-income consumers. Citing a Lawrence Berkeley National Laboratories report on EISA 2007, the

[13] The point of manufacturer refers to the point where the product is manufactured, produced, assembled, or imported.

[14] The point of sale refers to the point where the consumer purchases the product.

CA IOUs stated that an estimated 27 quadrillion British thermal units (Btus) and a consumer net present value of $120 billion (at a seven percent discount rate) would be saved nationally over the next 30 years as a result of the 45 lm/W standard, if applied to the January 2017 Definition Final Rules. (CA IOUs, No. 22 at p. 3) CEC estimated that enforcement of the backstop as of January 1, 2020 would have resulted in 9.5 billion kWh of energy to be saved by 2025, and that an effective date of July 1, 2021, would still result in substantial savings. (CEC, No. 23 at pp. 3,4, 6–7)

NW Power and Conservation Council estimated that if all residential and commercial replacement GSLs in the Northwest (excluding eastern Montana) complied with the backstop, the Pacific Northwest would save approximately 160 average megawatts or 1400 gigawatt hours. (NW Power and Conservation Council, No. 27 at p. 2) CA IOUs estimated national savings from a 45 lm/W standard for the January 2017 Definition Final Rules. Using this model and an effective date of July 1, 2022, CA IOUs estimate 0.83 quads of energy with a net present value of about $28 billion and 81 million tons of CO_2 over 30 years. CA IOUs further stated that a one-year delay will decrease the cumulative savings by 12 percent. (CA IOUs, No. 22 at p. 5) Citing a November 2020 ASAP study, NASEO stated that updated GSL standards could avoid an annual 2.7 to 6.2 million metric tons of CO2 in 2030, with concomitant utility bill savings of $2.6 billion in 2035. (NASEO, No. 10 at p. 1)

NEMA stated that the CO_2 emissions reduction from 2007 to 2020 for GSL A-line and non-regulated lamps (*e.g.,* lamps currently excluded from the GSL definitions) is 89 percent and 82 percent, respectively. NEMA stated that the reduction is due to conversion to LED technology, and given the current rate of this conversion, the maximum CO_2 emissions reductions by 2025 without regulation for GSL A-line and non-regulated lamps will be 92 percent and 88 percent, respectively. NEMA stated that the industry estimates that if the entire category of A-line lamps switches to LED or CFL there would be an approximate 96 percent reduction in CO_2 emissions since 2007. NEMA stated that most of the energy savings and CO_2 emission reduction has already been achieved by consumers voluntarily replacing lamps with LED lamps. (NEMA, No. 13 at p. 3)

Citing a November 2020 ASAP study, the Joint Commenters and OER stated that each additional month of delay in implementing the standards will result in 800,000 tons of CO_2 emissions over the lifetimes of the incandescent bulbs sold in that month. UGC, CFA, NCLC, VEIC, EA and Connecticut DEEP, and SWEEP reiterated the same estimate of CO_2 emissions in their comments. (Joint Commenters, No. 19 at p. 6; OER, No. 25 at p. 1; UGC, No. 16 at p. 1; CFA, NCLC, No. 24 at p. 1; VEIC, No. 29 at p. 2; EA, No. 28 at p. 1; Connecticut DEEP, No. 6 at p. 1, SWEEP, No. 11 at p. 1) CEO, MEIC, and SC & EJ estimated that continuing to delay the standard will result in 250,000 tons of CO_2 emissions per month. (CEO, No. 30 at p. 1; MEIC, No. 7 at p. 1; SC & EJ, No. 26 at p. 1) OER stated that each month of delay implementing standards will result in 300,000 tons of CO_2 emissions. (OER, No. 25 at p. 1) The Joint Commenters stated that an additional year of delay will result in 9.5 million metric tons of CO_2 but if standards are implemented soon they can reduce CO_2 emissions by 50 million metric tons by 2030. (Joint Commenters, No. 19 at pp. 6–7)

DOE recognizes the potential for consumer and environmental benefits from a prohibition on the sale of GSLs with an efficacy of less than 45 lm/W. DOE reiterates that 42 U.S.C. 6295(i)(6)(A)(v), if triggered, requires DOE to prohibit sales of GSLs that do not meet the minimum efficacy of 45 lm/W. This backstop requirement is statutorily prescribed by Congress and no further analysis is required for its implementation.

III. Conclusion

DOE preliminarily determines that the statutory 45 lm/W backstop requirement has been triggered and therefore is proposing to place the backstop requirement for GSLs in the Code of Federal Regulations.

Were DOE to finalize the proposed rule and affirmatively determine that the backstop has been triggered, DOE would codify the statutory requirement in the Code of Federal Regulations.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed rule is an economically significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). Pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs. This assessment can be found in the technical report that accompanies this rulemaking.[15] The assessment estimates that all lamp demand for new construction and replacements is assumed to be fulfilled by lamps with an efficacy of at least 45 lm/W, yielding a substantial reduction in energy consumption and an associated savings in energy costs relative to the base case. It is estimated that national full fuel cycle energy savings of 5.7 quads from the implementation of a 45 lm/W backstop over the 30-year analysis period. These energy savings translate to annualized net benefits of $3.7 billion, which includes the social value of emissions reductions (net benefits discounted at 3 percent). DOE plans to update our methodology to reflect the Environmental Protection Agency's recent updates to benefit-per-ton values in a future impact analysis if DOE issues a final rule and generally for forthcoming rulemakings, but we do not have time to fully vet the new methods for this impact analysis.

TABLE IV.1—SUMMARY OF ANNUALIZED COSTS AND BENEFITS, 2022–2051

	Annualized (million 2020$/year)		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Total Benefits:			
7% discount rate	3,718	3,551	3,884

[15] *https://eta-publications.lbl.gov/publications/impact-eisa-2007-backstop-requirement.*

TABLE IV.1—SUMMARY OF ANNUALIZED COSTS AND BENEFITS, 2022–2051—Continued

	Annualized (million 2020$/year)		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate	3,828	3,632	4,023
Total Costs:			
7% discount rate	178	180	173
3% discount rate	149	151	145
Net Benefits:			
7% discount rate	3,540	3,371	3,711
3% discount rate	3,679	3,481	3,879

Note: Total Benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. GHG reduction benefits are calculated using four different estimates of the social cost of carbon (SC-CO_2), methane (SC-CH_4), and nitrous oxide (SC-N_2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate) as shown in Table ES–2 of the accompanying technical report. For the presentational purposes of this table, we show the total and net benefits associated with the average SC–GHG at a 3 percent discount rate, but the Department in a previous rulemaking did not use a single central SC–GHG point estimate. Considering the four SC–GHG estimates, the equivalent annual net benefit would be between $3.1 billion to $4.9 billion for the primary estimate, $3 billion to 4.6 billion for the Low-Net-Benefits Estimate and $3.3 to $5.1 billion for the High-Net-Benefits Estimate. All net benefits are calculated using GHG benefits discounted at 3 percent.

While this assessment represents DOE's best effort to analyze the effects of this rule, there are areas where more information would be helpful to DOE as it considers potentially refining the analysis. They are: (1) Whether DOE should consider a rebound effect (such as 10%) associated with the purchase of more efficient products; (2) whether there are consumer welfare losses associated with those consumers who prefer incandescent or halogen bulbs to LED bulbs even after taking into account steep price decline in LED bulbs and the energy savings that would accrue to them; and (3) how to disaggregate the effects of the backstop provision and the definitional provision separately within the framework presented in the proposed rules.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE is proposing to revise the Code of Federal Regulations to incorporate and implement the backstop requirement for general service lamps that Congress prescribed in EPCA. Because DOE is not imposing additional costs beyond those required by statute, DOE certifies that the proposed rule, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed rule. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

If made final, this proposed rule would impose no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (''NEPA'') of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. (*See* 10 CFR part 1021, app. B, B5.1(b); 10 CFR 1021.410(b) and app. B, B(1)–(5).) The proposed rule fits within this category of actions because it is a rulemaking that establishes a standard for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *energy.gov/nepa/categorical-exclusioncx-determinations-cx.*

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA

governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. 42 U.S.C. 6297. Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

If made final, this proposed rule would codify the sales prohibition of GSLs with an efficacy of less than 45 lm/W prescribed in 42 U.S.C. 6295(i)(6)(A)(v). As the proposed rule would incorporate requirements specifically set forth in law, an assessment under UMRA is not required and has not been conducted.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this action under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this proposed rule is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

V. Public Participation

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods

described in the **ADDRESSES** section at the beginning of this document.

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

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

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

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

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

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

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

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

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

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

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

Signing Authority

This document of the Department of Energy was signed on December 3, 2021, by Kelly Speakes-Backman, Principal Deputy 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 December 7, 2021.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.32 by:

■ a. Revising the introductory text to paragraphs (u)(1) and (x)(1); and

■ b. Adding paragraph (dd).

The revisions and addition read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(u) *Compact fluorescent lamps.*

(1) Medium Base Compact Fluorescent Lamps. Subject to the sales prohibition in paragraph (dd) of this section, a bare or covered (no reflector) medium base compact fluorescent lamp manufactured on or after January 1, 2006, must meet the following requirements:

* * * * *

(x) *General service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps.*

(1) Subject to the sales prohibition in paragraph (dd) of this section, the energy conservation standards in this paragraph apply to general service incandescent lamps:

* * * * *

(dd) *General service lamp.* Beginning [date of final rule] the sale of any general service lamp that does not meet

a minimum efficacy standard of 45 lumens per watt is prohibited.

[FR Doc. 2021–26807 Filed 12–10–21; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

[Docket No. CFPB–2021–0015]

RIN 3170–AA09

Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)

Correction

In proposed rule document 2021–19274 beginning on page 56356 in the issue of Friday, October 8, 2021, make the following corrections:

1. On page 56359, in the second column, in footnote 13, ''*https://cdn.advocacy.sba.gov/content/uploads/2020/06/04144214/2020-Small-Business-Economic-ProfileStates-Territories.pdf*'' should read ''*https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144214/2020-Small-Business-Economic-Profile-States-Territories.pdf*''.

2. On the same page, in the same column, in footnote 16, ''*https://www.newyorkfed.org////_issues/ci17-4.pdf*'' should read ''*https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci17-4.pdf*''.

3. On the same page, in the same column, in footnote 17, ''*https://www.microbiz.org/content/ploads//04/SmallBizLending-and-FiscalCrisis.pdf*'' should read ''*https://www.microbiz.org/wp-content/uploads/2014/04/SBA-SmallBizLending-and-FiscalCrisis.pdf*''.

4. On the same page, in the third column, in footnote 20, ''*https://adpemploymentreport.com////May-2021.aspx*'' should read ''*https://www.biz2credit.com/business-lending-index/april-2021*''.

5. On the same page, in the same column, in the same footnote, ''*https://www.biz2credit.com/business-lending-index/april-2021*'' should read ''*https://www.biz2credit.com/small-business-lending-index/april-2021*''.

6. On the same page, in the same column, in footnote 21, ''*https://fas.org/sgp//misc/R45878.pdf*'' should read ''*https://fas.org/sgp/crs/misc/R45878.pdf*''.

7. On page 56361, in the first column, in footnote 35, ''*https://www.sba.gov/sites/default/files/2019-08/SBA%20%20%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf*'' should read ''*https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf*''.

8. On the same page, in the second column, in footnotes 42 and 44, ''*https://www.census.gov/newsroom/press-releases//business-survey.html*'' should read ''*https://www.census.gov/newsroom/press-releases/2021/annual-business-survey.html*''.

9. On page 56363, in the third column, in footnote 72, ''*https://www.federalreserve.gov/econrest/feds/files2020089r1pap.pdf*'' should read ''*https://www.federalreserve.gov/econres/feds/files/2020089r1pap.pdf*''.

10. On page 56368, in the second column, in footnote 130, ''*https://www.ftc.gov/system/files/documents/report/staff-perspective-paper-ftcs-strictly-business-forum/strickly_business__forum_staff_perspective.pdf*'' should read ''*https://www.ftc.gov/system/files/documents/reports/staff-perspective-paper-ftcs-strictly-business-forum/strictly_business_forum_staff_perspective.pdf*''.

11. On page 56369, in the third column, in footnote 146, ''*https://www.farmcreditfunding.com/ffcb_live/serve/public/pressre/finin/pdf?assetId=395570*'' should read ''*https://www.farmcreditfunding.com/ffcb_live/serve/public/pressre/finin/report.pdf?assetId=395570*''.

Appendix H to Part 1002 [Corrected]

■ 12. On page 56586, in Appendix H to Part 1002, in the first column, footnote 959 should read as follows:

For a financial institution with fewer than 30 entries in its small business lending application register, the full sample size is the financial institution's total number of entries. The threshold number for such financial institutions remains three. Accordingly, the threshold percentage will be higher for financial institutions with fewer than 30 entries in their registers.

[FR Doc. C1–2021–19274 Filed 12–10–21; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1079; Airspace Docket No. 21–ASO–15]

RIN 2120–AA66

Proposed Amendment and Removal of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend four jet routes, and remove one jet route and one high altitude area navigation (RNAV) route in the eastern United States. These actions are in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–1079; Airspace Docket No. 21–ASO–15 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–1079; Airspace Docket No. 21–ASO–15) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1079; Airspace Docket No. 21–ASO–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend jet routes J–20, J–31, J–41, and J–73; and to remove J–69, and high altitude RNAV route Q–63, in the eastern United States. This action supports the VOR MON program.

The proposed route changes are as follows:

J–20: J–20 currently extends from Seattle, WA, to Montgomery, AL. This action would remove the segments to Meridian, MS, and Montgomery, AL. A new RNAV route, Q–184, is being proposed under a separate docket action. This would provide an alternative to the segments that would be removed from J–20. As amended, J–20 would extend from Seattle, WA, to Magnolia, MS.

J–31: J–31 currently extends from Leeville, LA, to Vulcan, AL. This action would remove the segment from Meridian, MS, to Vulcan, AL. As amended, J–31 would extend from Leeville, LA, to Meridian, MS.

J–41: J–41 currently extends from Montgomery, AL, to Omaha, IA. The FAA proposes to remove the segments between Montgomery, AL and Memphis, TN. As amended, J–41 would extend from Memphis, TN to Omaha, IA.

J–69: J–69 currently extends from Semmes, AL to Vulcan, AL. The route is not required for air traffic control purposes. This action would remove the entire route.

Q–63: Q–63 currently extends between the DOOGE, VA, RNAV waypoint (WP) and the HEVAN, IN, WP. The FAA proposes to remove Q–63 because it will be replaced by an extension of Q–93 which is being proposed in a separate docket action.

Jet routes are published in paragraph 2004, and United States area navigation routes are published in paragraph 2006, respectively, of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The jet routes and area navigation route listed in this document would be subsequently amended in, or removed from FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 14 CFR 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–20 [Amended]

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Belcher, LA; to Magnolia, MS.

* * * * *

J–31 [Amended]

From Leeville, LA; Harvey, LA; to Meridian, MS.

* * * * *

J–41 [Amended]

From Memphis, TN; Springfield, MO, Kansas City, MO, to Omaha, IA.

* * * * *

J–69 [Removed]

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–63 [Removed]

* * * * *

Issued in Washington, DC, on December 7, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–26842 Filed 12–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1057; Airspace Docket No. 21–ASO–38]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Peachtree City, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Atlanta Regional Airport Falcon Field (formerly Peachtree City, Falcon Field Airport). This action would update the airport's name and geographical coordinates to coincide with the FAA's database. Also, this action would increase the airport's radius and remove excessive verbiage from the legal description. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2021–1057; Airspace Docket No. 21–ASO–38, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace for Peachtree City, GA to support IFR operations in the area.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2021–1057 and Airspace Docket No. 21–ASO–38) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1057; Airspace Docket No. 21–ASO–38.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the

comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface at Atlanta Regional Airport Falcon Field, Peachtree City, GA (formerly Peachtree City, Falcon Field Airport) by updating the airports name and geographical coordinates of the airport to coincide with the FAA's database, increasing the radius of the airport to 8.7 miles (formerly 6.5 miles), and removing excessive verbiage from the legal description of the airport.

Class E airspace designations are published in Paragraphs 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'', prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASO GA E5 Peachtree City, GA [Amended]

Atlanta Regional Airport Falcon Field, GA
(Lat. 33°21′28″ N, long. 84°34′21″ W)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of Atlanta Regional Airport Falcon Field.

Issued in College Park, Georgia, on December 6, 2021.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2021–26836 Filed 12–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1100; Airspace Docket No. 19–AAL–65]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–235; Atqasuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–235 in the vicinity of Atqasuk, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–1100; Airspace Docket No. 19–AAL–65 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800

Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–1100; Airspace Docket No. 19–AAL–65) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1100; Airspace Docket No. 19–AAL–65''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored Airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum En route Altitude (MEA) or Global Navigation Satellite System Minimum En route Altitude (GNSS MEA); (b) the replacement of the colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA proposes to amend RNAV route T–235 to provide an alternate waypoints (WPs), the ZISDU WP for the Atqasuk, AK (ATK) NDB, and the JATIL WP for the Nuiqsut, AK, (UQS) NDB, in anticipation of the future decommissioning of the two NDBs. Additionally, the FAA proposes to extend the airway west to a newly established FILEV WP in the vicinity of Wainwright, AK. This extension would provide an alternate route for Colored airway G–17, supporting the future decommissioning of the Wainwright Village, AK, (UKK) NDB. Furthermore, the Put River, AK (PVQ) NDB is expected to be decommissioned. This proposal would provide an alternate in that area for Colored airway G–16 by extending the route to the east from the JATIL WP to the Deadhorse, AK, (SCC) VHF omnidirectional range with distance measuring equipment (VOR/DME).

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route

T–235 in the vicinity of Atqasuk, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–235: The FAA proposes to amend T–235 by extending the route from the FILEV, AK, WP to the ZISDU, AK, WP. From the ZISDU, AK, WP, the route would provide guidance to the Nuiqsut Airport (PAQT), AK via the JATIL, AK, WP and the ZADRO, AK, WP. Finally, the route would extend east from the ZADRO, AK, WP to the Deadhorse, AK, (SCC) VOR/DME.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–235 FILEV, AK to Deadhorse, AK

FILEV, AK	WP	(Lat. 70°38′16.81″ N, long. 159°59′41.10″ W)
ZISDU, AK	WP	(Lat. 70°28′08.35″ N, long. 157°25′20.99″ W)
JATIL, AK	WP	(Lat. 70°12′46.02″ N, long. 151°00′19.83″ W)
ZADRO, AK	WP	(Lat. 70°13′09.77″ N, long. 150°12′03.78″ W)
Deadhorse, AK (SCC)	VOR/DME	(Lat. 70°11′57.11″ N, long. 148°24′58.17″ W)

* * * * *

Issued in Washington, DC, on December 7, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–26815 Filed 12–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1030; Airspace Docket No. 21–ASW–10]

RIN 2120–AA66

Amendment of VOR Federal Airways V–47, V–54, V–69, V–94, V–140, V–278, V–305, and Revocation of V–397; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify VHF Omnidirectional Range (VOR) Federal airways V–47, V–54, V–69, V–94, V–140, V–278, V–305, and remove V–397, in association with the Graceland VOR Minimum Operational Network (MON) project in the southeastern United States. This action is necessary due to the planned decommissioning of the following ground-based navigation aids: Dyersburg, TN, (DYR) VOR Tactical Air Navigation (VORTAC); Malden, MO, (MAW) VORTAC; Monticello, AR, (MON) VOR/DME; and the Muscle Shoals, AL, (MSL) VORTAC.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2021–1030; Airspace Docket No. 21–ASW–10 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence

Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the eastern United States to maintain the efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–1030; Airspace Docket No. 21–ASW–10) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1030; Airspace Docket No. 21–ASW–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.* You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021 and effective September 15, 2021. FAA Order 7400.11F is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–47, V–54, V–69, V–94, V–140, V–278, V–305, and remove V–397, in support of the FAA's VOR MON program. The proposed route changes are described below.

V–47: V–47 currently consists of two separate parts: From Pine Bluff, AR, to Pocket City, IN; and From Cincinnati, KY, to Flag City, OH. The FAA proposes to remove the segments from Pine Bluff, AR, to Dyersburg, TN. Therefore, the first part of V–47 would extend from Cunningham, KY, to Pocket City, IN. The second part of the route would extend from Cincinnati, KY to Flag City, OH, as currently charted.

V–54: V–54 currently consists of two separate parts: From Waco, TX, to Cedar Creek, TX; and From Texarkana, AR, to Kinston, NC. The FAA proposes to remove the segments from Marvell, AR, to Charlotte, NC. This would configure V–54 into three parts: From Waco, TX, to Cedar Creek, TX; From Texarkana, AR, to Little Rock, AR; and From Sandhills, NC, to Kinston, NC.

V–69: V–69 currently extends from El Dorado, AR, to Joliet, IL. The FAA proposes to remove the segments from El Dorado, AR, to Walnut Ridge, AR. As amended, V–69 would extend from Farmington, MO to Joliet, IL.

V–94: V–94 currently consists of two parts: From Blythe, CA, to Tuscola, TX; and From Cedar Creek, TX, to Holly Springs, MS. The FAA is proposing to remove the final segment from Greenville, MS, to Holly Springs, MS. As amended, V–94 would extend from Blythe, CA, to Tuscola, TX; and from Cedar Creek, TX to Greenville, MS.

V–140: V–140 currently consists of two parts: From Panhandle, TX, to London, KY; and from Bluefield, WV, to Casanova, VA. The FAA proposes to remove the Walnut Ridge, AR, Dyersburg, TN, and Hazard, KY, navigation aids from V–140. As a result, V–140 would consist of the following three parts: From Panhandle, TX, to Harrison, AR; From Nashville, TN, to London, KY; and From Bluefield, WV, to Casanova, VA. Other changes to V–140 are being proposed in a separate docket action.

V–278: V–278 currently consists of two parts: From Texico, NM, to Plainview, TX; and from Bowie, TX, to Vulcan, AL. The FAA proposes to remove the segments from Monticello, AR, to Vulcan, AL. The first part of V–278 would remain unchanged. The second part of the route would be amended as follows: From Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; to INT Texarkana 088°(T)/081°(M) and Eldorado, AR 034°(T)/027°(M) radials. Note: When new radials are proposed in an NPRM both True (T) and Magnetic (M) degrees are stated. Only True degrees will be stated in the final rule.

V–305: V–305 currently extends from El Dorado, AR, to Kokomo, IN. The FAA proposes to remove Walnut Ridge, AR, and Malden, MO, from the route. This would split V–305 into two separate parts as follows: From Eldorado, AR, to Little Rock, AR; and From Cunningham, KY, to Kokomo, IN. Other changes to V–305 are being proposed in a separate docket action.

V–397: V–397 currently extends from Monroe, LA, to Marvell, AR. The FAA proposes to remove the entire route.

Full route descriptions of the above routes are listed in ''The Proposed Amendment'' section of this NPRM.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11F, dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in the FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–47 [Amended]

From Cunningham, KY; to Pocket City, IN. From Cincinnati, KY; Rosewood, OH; to Flag City, OH.

* * * * *

V–54 [Amended]

From Waco, TX; to Cedar Creek, TX. From Texarkana, AR; INT Texarkana 052° and Little Rock, AR, 235° radials; to Little Rock. From Sandhills, NC; INT Sandhills 146° and Fayetteville, NC, 267° radials; Fayetteville; to Kinston, NC.

* * * * *

V–69 [Amended]

From Farmington, MO; Troy, IL; Spinner, IL; Pontiac, IL; to Joliet, IL.

* * * * *

V–94 [Amended]

From Blythe, CA; INT Blythe 094°and Gila Bend, AZ, 299° radials; Gila Bend; Stanfield, AZ; 55 miles, 74 miles, 95 MSL, San Simon, AZ; Deming, NM; Newman, TX; Salt Flat, TX; Wink, TX; Midland, TX; to Tuscola, TX. From Cedar Creek, TX; Gregg County, TX; Elm Grove, LA; Monroe, LA; to Greenville, MS.

* * * * *

V–140 [Amended]

From Panhandle, TX; Burns Flat, OK; Kingfisher, OK; INT Kingfisher 072° and Tulsa, OK, 261° radials; Tulsa; Razorback, AR; to Harrison, AR. From Nashville, TN; Livingston, TN; to London, KY. From Bluefield, WV; INT Bluefield 071° and Montebello, VA, 250° radials; Montebello; to Casanova, VA.

* * * * *

V–278 [Amended]

From Texico, NM; to Plainview, TX. From Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; to INT Texarkana 088°T/081°M and El Dorado, AR 034°T 027°M radials.

* * * * *

V–305 [Amended]

From El Dorado, AR; to Little Rock, AR. From Cunningham, KY; Pocket City, IN; INT Pocket City 046° and Hoosier, IN, 205° radials; Hoosier; INT Hoosier 025° and Brickyard, IN, l85° radials; Brickyard; INT Brickyard 038° and Kokomo, IN, 182° radials; to Kokomo.

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V–397 [Removed]

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Issued in Washington, DC, on December 7, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–26840 Filed 12–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1082; Airspace Docket No. 21–ASO–16]

RIN 2120–AA66

Proposed Amendment and Removal of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend three jet routes and remove four jet routes in the eastern United States. This action supports the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) program to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–1082; Airspace Docket No. 21–ASO–16 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2021–1082; Airspace Docket No. 21–ASO–16) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1082; Airspace Docket No. 21–ASO–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend three, and remove four jet routes in the eastern United States. This action would support the VOR MON program by amending or removing certain jet route segments due to the planned decommissioning of ground-based navigation aids. Additionally, the proposed jet route changes would reduce aeronautical chart clutter by removing unneeded route segments.

The proposed route changes are as follows:

J–22: J–22 currently extends from Nuevo Laredo, Mexico, to Montebello, VA. The FAA proposes to remove the route segments from Vulcan, AL, to Montebello, VA. As proposed, the amendment route would extend from Nuevo Laredo, Mexico to Meridian, MS. The portion within Mexico is excluded.

J–39: J–39 currently extends from Montgomery, AL, to Rosewood, OH. The FAA proposes to remove the entire route.

J–46: J–46 currently extends from Tulsa, OK, to Volunteer, TN. The FAA proposes to remove the segment between Nashville, TN, and Volunteer, TN. As proposed, the amendment route would extend from Tulsa, OK, to Nashville, TN.

J–48: J–48 currently extends from the intersection of the Solberg, NJ, 264° and the Pottstown, PA, 050° radials, to Foothills, SC. The FAA proposes to remove the segment between Montebello, VA, and Foothills, SC. As proposed, J–48 would extend from the intersection of the above Solberg and Pottstown radials to Montebello, VA.

J–118: J–118 currently extends from Memphis, TN, to Spartanburg, SC. The FAA proposes to remove the entire route.

J–145: J–145 currently extends from Foothills, SC, to Charleston, WV. The FAA proposes to remove the entire route.

J–186: J–186 currently extends from Foothills, SC, to Appleton, OH. The FAA proposes to remove the entire route.

Jet routes are published in paragraph 2004 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be subsequently amended in, or removed, respectively, from FAA Order JO 7400.11

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–22 [Amended]

From Nuevo Laredo, Mexico, via Laredo, TX; Corpus Christi, TX; Palacios, TX; Lake Charles, LA; McComb, MS; to Meridian, MS. The airspace within Mexico is excluded.

* * * * *

J–39 [Removed]

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J–46 [Amended]

From Tulsa, OK, via Walnut Ridge, AR; to Nashville, TN.

* * * * *

J–48 [Amended]

From INT Solberg, NJ, 264° and Pottstown, PA, 050° radials; Pottstown; Westminster, MD; Casanova, VA; to Montebello, VA.

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J–118 [Removed]

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J–145 [Removed]

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J–186 [Removed]

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Issued in Washington, DC, on December 7, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–26841 Filed 12–10–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1043; Airspace Docket No. 21–ACE–4]

RIN 2120–AA66

Proposed Amendment of Jet Routes J–82 and J–94; Extension of Area Navigation (RNAV) Route Q–122; Amendment of VOR Federal Airways V–100, V–138, V–456, and V–505; Removal of VOR Federal Airway V–462; and Removal of the Fort Dodge, IA, Domestic Low Altitude Reporting Point; in the Vicinity of Fort Dodge, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend two Jet Routes; extend one high altitude RNAV Q-route; amend four VHF Omnidirectional Range (VOR) Federal airways; remove one VOR Federal airway; and remove one Domestic Low Altitude Reporting Point, in the vicinity of Fort Dodge, IA. This action is necessary due to the planned decommissioning of the VOR portion of the Fort Dodge, IA, VOR/Tactical Air Navigation (VORTAC), which provides navigation guidance to portions of the affected Air Traffic Service (ATS) routes. The Fort Dodge VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (VOR MON) program. Although the Fort Dodge VOR is being decommissioned, the FAA plans to retain the collocated Distance Measuring Equipment (DME) and Tactical Air Navigation (TACAN) portions of the navigational aid.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–1043; Airspace Docket No. 21–ACE–4 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would improve the efficient flow of air traffic within the NAS by lessening the dependency on ground-based navigation, and it would expand the availability of RNAV routes in the northcentral United States.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–

2021–1043; Airspace Docket No. 21–ACE–4) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1043; Airspace Docket No. 21–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021 and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Fort Dodge, IA, VORTAC with a proposed effective date of September 8, 2022. The Fort Dodge VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the NextGen Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR MON),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Fort Dodge, IA, VORTAC is planned for decommissioning, the co-located Distance Measuring Equipment (DME) and Tactical Air Navigation (TACAN) portions of the navigational aid are being retained in support of current and future RNAV procedures and Department of Defense mission requirements.

The ATS routes affected by the Fort Dodge, IA, VOR being decommissioned consist of J–82, J–94, Q–122, V–100, V–138, V–456, V–462, and V–505. With the planned decommissioning of the Fort Dodge VOR, the remaining ground-based navigational aid coverage in the area is insufficient to enable the continuity of these affected routes. As such, the proposal would result in the removal of airway segments for V–138, V–456, V–505; the creation of gaps in the ATS routes for J–82, J–94; the widening of the airway gap for V–100; and the entire removal of an airway for V–462. To overcome the loss of segments in the ATS routes, instrument flight rules (IFR) traffic may use adjacent low altitude VOR Federal airways, such as V–13, V–120, V–161, V–172, and T–392. IFR traffic may also use the remaining high altitude Jet Routes, such as J–84, J–100, J–128 and J–148. Pilots equipped with RNAV capabilities may also file point to point through the affected area using fixes that will remain in place, or receive air traffic control radar vectors. Visual flight rules (VFR) pilots, who elect to navigate through the affected area, may utilize the ATC services previously listed.

Additionally, the FAA proposes to extend the RNAV route, Q–122, 52-miles to the east. The extension of the Q–122 route would supplement the enroute structure for high altitude traffic, and facilitate the flow of traffic in the area southwest of the Chicago, IL, terminal area. This proposed new RNAV route would also support the FAA's plan to transition the National Airspace System from a ground-based surveillance and navigation system, to a satellite-based system.

Finally, the FAA proposes to remove the Fort Dodge, IA, Domestic Low Altitude Reporting point. The reporting point is no longer required by air traffic control after the proposed route amendments would be implemented.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend Jet Routes J–82 and J–94; extend RNAV route Q–122; amend VOR Federal airways V–100, V–138, V–456, and V–505; remove VOR Federal Airway V–462; and remove the Fort Dodge, IA reporting point.

The proposed ATS route and reporting point amendments are described below.

J–82. J–82 currently extends between the Battle Ground, WA, VORTAC and the Goshen, IN, VORTAC. The FAA proposes to remove the route segment between the Sioux Falls, SD, VORTAC and the Dubuque, IA, VORTAC. As a result, the Jet route would extend between the Battle Ground, WA, VORTAC and Sioux Falls, SD, VORTAC; and between the Dubuque, IA, VORTAC and the Goshen, IN, VORTAC.

J–94. J–94 extends between the Mustang, NV, VORTAC and the Flint, MI, VORTAC. The FAA proposes to remove the route segment between the O'Neill, NE, VORTAC and Dubuque, IA, VORTAC. As a result, the Jet route would extend between the Mustang, NV, VORTAC and the O'Neill, NE, VORTAC; and between the Dubuque, IA, VORTAC and the Flint, MI, VORTAC.

Q–122. Q–122 currently extends between the MOGEE, CA, waypoint (WP) and the Fort Dodge, IA, VORTAC (FOD). The FAA is proposing to remove the Fort Dodge, IA, VORTAC route point from the route description and establish a new waypoint (VIRGN, IA), located 3.08 NM south of the current Fort Dodge, IA, VORTAC. The VIRGN, IA waypoint would support navigation, on Q–122, in lieu of the removed Fort Dodge, IA, VORTAC. From the VIRGN, IA waypoint, the FAA is proposing to extend Q–122, 52 miles to the east, to the VIGGR, IA fix, which would now become the easternmost endpoint of the airway. The FAA also proposes to remove the BEARR, UT fix and the O'Neil, NE, VORTAC (ONL) from the legal description only. Because the route points are on straight segments of the existing Q–122 route, it is not necessary

to include them in the legal description. Although the BEARR, UT fix and the O'Neil, NE, VORTAC would be removed from the legal description, both would remain in service and continue to be charted on the route. The FAA also proposes to convert the KATES, NE fix to a waypoint, to support Q–122 navigation. The KATES, NE waypoint and the newly established VIRGN, IA waypoint, would also be charted to facilitate RNAV holding. As such, the proposed route, east of the KATES, NE waypoint, will overfly the VIRGN, IA, waypoint, located 3.08 nm south of the current Fort Dodge, IA, VORTAC, and will continue to the new airway endpoint at the VIGGR, IA, fix. As a result, the Q–122 route would extend between the MOGEE, CA, waypoint and the VIGGR, IA, fix.

V–100. V–100 extends between the Medicine Bow, WY, VOR/DME and the O'Neil, NE, VORTAC; between the Fort Dodge, IA, VORTAC and the Dubuque, IA, VORTAC; and between the Northbrook, IL, VOR/DME and the Litchfield, MI, VOR/DME. The FAA proposes to remove the segment between the Fort Dodge, IA, VORTAC and the Waterloo, IA, VOR/DME. The unaffected portions of the existing airway would remain as charted. Additional changes to other segments of V–100 have been proposed in a separate rulemaking proposal.

V–138. V–138 extends between the Riverton, WY, VOR/DME and the Sidney, NE, VOR/DME; and between the Grand Island, NE, VOR/DME and the Mason City, IA, VOR/DME. The FAA proposes to remove the segment between the Omaha, IA, VORTAC and the Mason City, IA, VOR/DME. As a result, V–138 would extend between the Riverton, WY, VOR/DME and the Sidney, NE, VOR/DME; and between the Grand Island, NE, VOR/DME and the Omaha, IA, VORTAC.

V–456. V–456 extends between the Fort Dodge, IA, VORTAC and the Flying Cloud, MN, VOR/DME. The FAA proposes to remove the segment between the Fort Dodge, IA, VORTAC and the Mankato, MN, VOR/DME. As a result, V–456 would extend between the Mankato, MN, VOR/DME and the Flying Cloud, MN, VOR/DME.

V–462. V–462 extends between the Fort Dodge, IA, VORTAC and the Sioux Falls, SD, VORTAC. The FAA proposes to remove the airway in its entirety.

V–505. V–505 extends between the Des Moines, IA, VORTAC and the Gopher, MN, VORTAC; and between the Duluth, MN, VORTAC and the International Falls, MN, VOR/DME. The FAA proposes to remove the segment between the Des Moines, IA, VORTAC and the Mason City, IA, VOR/DME. As a result, V–505 would extend between the Mason City, IA, VOR/DME and the Gopher, MN, VORTAC; and between the Duluth, MN, VORTAC and the International Falls, MN, VOR/DME.

Fort Dodge: The Fort Dodge, IA, Domestic Low Altitude Reporting Point would be removed.

All of the navigational aid radials in the ATS Route descriptions below are stated in True degrees.

United States Jet Routes, RNAV Q-routes, VOR Federal airways, and Domestic Low Altitude Reporting points are published in paragraphs 2004, 2006, 6010(a), and 7001, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which are incorporated by reference in 14 CFR 71.1. The ATC routes listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA JO Order 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–82 [Amended]

From Battle Ground, WA; Donnelly, ID; Dubois, ID; Crazy Woman, WY; Rapid City, SD; to Sioux Falls, SD. From Dubuque, IA; INT Dubuque 095° and Joliet, IL, 317° radials; Joliet; to Goshen, IN.

* * * * *

J–94 [Amended]

From Mustang, NV; Lovelock, NV; Battle Mountain, NV; Lucin, UT; Rock Springs, WY; Scottsbluff, NE; to O'Neill, NE. From Dubuque, IA; Northbrook, IL; Pullman, MI; to Flint, MI.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q122 MOGEE, CA to VIGGR, IA [Amended]

MOGEE, CA	WP	(Lat. 38°20′10.00″ N, long. 121°23′23.00″ W)
MACUS, NV	WP	(Lat. 39°53′00.00″ N, long. 118°48′00.00″ W)
MCORD, NV	WP	(Lat. 40°12′00.00″ N, long. 118°01′00.00″ W)
Lucin, UT (LCU)	VORTAC	(Lat. 41°21′46.63″ N, long. 113°50′26.23″ W)
KURSE, WY	WP	(Lat. 42°04′29.66″ N, long. 105°09′36.16″ W)
KATES, NE	WP	(Lat. 42°32′27.71″ N, long. 096°46′26.52″ W)
VIRGN, IA	WP	(Lat. 42°33′47.92″ N, long. 094°17′39.35″ W)

VIGGR, IA	FIX	(Lat. 42°33′18.67″ N, long. 093°07′26.83″ W)

* * * * *

Paragraph 6010(a) VOR Federal Airways.

* * * * *

V–100 [Amended]

From Medicine Bow, WY; Scottsbluff, NE; Alliance, NE; Ainsworth, NE; to O'Neill, NE. From Waterloo, IA; to Dubuque, IA. From Northbrook, IL; INT Northbrook 095° and Keeler, MI, 271° radials; Keeler; to Litchfield, MI.

* * * * *

V–138 [Amended]

From Riverton, WY; 35 miles, 80 miles 107 MSL, 16 miles 85 MSL, Medicine Bow, WY; Cheyenne, WY; to Sidney, NE. From Grand Island, NE; INT of Grand Island 099° and Lincoln, NE, 267° radials; Lincoln; to Omaha, IA.

* * * * *

V–456 [Amended]

From Mankato, MN; to Flying Cloud, MN.

* * * * *

V–462 [Removed]

* * * * *

V–505 [Amended]

From Mason City, IA; INT Mason City 349° and Gopher, MN, 188° radials; to Gopher. From Duluth, MN; INT Duluth 331° and Hibbing, MN, 120° radials; Hibbing; INT Hibbing 319° and International Falls, MN, 182° radials; to International Falls.

* * * * *

Paragraph 7001 Domestic Low Altitude Reporting Points.

* * * * *

Fort Dodge, IA [Removed]

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Issued in Washington, DC, on December 7, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–26887 Filed 12–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1083; Airspace Docket No. 19–AAL–62]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–229; Point Hope, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–229 in the vicinity of Point Hope, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–1083; Airspace Docket No. 19–AAL–62 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–1083; Airspace Docket No. 19–AAL–62) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1083; Airspace Docket No. 19–AAL–62''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://*

www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored Airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum En route Altitude (MEA) or Global Navigation Satellite System Minimum En route Altitude (GNSS MEA); (b) the replacement of the colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA proposes to amend RNAV route T–229 to provide an alternate waypoint (WP), VANTY WP, in anticipation of the future decommissioning of the Point Hope, AK, (PHO) NDB. The proposed amendment would also provide a lowered GNSS MEA, from 4,000 Mean Sea Level (MSL) to 3,000 MSL, between the SURGE WP and the VANTY WP. The SURGE WP is not a turn point on the route, so the proposal does not include it in the legal description but it will be depicted on the sectional chart.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–229 in the vicinity of Point Hope, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–229: The FAA proposes to amend T–229 from the SURGE WP to the newly established VANTY WP. The rest of the route would remain unchanged.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–229 Fairbanks, AK to VANTY, AK

Fairbanks, AK (FAI)	VORTAC	(Lat. 64°48′00.25″ N, long. 148°00′43.11″ W)
Tanana, AK (TAL)	VOR/DME	(Lat. 65°10′37.65″ N, long. 152°10′39.18″ W)
Huslia, AK (HSL)	VOR/DME	(Lat. 65°42′28.35″ N, long. 156°21′47.11″ W)
Selawik, AK (WLK)	VOR/DME	(Lat. 66°35′58.11″ N, long. 159°59′26.98″ W)
Kotzebue, AK (OTZ)	VOR/DME	(Lat. 66°53′08.46″ N, long. 162°32′23.77″ W)

VANTY, AK WP (Lat. 68°20′40.68″ N, long. 166°47′53.61″ W)

* * * * *

Issued in Washington, DC, on December 7, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–26843 Filed 12–10–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1097; Airspace Docket No. 19–AAL–64]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–233; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–233 in the vicinity of Kotzebue, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2021–1097; Airspace Docket No. 19–AAL–64 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–1097; Airspace Docket No. 19–AAL–64) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2021–1097; Airspace Docket No. 19–AAL–64''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the

nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide en route continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored Airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum En route Altitude (MEA) or Global Navigation Satellite System Minimum En route Altitude (GNSS MEA); (b) the replacement of the colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The FAA proposes to amend RNAV route T–233 to provide an alternate reporting point, the Bettles, AK, (BTT) VHF omnidirectional range with distance measuring equipment (VOR/DME), as well as a new waypoint (WP) the TOMPY WP, in anticipation of the future decommissioning of the Evansville, AK, (EAV) NDB, and the Ambler, AK, (AMF) NDB. Additionally, the proposed route would extend from the TOMPY WP to the new CIBDU WP and then to the Kotzebue, AK, (OTZ) VOR/DME, providing an alternate for VOR Federal airwayV–401 with a lower GNSS MEA.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–233 in the vicinity of Kotzebue, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–233: The FAA proposes to amend T–233 by extending the route from the Kotzebue, AK, (OTZ) VOR/DME to the CIBDU, AK, WP to the TOMPY, AK, WP. Due to the positioning of the TOMPY WP, the KORKY WP would no longer be a turn point, so it will not be included in the proposed legal description.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–233 Kotzebue, AK to Bettles, AK

Kotzebue, AK (OTZ)	VOR/DME	(Lat. 66°53′08.46″ N, long. 162°32′23.77″ W)
CIBDU, AK	WP	(Lat. 66°52′57.45″ N, long. 161°03′44.52″ W)
TOMPY, AK	WP	(Lat. 67°06′18.81″ N, long. 157°51′52.03″ W)
ENCOR, AK	WP	(Lat. 66°55′58.35″ N, long. 152°19′54.35″ W)
Bettles, AK (BTT)	VOR/DME	(Lat. 66°54′18.03″ N, long. 151°32′09.18″ W)

* * * * *

Issued in Washington, DC, on December 7, 2021.

Margaret C. Flategraff,

Acting Manager, Rules and Regulations Group.

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DEPARTMENT OF JUSTICE

28 CFR Part 5

[Docket No. NSD 102]

RIN 1105–AB67

Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations

AGENCY: National Security Division, Department of Justice.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Justice's National Security Division (NSD) anticipates issuing a Notice of Proposed Rulemaking (NPRM) that would amend or otherwise clarify the scope of certain exemptions, update various definitions, and make other modernizing changes to the Attorney General's Foreign Agents Registration Act (FARA) implementing regulations. The Department is issuing this Advanced Notice of Public Rulemaking (ANPRM) to solicit suggestions for any potential amendments to, or clarifications of, the current FARA implementing regulations.

DATES: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before February 11, 2022. Written comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System at *www.regulations.gov* will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1105–AB67 or NSD Docket No. 102, by one of the two methods below:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Mail/Commercial Courier:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Jennifer Kennedy Gellie, Chief, FARA Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, 175 N Street NE, Constitution Square, Building 3—Room 1.100, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Jennifer Kennedy Gellie, Chief, FARA Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, 175 N Street NE, Constitution Square, Building 3—Room 1.100, Washington, DC 20002; telephone: (202) 233–0776 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this ANPRM via one of the two methods identified above and by the deadline stated above. All comments must be submitted in the English language, or accompanied by an English language translation.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov.* Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Department may withhold from public viewing information provided in comments that it determines is offensive or may adversely impact the privacy of a third party. For additional information, please read the privacy notice that is available via the link in the footer of *https://www.regulations.gov.*

To inspect the agency's public docket file in person, you must make an appointment with the FARA Unit. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for FARA Unit contact information.

II. Background

The Foreign Agents Registration Act of 1938, 22 U.S.C. 611 *et seq.* (FARA or the Act) was enacted to ensure that the government and the American people are aware of people who are acting within this country as agents of foreign principals and are informed about their activities undertaken to influence public opinion or governmental action on political or policy matters. FARA requires that people acting as agents of foreign principals, within the meaning of the statute, make periodic public disclosures of their agency relationship and activities, as well as their receipts and disbursements in support of these activities. Disclosure of the required information allows the American public and government officials to evaluate the agents' statements and activities with knowledge of the foreign interests they serve. The FARA Unit of the Counterintelligence and Export Control Section (CES) in the National Security Division (NSD) is responsible for the administration and enforcement of FARA.

The Act gives the Attorney General the authority to issue ''rules, regulations, and forms as he may deem necessary to carry out the provisions'' of the Act.[1] Under that authority, the Attorney General has issued regulations covering a range of administrative and enforcement functions.[2] The regulations were last amended in 2007. The Department is now considering amending and updating the regulations to clarify key substantive provisions, such as the attorney and commercial exemptions. Other changes under consideration would modernize the regulations to clarify how they apply to social media and electronic filing, among other things.

III. Request for Public Comments

Before issuing a NPRM with specific regulatory text for public comment, the Department is seeking preliminary input from the public on the regulations as a whole and in response to the specific questions set forth below:

A. Agency

Pursuant to 22 U.S.C. 611(c), an ''agent of a foreign principal'' is ''any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal,'' who does any of the following:

- Engages within the United States in political activities, such as intending to influence any U.S. Government official or the American public regarding U.S. domestic or foreign policy or the political or public interests of a foreign government or foreign political party;
- Acts within the United States as a public relations counsel, publicity agent, information service employee, or political consultant;

[1] *See* 22 U.S.C. 620; *see also id.* 612(f), 614(c).

[2] *See* 28 CFR 5.1–5.1101.

• Solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value within the United States; or

• Represents within the United States the interests of a foreign principal before U.S. Government officials or agencies.

In addition, 22 U.S.C. 611(p) defines ''political consultant'' to mean ''any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.''

Question 1: Should the Department incorporate into its regulations some or all of its guidance addressing the scope of agency, which is currently published as part of the FARA Unit's FAQs on its website? *See https://www.justice.gov/nsd-fara/page/file/1279836/download.* If so, which aspects of that guidance should be incorporated? Should any additional guidance currently included in the FAQs, or any other guidance, be incorporated into the regulations?

Question 2: Should the Department issue new regulations to clarify the meaning of the term ''political consultant,'' including, for example, by providing that this term is generally limited to those who conduct ''political activities,'' as defined in 22 U.S.C. 611(o)?

B. Exemptions

1. Commercial Exemptions

Two of the three exemptions in 22 U.S.C. 613(d) apply to ''[a]ny person engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest.'' In 28 CFR 5.304(b), the word ''private'' is defined to include activities on behalf of a foreign principal that is ''owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government.'' For activities on behalf of state-owned enterprises, 28 CFR 5.304(c) provides that the phrase ''not serving predominantly a foreign interest'' includes ''political activities'' that:

• Are ''directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporations'';

• Are not ''directed by a foreign government or foreign political party''; and

• ''[D]o not directly promote the public or political interests of a foreign government or of a foreign political party.''

Because the regulation in 5.304(c) addresses only activities on behalf of state-owned enterprises, it does not provide guidance on whether political activities on behalf of other foreign principals fall within the exemption. The Department is considering issuing regulations to address contexts not currently covered by the existing regulations. The Department is also seeking comment on whether to revise the existing regulations to address the scope of the exemptions, such as by limiting the scope of the exemptions so that they would not apply if the activities promoted—either directly or indirectly—the public or political interests of a foreign government or foreign political party.

Question 3: Should the Department issue a regulation addressing how 22 U.S.C. 613(d)(2) applies to political activities on behalf of foreign principals other than state-owned enterprises? If so, how should the Department amend the regulation to address when such activities do not serve ''predominantly a foreign interest''?

Question 4: Is the language in 28 CFR 5.304(b), (c), which provides that the exemptions in sections 613(d)(1) and (d)(2) do not apply to activities that ''directly promote'' the public or political interests of a foreign government or political party, sufficiently clear? And does that language appropriately describe the full range of activities that are outside the scope of the exemptions because they promote such interests, including indirectly? Should the language be clarified, and, if so, how?

Question 5: What other changes, if any, should the Department make to the current regulations at 28 CFR 5.304(b) and (c) relating to the exemptions in 22 U.S.C. 613(d)(1) and (2)?

2. Exemption for Religious, Scholastic, or Scientific Pursuits

This statutory exemption, 22 U.S.C. 613(e), applies to ''[a]ny person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.'' The regulation in 28 CFR 5.304(d) provides that this exemption ''shall not be available to any person described therein if he engages in political activities as defined in [22 U.S.C. 611(o)] for or in the interests of his foreign principal.''

Question 6: Should the Department issue additional or clarified regulations regarding this exemption to clarify the circumstances in which this exemption applies? If so, how should those additional regulations clarify the scope of the exemption?

3. Exemption for Persons Qualified To Practice Law

This statutory exemption, 22 U.S.C. 613(g), applies to ''[a]ny person qualified to practice law, insofar as he engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States,'' provided that for purposes of the exemption ''legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial proceedings, criminal or civil law enforcement inquiries, investigations, or proceedings, or agency proceedings required by statute or regulation to be conducted on the record.'' The exemption applies where a person, qualified to practice law, engages or agrees to engage in the legal representation of a disclosed foreign principal before any court or agency of the Government of the United States. The regulation at 28 CFR 5.306(a) provides that the exemption does not apply to an agreement to provide legal representation to further political activities, as defined by FARA, to influence or persuade agency personnel or officials, other than in the course of: Judicial proceedings; criminal or civil law enforcement inquiries, investigations, or proceedings; or other agency proceedings required by law to be conducted on the record. The exemption may apply to an attorney's activities that relate to such proceedings so long as the activities do not go beyond the bounds of normal legal representation of a client in the matter.

Question 7: Should the Department amend 28 CFR 5.306(a) to clarify when activities that relate to criminal, civil, or agency proceedings are ''in the course of'' such proceedings because they are within the bounds of normal legal representation of a client in the matter for purposes of the exemption in 22 U.S.C. 613(g)? If so, how should the Department amend the regulation to address that issue?

Question 8: What other changes, if any, should the Department make to 28 CFR 5.306 to clarify the scope of the exemption in 22 U.S.C. 613(g)?

4. Additional Clarifications of Statutory Exemptions

Question 9: Are there other aspects of the statutory exemptions that the Department should clarify, whether to make clear additional circumstances in which registration is, or is not, required?

C. Inquiries Concerning Application of the Act

Any present or prospective agent of a foreign principal, or the agent's attorney, may request from the Assistant Attorney General for National Security a statement of present enforcement intentions (also known as a ''Rule 2'' or an ''advisory opinion'') as to whether the agent has an obligation to register under FARA. These requests must be made in writing to the FARA Unit. The subject of the request must be an actual event, not a hypothetical situation, and may not involve only past conduct. Any request must be specific and contain in detail all relevant and material information, including the names of the potential agents and principals, the nature of their activities, and a copy of any existing or proposed contract. Responding to each request involves significant attorney research and analysis to address fully the facts presented in the request.

Question 10: Should the Department revise 28 CFR 5.2(i) to allow the National Security Division longer than 30 days to respond to a Rule 2 request, with the time to begin on the date it receives all of the information it needs to evaluate the request? If so, what is a reasonable amount of time?

Question 11: Should the Department include with its published Rule 2 advisory opinions the corresponding request, with appropriate redactions to protect confidential commercial or financial information, so that the public may better understand the factual context of the opinion?

Question 12: What other changes, if any, should the Department make to the current process for using advisory opinions pursuant to 28 CFR 5.2?

D. Labeling Informational Materials

22 U.S.C. 614(b) requires that any informational materials that are or will be disseminated to two or more persons by an agent of a foreign principal contain a ''conspicuous statement'' that the materials are distributed by an agent of a foreign principal and that additional information is on file with the U.S. Department of Justice. Section 614(b) also provides that the ''Attorney General may by rule define what constitutes a conspicuous statement.'' The regulations implementing this statutory requirement were last amended in 2003 and do not reflect the challenges of labeling informational materials disseminated through various online media platforms.

Question 13: Should the Department define by regulation what constitutes ''informational materials''? If so, how should it define the term?

Question 14: What changes, if any, should the Department make to the current regulation, 22 CFR 5.402, relating to labeling informational materials to account for the numerous ways informational materials may appear online? For example, how should the Department require conspicuous statements on social media accounts or in other communications, particularly where text space is limited?

Question 15: Should the Department amend the current regulation, 22 CFR 5.402(d), relating to ''labeling informational materials'' that are ''televised or broadcast'' by requiring that the conspicuous statement appear at the end of the broadcast (as well as at the beginning), if the broadcast is of sufficient duration, and at least once-per hour for each broadcast with a duration of more than one hour, or are there other ways such information should be labeled?

Question 16: Should any changes to regulations relating to the labeling of ''televised or broadcast'' informational materials also address audio and/or visual informational materials carried by an online provider? And, if so, should the regulations addressing labeling of such audio and/or visual information materials be the same as for televised broadcasts or should they be tailored to online materials; and, if so, how?

Question 17: Should the Department amend 22 CFR 5.402 to ensure that the reference to the ''foreign principal'' in the conspicuous statement includes the country in which the foreign principal is located and the foreign principal's relation, if any, to a foreign government or foreign political party; and, if so, how should the regulations be clarified in this regard?

E. E-Filing

The Department now uses an e-File system with web-fillable forms. This system makes it easier for new registrants to keep their registrations current and helps the public search for and download information about FARA registrants.

Questions 18: What changes, if any, should the Department make to its regulations to account for the e-File system that was adopted after the regulations were last updated in 2007?

F. Miscellaneous Changes

While administering FARA, the FARA Unit has found that being able to contact agents via business telephone numbers and business email addresses promotes the efficient administration of FARA. Neither the Act nor the current regulations requires agents to provide this information.

Question 19: Should the Department amend 28 CFR 5.1 to require—separate from the registration statements, supplements, and related documentation—that agents provide their business telephone numbers and business email addresses to facilitate better communications with the FARA Unit?

Comments that will provide the most assistance to the Department in issuing a NPRM will be those that answer one or more of the specific questions asked; explain what changes, if any, should be made to the regulations and why; and support that position with accompanying data, information, or legal authority.

In addition to providing comments on the specific nineteen questions listed above, the Department is also seeking input from the public on any other aspect of the current FARA regulatory structure that the public believes should involve the issuance, amendment, or rescinding of any regulation not otherwise identified above.

IV. Regulatory Certifications

This ANPRM has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation. This ANPRM is not a ''significant'' regulatory action pursuant to Executive Order 12866 and, accordingly, the Office of Management and Budget (OMB) has not reviewed it.

This action does not propose or impose any requirements; rather, this ANPRM is being published to seek information and comments from the public about possible revisions and amendments to FARA's current regulatory scheme.

The requirements of the Regulatory Flexibility Act (RFA) do not apply to this action because, at this stage, it is an ANPRM and not a ''rule'' as defined in 5 U.S.C. 601.

Following review of the comments received in response to this ANPRM, if NSD proceeds with a notice or notices of proposed rulemaking regarding this matter, the Department will conduct all relevant analyses as required by statute or Executive Order.

Dated: December 7, 2021.

Matthew G. Olsen,

Assistant Attorney General, National Security Division.

[FR Doc. 2021–26936 Filed 12–10–21; 8:45 am]

BILLING CODE 4410–PF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2021–0389; FRL–9191–01–R5]

Michigan: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Michigan has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Michigan's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before January 27, 2022.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: Mullins.Angela@epa.gov.*
- *Instructions:* EPA must receive your comments by January 27, 2022. Direct your comments to Docket ID Number EPA–R05–RCRA–2021–0389.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or email. The federal *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *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, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, 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 EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *www.regulations.gov,* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov,* or in hard copy.

FOR FURTHER INFORMATION CONTACT: Angela Mullins, RCRA C&D Section, Land, Chemicals, and Redevelopment Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, LL–17J, Chicago, IL 60604. Angela Mullins can be reached by telephone at (312) 886–4237 or via email at *mullins.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in Michigan including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On April 8, 2021, Michigan submitted a complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between January 13, 2015 and January 3, 2018 (also known as RCRA Clusters XXV and XXVI). EPA concludes that Michigan's application to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA proposes to grant Michigan final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document.

Michigan has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If Michigan is authorized for the changes described in Michigan's authorization application, these changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Michigan will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations which EPA is proposing to authorize Michigan are already effective under state law and are not changed by this proposed action.

D. What happens if EPA receives comments that oppose this action?

If EPA receives comments on this proposed action, we will address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

E. What has Michigan previously been authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 FR 36804–36805), to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program on November 24, 1989, effective January 23, 1990 (54 FR 48608); on January 24, 1991, effective June 24, 1991 (56 FR 18517); on October 1, 1993, effective November 30, 1993 (58 FR 51244); on January 13, 1995, effective January 13, 1995 (60 FR 3095); on February 8, 1996, effective April 8, 1996 (61 FR 4742); on November 14, 1997, effective November 14, 1997 (62 FR 61775); on March 2, 1999, effective June 1, 1999 (64 FR 10111); on July 31, 2002, effective July 31, 2002 (67 FR 49617); on March 9, 2006, effective March 9, 2006 (71 FR 12141); on January 7, 2008 (73 FR 1077), effective January 7, 2008; on March 2, 2010, effective March 2, 2010 (75 FR 9345); on August 28, 2015 (80 FR 52194), effective August 28, 2015; and on June 6, 2019 (84 FR 26359), effective June 6, 2019.

F. What changes are we proposing with this action?

On April 8, 2021, Michigan submitted a final complete program revision application, seeking authorization of changes to its hazardous waste management program in accordance with 40 CFR 271.21. EPA proposes to determine, subject to receipt of written comments that oppose this action, that Michigan's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize Michigan for the following program changes:

TABLE 1—AUTHORIZED MICHIGAN PROGRAM CHANGES

Description of Federal requirement and revision checklist number [1]	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority (MAC R 299.***, effective August 3, 2020, unless otherwise specified)
Changes affecting all non-waste determinations and variances, Checklist 233A–2.	January 13, 2015, 80 FR 1694; May 30, 2018, 83 FR 24664.	9202(7), 11003(1), 9202(8), effective April 5, 2017.
Legitimacy-related provisions, including prohibition of sham recycling, and definitions of legitimacy and contained, checklist 233B–2.	January 13, 2015, 80 FR 1694; May 30, 2018, 83 FR 24664.	9102(t), 9104(d), 9232(1), 9232(2), 9202(1), and 9107(v), effective April 5, 2017.
2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule, checklist 233D2–2 [2].	January 13, 2015, 80 FR 1694; May 30, 2018, 83 FR 24664.	92013(v), 9104(e) and (bb), 9105(b), 9108(h), 9202(1), (6) and (7), 11003(1), 9107 (b), 9204(1), 9201(1), 9234(1), and 9519(5), effective April 5, 2017.
Imports and Exports of Hazardous Waste, Checklist 236.	November 28, 2016, 81 FR 85696	9101(s), 9103(a), 9107(c), 11001(7), 9204(4) and (6), 9206(3) and (6), 9231(1) and (7), 11003(1) and (2), 9301(7), 9308(7), 9312(3), 9309, 9310, 9314(1) and (2), 9401(5), 9409(1) and (5), 9605(1) and (4), 9608(1), (4), and (12), 9601(3) and (9), 9803(2), 9804(7)–(11), 9228(4), (5), (6), (7), (10) and (11).
Hazardous Waste Generator Rule Improvements Checklist 237.	November 28, 2016, 81 FR 85730	9101(o), 9102(d) and (n), 9105(h), (dd), 9107(z), 9109(ii), 11002, 9201, 9107(r), 9205, 9205(1), 9206(1)(c), 9214(2)–(4), 9234(1) and (2), 11003(1) and (2), 9104(s), 9301(1), (2), (3), (7), (9), and (10), 9302(1), (2), (3), and (7), 9311(1) and (7), 9303(1)–(8), 9304(1)—(3), 9305(1)—(4), 9306(1)—(5), 9307(1)—(7), 9308(1)—(7), 9309, 9310(1) and (2), 9311(1)–(3) and (5)–(7), 9312(1)–(3) and (7), 9315(1)–(3), 9316(1)–(7), 9103, 9106, 9109, 9401(1), 9404(1), 9503(1)(a) and (b), 9605(1) and (4), 9608(3), 9610(1), 9614(1) and (2), 9615(1) and (7), 9631(1) and (2), 9634(1) and (2), 9503(1)(a) and (b), 9601(1), (2), (3), and (9), 9804, 9822(13), 9313(1) and (2), 9413(1) and (2), 9627(1) and (2), 9519, 9229(3), 9229(2), 9809(1)(a).
Confidentiality Determinations for Hazardous Waste Export and Import Documents, Checklist 238.	December 26, 2017 82 FR 60894	9231(1) and (7), 11103(1) and (2), 9314(1)–(3).
Hazardous Waste Electric Manifest User Fee Rule, Checklist 239.	January 3, 2018, 83 FR 420	9601(3) and (9), 9608(1), (9), (14), and (15), 11003(1) and (2), 9309(1) and (6), 9409(1) and (5), 9634(1) and (2).

[1] Revision Checklists generally reflect changes to Federal regulations pursuant to a particular **Federal Register** document; EPA publishes these checklists as aids to states to use for development of their authorization revision application. *See* EPA's RCRA State Authorization website at *https://www.epa.gov/epawaste/laws-regs/state/index.htm.*

[2] Original rule authorized on June 6, 2019. Court decisions from September 2018 were not included in original authorization. Checklist 233D2 is being resubmitted to include impacted sections.

TABLE 2—EQUIVALENT STATE-INITIATED CHANGES

Michigan administrative rules (MAC R 299.*** unless otherwise specified)	Effective date of amended State requirement
9103(i) (definition of ''EPA Acknowledgement of Consent (AOC)'', 9106(s) (definition of ''Primary exporter''), 9228, 9314, 9405(2)(f) and (3)(d), 9511(5)(b), 9608(4).	February 21, 2021.

G. Which revised state rules are different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive Federal authorization for such regulations, and they are not federally enforceable.

EPA considers the following Michigan requirements to be more stringent than the Federal requirements:

Michigan does not adopt standardized permits, making the State requirements more stringent than the Federal requirement at 40 CFR 267.71(a)(4)–(6)(i) and (ii), (c), (d); and 267.1(a).

Michigan does not allow containment buildings, making its State requirements more stringent than the Federal requirements at 40 CFR 262.16(b)(4)(iii)(B), (5)(i) and (ii)(A) through (C), (6)(i) and (ii)(A) through (D), (7), and (8)(i) through (vi); 262.17(a)(3)(iii)(A) and (B), (4)(i) and (ii)(A) through (C), (5)(i)(B) and (ii)(B), (8)(i)(B), (c)(4)(i)(C)(1)and (2), and (iv)(B).

Michigan's rules at R 299.9304(1)(e)(xii)(B), R 299.9305(1)(e)(B), R 299.9316(2)(e)(i)(B)(2), R 299.9316(2)(e)(i)(B)(2), R 299.9316(3)(e)(i) (B)(2), and R 299.9316(3)(e) (ii)(B) (2) are more stringent than the Federal analogs at 40 CFR 262.14(a)(5)(viii)(B)(2), 232.15(a)(5)(ii), 262.232(a)(4)(i)(B), 262.232(a)(4)(ii)(B), 262.232(b)(4)(i) (B), 262.232(b)(4)(ii) (B), and 268.50(a)(1) since the State's rulings include the requirement of labeling each container with a description of the waste or the hazardous waste number while the Federal rule only requires an indication of the hazards of the contents. These requirements would become part of Michigan's authorized program and would be federally enforceable.

EPA also considers the following State requirements go beyond the scope of the Federal program:

Michigan's rules at R 299.9214(3) and (4) are broader in scope than the Federal analog at 40 CFR 261.33(f) with respect to the chemicals listed in table 205c that are not included in Federal regulations. This expands the number of chemicals listed as toxic wastes by the rule. Broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Although regulated entities must comply with these requirements in accordance with State law, they are not RCRA requirements.

H. Who handles permits after final authorization takes effect?

When the final authorization takes effect, Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of the proposed authorization until they expire or are terminated. EPA will not issue any more new permits or new portions of permits for the provisions listed in Table 1after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian Country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Michigan;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation, that qualifies as Indian Country.

Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands. It is EPA's long-standing position that the term ''Indian lands'' used in past Michigan hazardous waste approvals is synonymous with the term ''Indian Country.'' *Washington Dep't of Ecology* v. *U.S. EPA,* 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). *See* 40 CFR 144.3 and 258.2.

J. What is codification and is EPA codifying Michigan's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized state rules in 40 CFR part 272. EPA previously codified Michigan's rules up to and including those revised October 19, 1991 effective April 24, 1989 (54 FR 7421, February 21, 1989); as amended effective March 31, 1992 (57 FR 3724, January 31, 1992). EPA is not proposing to codify the authorization of Michigan's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart X, for the authorization of Michigan's program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This authorization is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this proposed authorization of Michigan's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rulemaking, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental Protection; Administrative Practice and Procedure; Confidential Business Information; Hazardous Materials transportation; Hazardous Waste; Indian lands; Intergovernmental Relations; Penalties; Reporting, and Recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 3, 2021.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2021–26829 Filed 12–10–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[GN Docket No. 16–142; FCC 21–116; FR ID 60151]

Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes changes to its Next Gen TV rules designed to preserve over-the-air television viewers' access to the widest possible range of programming while also supporting television broadcasters' transition to the next generation of broadcast digital television (DTV) technology. In response to a Petition filed by the National Association of Broadcasters (NAB), the Commission proposes to allow Next Gen TV stations to include within their license certain of their non-primary video programming streams (multicast streams) that are aired in a different service on ''host'' stations during a transitional period, using the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on ''host'' station facilities.

DATES: Comments are due on or before February 11, 2022; reply comments are due on or before March 14, 2022. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before February 11, 2022.

ADDRESSES: You may submit comments, identified by GN Docket No. 16–142, 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.[1]
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

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). Comments regarding the PRA proposed information collection requirements. ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, *Evan.Baranoff@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120. Direct press inquiries to Janice Wise at (202) 418–8165. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (FNPRM), FCC 21–116, adopted on November 4, 2021 and released on November 5, 2021. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *https://www.fcc.gov/edocs* or via the FCC's Electronic Comment Filing System (ECFS) website at *https://www.fcc.gov/ecfs.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) 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 Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. In this Second Further Notice of Proposed Rulemaking (FNPRM), we propose changes to our Next Gen TV rules designed to preserve over-the-air (OTA) television viewers' access to the widest possible range of programming while also supporting television broadcasters' transition to the next generation of broadcast digital television (DTV) technology. In response to a Petition filed by the National Association of Broadcasters (NAB), we propose to allow Next Gen TV stations[2] to include within their license certain of their non-primary video programming streams (multicast streams)[3] that are aired in a different service on ''host'' stations[4] during a transitional period, using the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on ''host'' station facilities.[5] Given that Next Gen TV stations must, without any additional allocation of spectrum, prioritize serving ATSC 1.0 viewers while voluntarily transitioning to ATSC 3.0, we seek to take actions that will minimize viewer disruption as much as possible. Specifically, this FNPRM seeks to facilitate and encourage partnerships that will minimize potential disruptions by permitting stations in a market to work together to preserve viewers' access to ATSC 1.0-formatted programming during the transition. We intend to facilitate broadcasters' voluntary transition to 3.0, which can provide consumers with the benefit of new and innovative services, while protecting consumers who continue to rely on 1.0 equipment.

II. Background

2. Next Gen TV is the newest broadcast TV transmission standard, developed by the Advanced Television Systems Committee (ATSC), that promises to enable broadcasters to deliver an array of new services and enhanced content features to consumers. In 2017, the Commission authorized television broadcasters to use the Next Gen TV transmission standard, also called ''ATSC 3.0'' or ''3.0,'' on a voluntary, market-driven basis. The Commission required that broadcasters voluntarily deploying ATSC 3.0 service must, with very limited exceptions,[6] continue to air at least their primary stream using the current-generation DTV transmission standard, also called ''ATSC 1.0'' or ''1.0,'' to their viewers through ''local simulcasting.'' Under the Commission's rules, Next Gen TV broadcasters are encouraged, but not required, to simulcast their 3.0 multicast streams in a 1.0 format.

3. The Commission found that the local simulcasting requirement is crucial to deploying Next Gen TV service in a manner that minimizes viewer disruption. The Next Gen TV standard is not backward-compatible with existing TV sets or receivers,

[1] FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OMD 2020). *See https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

[2] By ''Next Gen TV'' broadcaster or station, we mean a television broadcaster or station that has obtained Commission approval and commenced broadcasting its signal using the ATSC 3.0 standard in its local market. A station can deploy ATSC 3.0 service either by converting its own facility to ATSC 3.0 or by airing its ATSC 3.0 signal(s) on a station in its local market that has converted its facility to ATSC 3.0 (which we refer to as an ATSC 3.0 ''host'' station). For purposes of this FNPRM, a station's ''own'' channel or facility refers to the channel and facility on which it operated prior to its transition to ATSC 3.0 (even if it has already converted to operate in 3.0). We use this term to distinguish between operations on this facility and a station's operations on a host facility.

[3] For purposes of this FNPRM, ''multicast'' stream(s) refers to a TV broadcast station's *non-primary* video programming stream(s); that is, stream(s) other than the station's primary video programming stream.

[4] A ''host'' station is one whose facilities are being used to transmit programming originated by another station (''guest'') as part of a local simulcasting arrangement. We propose below that, as with primary stream simulcasting, host and guest stations may not be broadcasting in the same service (*i.e.,* a guest station that continues to broadcast in ATSC 1.0 may only seek a host or hosts broadcasting in ATSC 3.0).

[5] We also expect to modify our Next Gen TV license application form (FCC Form 2100) to accommodate this change. We note that our proposed rules do not prohibit the use of private contractual arrangements for partner stations to air their multicast streams. For regulatory compliance purposes, such streams would be considered multicast streams of the host partner station, not the originator station.

[6] LPTV and TV translator stations may deploy ATSC 3.0 service without providing an ATSC 1.0 simulcast signal. In addition, full power and Class A stations may request a waiver of the simulcast requirements.

which have only ATSC 1.0 and analog tuners. Accordingly viewers will be unable to watch ATSC 3.0 transmissions on their existing televisions without additional equipment. Thus, it is critical that Next Gen TV broadcasters continue to provide service using the current ATSC 1.0 standard while the marketplace adopts devices compatible with the new 3.0 transmission standard in order to avoid forcing viewers to acquire expensive new equipment or depriving them of their local television service during the transition. Because a TV station cannot, as a technical matter, simultaneously broadcast in both 1.0 and 3.0 format from the same facility on the same physical channel, local simulcasting must be effectuated through voluntary partnerships that broadcasters seeking to provide Next Gen TV service enter into with other broadcasters in their local markets. A Next Gen TV station must partner with another television station (*i.e.,* a temporary ''host'' station) in its local market to either: (1) Air an ATSC 3.0 channel at the temporary host's facility, while using its original facility to continue to provide an ATSC 1.0 simulcast channel, or (2) air an ATSC 1.0 simulcast channel at the temporary host's facility, while converting its original facility to the ATSC 3.0 standard in order to provide a 3.0 channel.[7] A Next Gen TV station's ATSC 1.0 ''simulcast'' must be ''substantially similar'' to that of the primary video programming stream on the ATSC 3.0 channel.

4. The process for considering applications to deploy ATSC 3.0 service includes coverage requirements for a Next Gen TV station's ATSC 1.0 simulcast signal.[8] The Commission sought to minimize disruption to viewers resulting from the voluntary deployment of ATSC 3.0 while recognizing that if a station moves its ATSC 1.0 signal to a partner simulcast host station with a different transmitter location, some OTA viewers may no longer be able to receive the station's 1.0 signal. Among other obligations, the Commission requires the Next Gen TV station to select a partner 1.0 simulcast host station that is assigned to its same designated market area (DMA) and from which it will continue to provide ATSC 1.0 simulcast service to its entire community of license.[9]

5. According to NAB, as ATSC 3.0 deployment has progressed, broadcasters interested in transitioning to ATSC 3.0 while maintaining their current programming streams have faced challenges finding partner stations willing to host broadcasters' multicast streams through private contractual agreements. Moreover, NAB states that Next Gen TV broadcasters want to ''continue to serve audiences with multicast streams,'' even though they are not required to do so. NAB contends, however, that stations are hesitant to serve as hosts pursuant to private arrangements due to concerns about regulatory liability and whether such private multicast agreements are expressly permitted under the Commission's ATSC 3.0 rules. Moreover, NAB observes that ''a purely contractual approach [to ATSC 3.0 deployment sharing arrangements] would exclude noncommercial stations from participating in sharing arrangements to host commercial multicast streams'' under 47 U.S.C. 399B. In addition, NAB asserts that if broadcasters execute hosting agreements for their multicast streams that are not reflected on the license of the originating station, ''the Commission might not retain enforcement authority'' over the originating station with respect to that guest stream.[10]

6. Because our existing rules do not address the licensing of multicast streams, even with regard to the host that is airing a station's primary stream, the Media Bureau implemented an interim process by which a Next Gen TV broadcaster that has converted or is seeking to convert its facility to 3.0 can seek special temporary authority (STA) to air 1.0 multicast streams on a host station. Just as under the current rules for primary guest streams, these STAs permit a guest multicast stream to be treated as if it originated from the Next Gen TV broadcaster's facility, as opposed to the host station's facility, for purposes of the Commission's rules and the Communications Act. The STAs granted to date are valid for six months but may be renewed. This case-by-case process is resource-intensive for both the Commission and broadcasters, and under this approach it is difficult for both Commission staff and potential viewers to track where streams are being hosted.

7. *NAB Petition.* In November 2020, NAB filed a Petition for Declaratory Ruling and Petition for Rulemaking (Petition) seeking: [11]

(1) Clarification or a rulemaking to allow a Next Gen TV broadcaster to license its simulcast multicast stream(s) either together with its primary stream on the primary simulcast host or on different simulcast host(s); [12]

(2) A rulemaking to allow a Next Gen TV broadcaster to license its ''non-simulcast'' 1.0 multicast stream(s) (*i.e.,* multicast stream(s) aired only in 1.0 format and not in 3.0 format) either together with its primary stream on its primary 1.0 host or on different 1.0 simulcast host(s); [13] and

(3) A rulemaking to allow a Next Gen TV broadcaster to license its ''non-simulcast'' 3.0 multicast stream(s) (*i.e.,*

[7] In either case, a Next Gen TV broadcaster must simulcast the primary video programming stream of its ATSC 3.0 channel in an ATSC 1.0 format, so that viewers will continue to receive ATSC 1.0 service. By the time the transition is complete, any temporary authority granted for local simulcasting will expire, and a station will once again be required to air all of its licensed programming on its own single channel. The Commission has committed to consider the state of the transition and the Next Gen TV marketplace in the Spring of 2022.

[8] A Next Gen TV broadcaster must file an application and obtain Commission approval before a 1.0 simulcast channel or a 3.0 channel aired on a partner host station can go on the air, as well as before an existing 1.0 station can convert to 3.0 operation or back to 1.0 operation.

[9] Because Class A TV stations do not have a community of license, the Commission established a coverage requirement based on contour overlap and mileage.

[10] The NAB asserts that these issues ''could create complex contractual indemnification concerns that could complicate deployment,'' particularly for NCE stations, ''some of which are restricted or prohibited entirely from agreeing to indemnification.''

[11] Although the Petition was structured as two requests, we divided the two requests into three parts for purposes of our discussion below.

[12] By ''simulcast multicast stream,'' we refer to a multicast stream that is aired by a Next Gen TV station, in substantially similar fashion, in both 1.0 and 3.0 formats throughout the mandatory local simulcasting period. That is, we mean either (1) a 1.0 multicast guest stream aired on a host that is a simulcast of a 3.0 multicast stream aired by the Next Gen TV station, or (2) a 3.0 multicast stream aired on a host that is being simulcast by a 1.0 multicast stream aired by the Next Gen TV station. For example, in this situation, Station A converts to 3.0 and arranges with Station B (remaining in 1.0) to host Station A's primary stream and one multicast stream in 1.0; Petitioner wants the multicast stream, like the primary stream, to be licensed to Station A, the originator of the streams. In addition, if Station A arranges with Station C (not the primary host) to host a second multicast stream in 1.0, that multicast stream would also be licensed to Station A. In these examples, Station A would itself be broadcasting both multicast streams in 3.0. Likewise, if a station remained in 1.0, it would be allowed to license its 3.0 multicast streams aired either by the primary host or a secondary host. In these situations, the multicast channels are being simulcast.

[13] For example, using Stations A, B, and C from the prior example, Station A (the 3.0 host) only has enough capacity to air its primary channel, Station B's primary channel, and Station C's primary channel in 3.0, but wants to continue to provide its multicast channels in 1.0 during the transition. In this situation, Stations B and C would each be hosting a multicast stream licensed to Station A, but neither multicast stream would be simulcast. Thus, by ''non-simulcast 1.0 multicast stream,'' we refer to a multicast stream that was originated by a Next Gen TV station and aired in 1.0 format either on its own channel or a 1.0 host's channel, but that has no ''substantially similar'' stream being aired in 3.0 format by the originating station, whether on its own channel or on a 3.0 host's channel.

multicast stream(s) aired only in 3.0 format and not in 1.0 format) either together with its primary stream on its primary 3.0 host or on different 3.0 host(s).[14]

NAB requests that the regulatory treatment of multicast streams mirror the existing licensing framework for primary streams. Moreover, NAB asserts that its requested rule changes would not create any new cable or satellite carriage rights for multicast streams, which are not entitled to mandatory carriage. NAB later filed an *ex parte* expanding on its proposal by suggesting specific revisions to the Commission's ATSC 3.0 rules that would implement the changes and clarifications requested in its Petition.

8. The Media Bureau placed the Petition on Public Notice and received comments and reply comments from 12 parties, including 10 broadcast station groups and associations (including NAB) and two MVPD associations.[15] As discussed more fully below, all of the broadcast station groups and associations support the Petition's proposals. The two MVPD associations that commented generally do not oppose a rulemaking, but express particular concerns about the effect on the local television marketplaces of permitting Next Gen TV stations to license multicast streams that are not being simulcast on host stations and, in particular, of permitting those stations to license such multicast streams on multiple hosts.

III. Discussion

9. We propose to adopt rules to address the first two licensing scenarios set forth by NAB (as described above), so as to preserve, to the extent possible, consumer access to multicast programming in 1.0 format during the ATSC 3.0 transition without the need for new equipment. First, we therefore tentatively conclude that Next Gen TV stations may license one or more simulcast multicast streams on a host station or stations, whether that guest stream is the 3.0 broadcast or the 1.0 simulcast (''simulcast'' multicast streams). Second, we propose that Next Gen TV stations which are broadcasting in 3.0 on their own channels may license one or more multicast streams aired only in 1.0 format on a host station or stations even if they are not simulcasting that stream in 3.0 (''non-simulcast'' 1.0 multicast streams), consistent with any limits as discussed below.[16] To permit the licensing of multicast streams on a host, we propose that each of the originating station's multicast streams will be licensed as a temporary channel in the same manner as its primary stream on the primary host. That is, each of the originating station's guest multicast streams aired on a host will be considered to be an additional, separately authorized channel under the originating station's single, unified license. As to the third of NAB's scenarios, in which a Next Gen TV station broadcasting in 1.0 on its own channel might seek to license multicast streams aired only in 3.0 format on a 3.0 host or hosts (''non-simulcast'' 3.0 multicast streams),[17] we decline at this time to seek comment on what appears to be a purely hypothetical scenario. In addition to these scenarios, we explore another licensing scenario that has come to our attention from industry. Specifically, we seek comment on whether our rules should permit an originating station to rely on simulcasting its primary stream on two separate partner stations in order to minimize service loss from its transition to 3.0.

10. After considering these various licensing arrangements, we next explore the policy concerns raised in the record with respect to these arrangements, including whether there is a need, as some commenters suggest, to limit the ability of stations to aggregate spectrum or programming streams through the licensing of programming streams on multiple partner hosts. Finally, we tentatively conclude that we should apply certain ATSC 3.0 transition rules that currently apply only to primary simulcast streams to both simulcast and non-simulcast licensed multicast streams aired on host stations, as NAB has proposed,[18] with certain exceptions as detailed below, and tentatively conclude that any rules adopted pursuant to this FNPRM should apply until the Commission eliminates the mandatory local simulcasting requirement.

11. We seek to craft rules that will protect current OTA viewers by facilitating and encouraging Next Gen TV stations to preserve 1.0 multicast streams during the transition while also creating an environment that does not stifle innovative new services that may be offered to OTA viewers through the deployment of ATSC 3.0 service. Pursuant to the current ATSC 3.0 rules, Next Gen TV stations are not required to simulcast their multicast streams but may choose to air them pursuant to private contractual arrangements.[19] NAB explains that some host stations may be reluctant, however, to accept legal responsibility when airing another station's multicast stream(s), even if they can obtain indemnification from such station through a private contractual agreement. Further, many Next Gen Broadcasters cannot simulcast all of their multicast streams because of capacity and other practical constraints. The licensed multicast stream approach proposed herein seeks to address these

[14] This request apparently is being made looking forward to a later stage in the transition when more stations have transitioned to 3.0 and the number of 1.0 ''lighthouses'' is more limited.

[15] Commenters include: American Television Alliance (ATVA), America's Public Television Stations (APTS) & Public Broadcasting Service (PBS) (collectively, ''PTV''), Cox Media Group (Cox), Graham Media Group, Inc. (Graham), Gray Television Inc. (Gray), Meredith Corporation (Meredith), National Translator Association (NTA), Pearl TV (Pearl), and the E.W. Scripps Company (Scripps). Reply comments were filed by the National Association of Broadcasters (NAB), NCTA—The internet & Television Association (NCTA), Scripps, and TEGNA Inc. (TEGNA). The comment cycle ended January 25, 2021. We note that NAB did not submit its proposed rule until April 9, 2021.

[16] Under our proposal, Next Gen TV stations would not be required to license their multicast stream(s), but if they choose to do so, they would be required to comply with the rules we ultimately adopt through this rulemaking proceeding. As noted above, we do not preclude Next Gen TV broadcasters from pursuing private contractual arrangements with partner stations, but note that host stations will be legally responsible for multicast streams aired on their channels in such situations. Stations entering into such arrangements may also choose to air their multicast stream(s) on one or more hosts.

[17] By ''non-simulcast 3.0 multicast stream,'' we refer to a multicast stream that was originated by a Next Gen TV station and aired in 3.0 format either on its own channel or a 3.0 host's channel, but that has no ''substantially similar'' stream being aired in 1.0 format by the originating station, whether on its own channel or on a 1.0 host's channel.

[18] The rules at issue are those found in §§ 73.3801, 73.6029, and 74.782 (each entitled ''Television Simulcasting''). These include simulcast arrangements and agreements (47 CFR 73.3801(a) and (e), 73.6029(a) and (e), 74.782(a) and (f)); the simulcasting requirement (47 CFR 73.3801(b), 73.6029(b), 74.782(b)); contour, DMA, and community of license coverage requirements (47 CFR 73.3801(d) and (f)(5)–(6), 73.6029(d) and (f)(5)–(6), 74.782(e) and (g)(5)–(6)); MVPD notice requirements (47 CFR 73.3801(h), 73.6029(h), 74.782(i)); consumer education provisions (47 CFR 73.3801(g), 73.6029(g), 74.782(h)); and licensing procedures (47 CFR 73.3801(f)(2), 73.6029(f)(2), 74.782(g)(2)). We do not propose to extend these requirements to private contractual arrangements, many of which may already be in place.

[19] For example, commonly owned stations would not appear to face the same challenges in formulating hosting arrangements or determining ultimate responsibility for broadcast programming, and such stations may choose to forego multicast licensing altogether. Nonetheless, we encourage Next Gen TV stations to license their multicast streams aired on a commonly owned host station, in order to aid the Commission and the public in understanding the progress of the transition. In order to facilitate such licensing arrangements, we tentatively conclude that commonly owned stations should not be required to enter into written agreements, either for the hosting of primary or multicast streams. This is consistent with how the Bureau announced it would handle the hosting of primary streams on commonly owned stations.

concerns by providing the industry with regulatory certainty about the legal treatment of multicast streams and facilitating their airing on multiple stations. A licensed multicast approach would not only make clear that the originating station (and not the host station) is responsible for regulatory compliance regarding the multicast stream being aired on a host station but also give the Commission clear enforcement authority over the originating station in the event of a rule violation on the hosted multicast programming stream. In addition, this approach seeks to facilitate noncommercial educational (NCE) stations' 3.0 deployment by allowing them to serve as hosts to commercial stations' multicast streams without violating the prohibition on broadcasting advertisements over spectrum dedicated to noncommercial use.

A. Simulcast Multicast Streams

12. We tentatively conclude that to address NAB's first scenario, a Next Gen TV station may license one or more of its multicast streams, hosted by one or more partner stations, in situations where the Next Gen TV station is airing such multicast stream in ''substantially similar'' fashion [20] in both 1.0 and 3.0 formats.[21] This would include situations in which a multicast stream is aired together with the Next Gen TV station's primary stream on the primary host, as well as situations in which a multicast stream is aired on a host different from the primary host. In either case, we tentatively conclude that the Next Gen station must air one of the simulcast multicast streams—either the 1.0 or 3.0.on its own (non-host) channel. No commenter opposes this prong of NAB's proposal or raises any concerns about permitting the licensing of simulcast multicast streams. We also tentatively conclude that any multicast streams treated as ''simulcasts'' of each other under this section must be ''substantially similar.'' Although these rules, like the ATSC 3.0 transition rules generally, do not increase the amount of spectrum available to television broadcasters in a market, we tentatively conclude that this proposal may help address specific Next Gen TV stations' capacity constraints by facilitating the participation of stations uncomfortable with a purely contractual approach and making the participation of NCE stations legally permissible. We seek comment on these tentative conclusions. Is there any reason to treat ''simulcast'' multicast streams differently than ''simulcast'' primary streams in this regard? As discussed below, like local simulcasting arrangements for primary streams, hosting arrangements for multicast streams are temporary ones made to facilitate the station's transition to 3.0 service.

13. We agree with NAB that the adoption of such a licensing process will help preserve existing service in the market by recognizing what CMG calls the ''multi-party simulcasting model that has evolved'' as a result of limited spectrum.[22] Moreover, we believe that facilitating the licensing of simulcast multicast channels best meets our dual goals of facilitating the transition to 3.0 and protecting current 1.0 viewers.[23]

B. Non-Simulcast 1.0 Multicast Streams

14. We tentatively conclude that to address the second scenario set forth by NAB, a Next Gen TV station that is broadcasting in 3.0 on its own channel may license one or more 1.0 multicast streams aired on a 1.0 host or hosts, even when it is *not* simulcasting that multicast stream in a 3.0 format.[24] We seek comment on this tentative conclusion, including our conclusion that we should limit this proposal to those Next Gen TV stations broadcasting in 3.0 on their own channels. Although NAB suggests such a hypothetical, we are unaware of any station broadcasting in 1.0 on its own channel that has sought 1.0 hosts for its multicast programming, so see no reason to provide such flexibility in these proposed rules. Perhaps more fundamentally, it is unclear that providing such flexibility is necessary either to facilitate the transition to 3.0 or to protect current 1.0 viewers.[25]

15. We tentatively find that, as NAB contends, allowing multicast licensing for non-simulcast 1.0 multicast streams would benefit consumers by preserving viewer access to 1.0 multicast streams in situations where broadcasters that have transitioned to 3.0 on their own channels lack capacity to air their multicast streams on their 3.0 facilities. We recognize that, at this early stage of the transition, ATSC 3.0 capacity will be limited. During the initial roll-out of 3.0 service, we expect markets will generally start with one or two ATSC 3.0 ''lighthouse'' stations, leaving capacity on 3.0 lighthouse stations mostly—if not entirely—for Next Gen TV station's primary streams.[26] We agree with broadcasters that denying them this flexibility would likely lead them to stop broadcasting some 1.0 multicast streams altogether. We therefore tentatively find that, by extending our multicast licensing approach to non-simulcast 1.0 multicast streams, we would not only encourage Next Gen TV broadcasters to preserve the multicast streams viewers watch today, but also facilitate their transition to 3.0 by making it easier for them to

[20] As with primary streams, ''substantially similar'' means that the programming must be the same, except for programming features that are based on the enhanced capabilities of ATSC 3.0, including targeted advertisements and promotions for upcoming programs. Such enhanced content or features that cannot reasonably be provided in ATSC 1.0 format include: ''hyper-localized'' content (*e.g.,* geo-targeted weather, targeted emergency alerts, and hyper-local news), programming features or improvements created for the 3.0 service (*e.g.,* emergency alert ''wake up'' ability and interactive programming features), enhanced formats made possible by 3.0 technology (*e.g.,* 4K or HDR), and any personalization of programming performed by the viewer and at the viewer's discretion.

[21] Although NAB's Petition alternatively asks us to clarify through a declaratory ruling that our ''existing rules permit a station transmitting in ATSC 3.0 to partner with one or more other stations that would host the first station's simulcast ATSC 1.0 multicast streams to preserve existing service in the market,'' we believe a rulemaking is more appropriate for addressing the issue of licensing of simulcast multicast streams. When adopting its initial rules, the Commission did not address the issue of multicast licensing. Instead, by default, multicast arrangements were left to private contractual arrangements and more recently to the STA process. During the pendency of this proceeding, we will maintain the status quo and permit the Bureau to continue to process STA requests and 3.0 license applications in the same manner it has to date. Any STA or 3.0 license application granted previously or during the course of this proceeding containing such multicast arrangements shall not prejudice the outcome of this proceeding, and any such STA or 3.0 license application will be subject to the outcome of this proceeding.

[22] For example, a Next Gen TV station's primary stream host may not have sufficient capacity to also air all of the Next Gen TV station's multicast streams, either because it is using that capacity for its own programming or to host the streams of other stations. In such a case, this proposal would permit the Next Gen TV station to seek an additional partner or partners with available capacity who can serve as hosts to its different-service multicast streams.

[23] As discussed below, however, we seek comment on any necessary restrictions on the licensing of multicast streams aired by multiple hosts, in order to limit the amount of spectrum or programming any one Next Gen TV licensee may aggregate.

[24] Any ''non-simulcast'' multicast streams licensed pursuant to rules proposed in this section would not be required to comply with 47 CFR 73.3801(b), 73.6029(b), and 74.782(b) (the ''Simulcasting Requirement'').

[25] As discussed below, we also seek comment on our tentative conclusion regarding the duration of such a requirement, and on whether restrictions on the licensing of multicast streams aired by multiple hosts are needed in order to limit the amount of spectrum any one Next Gen TV licensee may aggregate.

[26] For example, a Next Gen TV station broadcasting in 3.0 on its own channel may not have sufficient capacity to also air all of its own multicast streams in 3.0, most likely because it is using that capacity to host the primary 3.0 streams of partner stations. In such a case, this proposal would permit the Next Gen TV station to seek a partner or partners with available capacity in 1.0 who can air 1.0 versions of its multicast streams.

continue serving their existing viewers even while 3.0 spectrum is limited.

16. We seek comment about whether licensing non-simulcast 1.0 multicast streams raises specific concerns.[27] We observe that, unlike simulcast streams, non-simulcast 1.0 multicast streams aired on a host would not be tied to a specific programming stream aired by the originating station. We also observe that non-simulcast 1.0 multicast licensing is only necessary while 3.0 capacity is limited, because with sufficient 3.0 capacity a station could simulcast its multicast streams. Should we limit the licensing of non-simulcast 1.0 multicast streams only to situations where 3.0 capacity is demonstrably limited because of the hosting of partner streams or otherwise restrict the licensing of non-simulcast streams? Why or why not?

17. We seek comment on ATVA's assertion that, under the non-simulcast licensing proposal, a Next Gen TV station could air a single SD primary stream on its 3.0 signal and provide data services on its remaining 3.0 spectrum, while licensing host spectrum to air its 1.0 primary and multicast streams. To our knowledge, no situation like this has arisen to date, even though dozens of 3.0 transitions have begun with programming streams carried by partner hosts (in the case of primary streams) and private contractual partners. While we consider this situation unlikely early in the transition because of 3.0 capacity constraints, we seek comment on this understanding and acknowledge that this could occur as the transition progresses.[28] However, given that 3.0 broadcasters will be seeking to attract viewers, we note that they have touted offering primary streams in HD, if not UHD format, as a key selling point for the 3.0 service. Moreover, as discussed more below, our grant of authority for Next Gen TV broadcasters to license host spectrum is temporary. Finally, we seek comment on NCTA's request that we consider ''enhanced transparency and disclosure requirements'' for ATSC 3.0 host partner arrangements, particularly those involving non-simulcast streams. What would such requirements entail, what benefits would they provide, and what costs would they impose? We seek comment on these issues.

C. Non-Simulcast 3.0 Multicast Streams

18. We decline to seek comment on the third prong of NAB's proposal, which would allow a Next Gen TV station that continues to broadcast in 1.0 on its own channel to license 3.0 multicast streams aired on a host station even when it is not simulcasting those multicast streams in a 1.0 format. NAB itself concedes that the issue of non-simulcast 3.0 multicast streams is likely to arise only in the later stages of the transition. Significantly, we also note that, of the 35 STA requests the Bureau has reviewed to date, none has asked us to license a non-simulcast 3.0 multicast stream. We thus conclude that seeking comment on NAB's third scenario at this time would be premature.

D. Use of Multicast Streams To Minimize 1.0 Service Loss

19. We tentatively conclude that, under certain circumstances, a Next Gen TV station may simulcast its primary stream programming both on its primary stream host and on a multicast stream carried by a different partner station in order to minimize the impact of service loss that would result if it were only able to air its primary stream on a single host.[29] We expect this situation will arise only when an applicant intends to broadcast in 3.0 on its own channel and is unable to find a partner 1.0 host that could, on its own, provide coverage of its primary stream to 95 percent of the applicant's 1.0 service area. In such cases, the application will be reviewed under the non-expedited processing standard.[30] Applicants whose applications are reviewed under the non-expedited processing standard are required to minimize the impact of the expected service loss, but the Commission did not require a specific method for doing so. The Bureau recently considered an STA application which found that airing a simulcast of the originating station's primary stream on two different hosts was ''an acceptable method for mitigating ATSC 1.0 service loss under the non-expedited processing standard.'' [31] Significantly, the Bureau noted that the two hosts in question were NCEs, and found that ''permitting NCE stations to participate in the ATSC 3.0 rollout arrangements in this manner is critical to the success of the transition.'' The Bureau therefore granted an STA request to authorize the multicast streams, including the stream with the primary programming. We tentatively conclude that similarly situated applicants [32] seeking to rely on one licensed multicast stream carrying primary programming to minimize the impact of service loss may have their applications considered through the non-expedited application process instead of through an STA. We also tentatively conclude that any approval of such an approach would require that the licensed multicast stream airing the primary programming be a ''substantially similar'' simulcast of the Next Gen TV station's primary stream. We also tentatively conclude that, if such application is granted, we will consider the 1.0 host station of the multicast stream to be licensed in the same manner as the primary stream host. Providing a license will permit NCE stations to host commercial primary multicast streams in a manner that is consistent with 47 U.S.C. 399B. We seek comment on these tentative conclusions.

20. We also seek comment on whether we should consider this approach to be an acceptable method for mitigating ATSC 1.0 service loss for any other types or groups of applicants. We recognize that each programming stream devoted to simulcasting a primary stream is one fewer that could be devoted to multicast programming,

[27] ATVA and NCTA raise policy questions and concerns about non-simulcast multicast streams in particular. We address some of those issues below to the extent that they are potentially relevant to all situations involving multiple hosts.

[28] We note that the Commission has indicated its intention to address in a future proceeding how much spectral capacity a broadcast television station (commercial or NCE) must use *after* the ATSC 3.0 transition period for the provision of its free over-the-air television service. Nonetheless, we observe that today no station is required to air more than one SD stream of programming, and most choose to air more programming, and/or programming at higher resolutions.

[29] We note that such a stream would be considered a ''simulcast multicast stream'' under any rules adopted in this proceeding and would count toward any limit on aggregate spectrum or programming ultimately established in this proceeding.

[30] In the *Next Gen TV Report and Order,* the Commission established a presumption that it would favor grant of an application demonstrating that the station would provide ATSC 1.0 simulcast service to at least 95 percent of the predicted population within the station's original noise limited service contour (NLSC) and afford ''expedited processing'' to such applications. A Next Gen TV applicant whose ATSC 1.0 simulcast signal will not satisfy this 95 percent threshold (''non-expedited applicant'') will be considered on a case-by-case basis and must provide the showing set forth in the *Next Gen TV Report and Order.*

[31] Although the Bureau called the stream a ''supplemental primary ATSC 1.0 simulcast stream,'' the stream can be viewed as a multicast stream simulcasting the station's primary programming. Recognizing this ensures that there is no confusion that the second stream is merely a multicast stream and not a second ''primary'' stream. We seek comment on this point. We note that the Bureau ''emphasize[d] that the supplemental primary stream [had] no carriage rights.'' Our treatment of this stream as a multicast stream would similarly afford it with no carriage rights.

[32] For the purposes of this tentative conclusion, we consider similarly situated originating stations to be NCEs, or commercial stations working with NCE partner hosts, transitioning their own channel to 3.0, who are unable to find a partner 1.0 host that could, on its own, provide coverage of its primary stream to 95 percent of the applicant's 1.0 service area.

potentially reducing the diversity of programming available to viewers in order to ensure the widest availability of the most popular programming. We also note that a station airing its primary stream programming on two hosts could be reaching many viewers previously outside its 1.0 footprint, irrespective of whether it successfully provides service to 95 percent of that original area. How should we weigh such tradeoffs when reviewing non-expedited applications seeking to rely on this method of reducing service loss? We seek comment on the appropriate scope of this flexibility.

E. Policy Issues Related to Multicast Licensing

21. While we consider each of the specific licensing proposals above, in this section, we seek comment on potential policy-related issues stemming from the increased flexibility that we propose in this proceeding. While our proposals for licensing simulcast multicast streams and non-simulcast 1.0 multicast streams would allow Next Gen TV stations to license multicast programming streams on one or more hosts in their local markets, we seek comment on whether this flexibility should be circumscribed. Specifically, we seek comment on how we can ensure that individual stations do not use this transition period flexibility to aggregate programming or broadcast spectrum on multiple stations in a market in a manner that would not otherwise be possible or permitted absent the proposed rule changes. We also seek comment on whether to extend the waiver of the ownership rules, which currently applies only to primary stream hosting partnerships, to multicast stream hosting partnerships.

22. *Programming Aggregation.* As ATVA points out, permitting the types of licensing arrangements set forth in NAB's petition could have the unintended consequence of permitting Next Gen TV stations to aggregate broadcast programming in a way they may not do today. We seek comment on these concerns, and whether our final rules should be tailored to address them while allowing broadcasters to ''continue to serve audiences with multicast streams.'' For instance, ATVA contends that NAB's proposal would ''provide yet another loophole permitting [a station] to assemble 'big four' duopolies, triopolies, and even quadropolies without triggering ownership rules and without needing to seek FCC approval.'' Under our current ownership rules, an entity may only own two full power stations in a market, only one of which may be a ''top-four'' station. As described in the 2018 Quadrennial Review proceeding, however, broadcasters sometimes aggregate multiple top-four network affiliations in a market on a single station by placing newly acquired affiliated programming on one or more multicast streams. These licensees are not currently required to seek Commission approval to do so and are able to maintain compliance with the Local TV Ownership Rule, which limits ownership of multiple *stations* in a single market, rather than multiple *streams* of programming in a market. Recognizing this trend, as well as commenters' concerns about its increasing prevalence as a means to work around the letter and spirit of the Local TV Ownership Rule, the Commission has sought comment on the practice of dual affiliation using multicasting and ''whether and how the Commission should evaluate multicast streams for purposes of the Local Television Ownership Rule.'' The proposals at issue in this FNPRM appear to be primarily motivated by a desire to adopt new technologies in a rapidly changing video programming market, and any rules adopted would be temporary. Nonetheless, we recognize that they could contribute to or even exacerbate the trend discussed above. Would it be appropriate to restrict these program aggregation practices for Next Gen TV stations relying on partner hosts during the 3.0 transition regardless of how we address the application of the TV duopoly rule in the context of the Quadrennial Review proceeding?

23. ATVA notes that the proposal in this proceeding would open the door to broadcasters' airing newly acquired programming not just on their own multicast streams carried on their own channels—the issue directly raised in the 2018 Quadrennial Review proceeding—but on their own multicast streams carried by host stations as well. Such a scenario would potentially expand what ATVA characterizes as an existing ''loophole'' in the Local TV Rule. Should the Commission be concerned about allowing such flexibility, and if so are there ways that the approach contemplated in this FNPRM could be modified to avoid expanding this ''loophole'' while at the same time giving broadcasters sufficient flexibility to ''preserve existing multicast service to viewers'' during the transition from 1.0 to 3.0? For instance, to what extent are efforts to address the issues raised by ATVA more properly addressed in another proceeding, such as the 2018 Quadrennial Review proceeding where, as noted above, the Commission has sought comment on issues related to multicasting? In what ways are the issues ATVA raises here different than the issues raised in the 2018 Quadrennial Review proceeding? We seek comment on whether, and if so how, these concerns should be addressed in the context of this proceeding. Should we condition the grant of a multicast license on the outcome of the 2018 Quadrennial Review proceeding?

24. In response to ATVA's concerns, NAB offers a proposal for ''limiting the potential scope of hosting arrangements.'' Specifically, NAB proposes that: ''In arranging for the hosting of its programming, no individual broadcaster shall partner with other stations to host, in the aggregate, more programming than such station could broadcast on its own facilities based on the then-current state of the art for television broadcasting as evidenced by other television stations then operating with the same standard.'' We believe that an effective rule addressing ATVA's concerns would need to be objective, simple for stakeholders to understand and apply, and amenable to enforcement. While we question whether NAB's proposal meets these standards, we seek comment on NAB's proposed approach. For example, what is meant by ''the then-current state of the art''? How would such a standard work? Who would decide what is the ''state of the art''? How would an interested party and/or the Commission determine whether a given broadcaster is in compliance with this rule? We seek comment on NAB's proposal, including suggestions regarding how NAB's terminology in the proposal could or should be construed, or ways in which it could be made workable or enforceable in practice. The record contains no alternative proposals that might address these concerns, beyond the cable commenters' suggestion that we consider a flat prohibition on the licensing of hosted non-simulcast streams. We therefore seek comment on potential alternatives to NAB's proposal that might better address concerns related to the aggregation of programming, should we adopt our licensing proposals.

25. Either in addition to or in lieu of action in the 2018 Quadrennial Review or another proceeding, should the Commission limit the number of programming streams generally—or non-simulcast programming streams in particular—that an originating station can air on host stations as commenters suggest? Alternatively, should the Commission limit the number of hosts that any one broadcaster can use to air

primary and multicast streams? If so, would limiting the number of hosts to two give broadcasters sufficient flexibility to serve their existing viewers during the transition, while also limiting their ability to aggregate programming or broadcast spectrum on multiple stations in a manner that would not otherwise be possible or permitted absent the proposed rule changes? If the Commission does adopt final multicast licensing rules that circumscribe the approach NAB originally sought, should the Commission also establish a waiver process pursuant to which parties could seek additional flexibility by demonstrating that it is consistent with the goals of this proceeding?

26. *Spectrum Aggregation.* We also seek comment on how to ensure that a Next Gen TV broadcaster does not use the interim flexibility proposed in this FNPRM to aggregate spectrum beyond that which is legally permissible today. A single station may generally use no more than 6 MHz under its license (and stations channel sharing due to successful participation in the reverse auction use less). As discussed above, today one entity can effectively control no more than two full power stations in a market.[33] In addition to its concerns about aggregation of programming, ATVA expresses concern that the proposal in NAB's Petition could result in a Next Gen TV station being authorized to operate on three or more different channels, potentially using ''many times its assigned'' amount of spectrum to air more programming than it otherwise could. The group asserts that this would reduce viewpoint diversity by encouraging stations to lease spectrum in order to host other stations' streams, rather than providing programming of their own. While calling the idea ''wholly speculative and extraordinarily unlikely in practice,'' NAB suggests that its proposal to limit the scope of hosting arrangements (described above) would address this concern. Should the Commission be concerned about the impact of the proposals above on spectrum aggregation in a market and in particular the ramifications for viewpoint diversity, competition, or localism? If so, we anticipate that any rule the Commission adopts to address this situation will also address any concerns about programming aggregation. That is, we expect that, to the extent we must address both of these potential scenarios, they can be addressed by the same rule. We seek comment on these assumptions. If we were to adopt such a rule, would NAB's proposed rule be effective for this purpose? [34] We also invite comment on other ways in which we could ensure that a station does not aggregate spectrum beyond that which it is allowed pursuant to a single license and that a broadcaster does not aggregate control of spectrum in a market beyond that which it is allowed under the Local Television Ownership Rule.

27. *Ownership Rules Exemption.* On a related issue, we seek comment on whether to extend the temporary ''waiver'' of the Commission's local broadcast ownership rules, which currently applies to primary stream hosting partnerships, to multicast stream hosting partnerships. That is, if we adopt the approach contemplated in this FNPRM or another proposal that would grant similar flexibility, should we also grant temporary relief from our broadcast ownership rules broadly to stations involved in multicast hosting relationships in order to provide clarity for such stations and other stakeholders, or would it be sufficient for us to limit any relief granted to those portions of our ownership rules that define attributable relationships? In the 2017 *Next Gen TV First Report and Order,* we found that, ''[g]iven that the local simulcasting requirement . . . is temporary, [the Commission] will not apply the broadcast ownership rules in any situation where airing an ATSC 3.0 signal or an ATSC 1.0 simulcast on a temporary host station's facility would result in a potential violation of those rules.'' In adopting this exemption, the Commission emphasized its temporary nature and that it was granted to facilitate the transition to ATSC 3.0. In addition, that previously adopted exemption is tied to a requirement to simulcast programming aired by the originating station itself, limiting the scope of the exemption and potential effects on the competitive dynamics of the marketplace. By contrast, the licensed multicast stream hosting rules proposed today would permit a Next Gen TV broadcaster to air programming on another station without airing a simulcast of that programming on its own station, or even having previously aired that network or stream of programming. Is this a significant enough difference to warrant a different approach? Or do the temporary nature of the exemption and the desire to facilitate the 3.0 transition make the situations similar enough to warrant the same approach? We seek comment on the similarities of and differences between these situations, and whether a temporary exemption from the media ownership rules in whole or in part is appropriate in the multicast licensing context.

28. Instead of broadly exempting licensed multicast streams from the Commission's ownership rules, should we alternatively find in this proceeding that the hosting of a Next Gen TV station's multicast stream standing alone—either simulcast or non-simulcast—simply does not give rise to an attributable interest in the host for the originating station and vice versa? Should we likewise find that the hosted multicast stream is considered part of the originating station for purposes of our ownership rules such that any action taken in the 2018 Quadrennial Review proceeding that impacts a station's use of its own multicast streams would also apply to multicast streams that the station arranges to air on a host station? We seek comment on these issues.

29. Finally, we seek comment on the practical impacts if we adopt the proposals in sections III.A, B, and D of this proceeding but decline to extend to multicasting hosting relationships a temporary exemption from either the ownership rules broadly or, more narrowly, the associated portion of those rules that governs attribution. To what extent, if any, would the absence of an exemption from the ownership rules or the associated attribution rules for multicast hosting arrangements inhibit broadcasters from providing multicast programming during the transition? If an exemption from the ownership rules or the associated attribution rules or both is not extended to multicast hosting relationships, how would, or how should, these relationships be considered or counted for purposes of applying our ownership and attribution rules, including the prohibition on ownership of two top-four rated stations in a market?

F. Rules Applicable to Multicast Streams Aired on a Host Station

30. Finally, we tentatively conclude that we should apply certain ATSC 3.0 transition rules that currently apply only to primary simulcast streams to both simulcast and non-simulcast licensed multicast streams aired on host stations, as NAB has proposed,[35] with

[33] A single entity, therefore, may effectively control no more than 12 megahertz of full power spectrum in a given market.

[34] For example, would the NAB proposal's cap on ''programming'' also address concerns about ''spectrum''?

[35] The rules at issue are those found in 47 CFR 73.3801, 73.6029, and 74.782 (each entitled ''Television Simulcasting''). These include simulcast arrangements and agreements (47 CFR

certain exceptions as detailed below. In particular, we propose an exception to the predicted population threshold required for expedited processing of the licensing applications as it relates to multicast license applications but keep the requirement in place for determining an originating station's compliance with our children's television Core Programming requirements. We propose to revise our rules and Form 2100, which is used by stations seeking to implement or modify sharing arrangements, accordingly. We also note that, as NAB recognizes in its proposal, nothing we do in proposing multicast licensing rules would change the carriage rights of multicast streams, which are not entitled to mandatory carriage by MVPDs.[36] We seek comment on these proposals.

31. Generally, the ATSC 3.0 transition rules that currently apply only to primary simulcast streams are intended to protect consumers from losing access to the 1.0 television programming they currently watch and avoiding consumer disruption during the transition to ATSC 3.0. Our intention is therefore to ensure that primary and multicast streams licensed to be aired by a partner host station are treated the same, to the greatest extent possible. While multicast programming typically has much lower viewership than primary streams, such viewership is not insignificant and is important to those viewers watching it today.[37] Moreover, multicast streams add to the diversity of programming available to viewers in the market. We recognize, however, that no broadcaster is required to provide multicast streams and that Next Gen TV stations are not required to preserve or simulcast their existing multicast streams when they transition to ATSC 3.0 service.[38] Thus, we must balance the goal of preserving maximum availability of multicast streams with the reality that broadcasters could simply decline to air multicast streams if our rules are too burdensome. We seek comment on how to balance these goals in adopting licensing rules.

32. *Coverage rules.* We propose to apply the DMA and community of license coverage requirements to all multicast streams that are licensed to be aired on a host station that is not the primary host.[39] We tentatively conclude that a station seeking to license multicast streams aired on a host station will continue to qualify for expedited processing if its primary stream aired on a partner 1.0 host can provide coverage to 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal. Even if its licensed multicast streams will be aired by a different a host station, they will not be required to meet this predicted population threshold requirement to qualify for expedited processing, as long as they comply with the DMA and community of license coverage requirements. However, we also propose that a Next Gen TV broadcaster should note in its application the predicted percentage of population within the noise-limited service contour (NLSC) served by the station's original 1.0 signal that will be served by each multicast stream host in order to provide transparency to the public and interested parties. Finally, we propose that in order for such a multicast stream to count toward the originating station's children's television Core Programming requirement, the multicast stream must either be carried on the same host as the originating station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.

33. Given that one of the primary goals of granting licensing flexibility is to preserve 1.0 multicast service, we tentatively conclude that we must preserve such service for the station's DMA and community of license when a Commission license is being issued. We note that this is more restrictive than NAB's proposed rule, which would require only that a multicast host be in the same DMA as the originating station. We seek comment on this tentative conclusion, including whether some other minimum coverage or other standard would be more appropriate. We tentatively agree with NAB, however, that we should not otherwise require a multicast stream to cover a specific amount of the originating station's 1.0 NLSC in order for a license application to receive favorable treatment and expedited processing.[40] We seek comment on whether this approach will provide broadcasters with enough flexibility to find hosts for their multicast streams, while still ensuring that the preservation of 1.0 service is focused on the stations' communities of license. We also seek comment, however, on whether this approach would adequately conform to the expectations of viewers outside a station's community of license.

34. We further tentatively conclude that, to be counted toward Core Programming for purposes of our children's television rules, programming on a multicast stream must either be carried on the same host as the originating station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.[41] We observe that if we allow multicast streams to serve substantially fewer viewers than the primary stream, it would seem to be inappropriate to allow a station to rely on such multicast streams to comply with its Core Programming requirements.[42] As in the expedited processing context, we believe this 95 percent threshold will balance the need to ensure the continued provision of service to viewers against the need to allow

73.3801(a) and (e), 73.6029(a) and (e), 74.782(a) and (f)); the simulcasting requirement (47 CFR 73.3801(b), 73.6029(b), 74.782(b)); contour, DMA, and community of license coverage requirements (47 CFR 73.3801(d) and (f)(5)–(6), 73.6029(d) and (f)(5)–(6), 74.782(e) and (g)(5)–(6)); MVPD notice requirements (47 CFR 73.3801(h), 73.6029(h), 74.782(i)); consumer education provisions (47 CFR 73.3801(g), 73.6029(g), 74.782(h)); and licensing procedures (47 CFR 73.3801(f)(2), 73.6029(f)(2), 74.782(g)(2)).

[36] We emphasize that multicast streams have no mandatory carriage rights on cable or satellite and our proposals herein will not convey any new carriage rights to Next Gen TV stations licensing their multicast streams on a host.

[37] We estimate that at least 70 broadcast television stations air Big-4 network programming (*i.e.,* ABC, CBS, FOX, NBC) on a multicast stream, based on staff review of May 2021 Nielsen ratings and the BIA Kelsey Media Access Pro database as of August 5, 2021, but seek comment on this estimate. In addition, other popular network programming on multicast streams includes, for example: MeTV (0.89 avg rating), ION (0.42 avg rating), CW (0.4 avg rating), GRIT (0.37 avg rating), Telemundo (0.35 avg rating), and Heroes & Icons (HI) (0.32 avg rating) (Average ratings data based on staff review of May 2021 Nielsen ratings. For each network, the average rating is computed using the network's ratings in DMAs where the network was aired on a multicast stream.).

[38] The Commission recognized the capacity constraints broadcasters will face during their transition to ATSC 3.0 service when they are sharing facilities in order to air both a 1.0 and 3.0 channel. The Commission also observed that ''[t]he provision of multicast channels is discretionary'' and so ''decline[d] to adopt rules requiring broadcasters who currently air such channels to continue to do so.''

[39] For 1.0 simulcasts aired on a host channel, a Next Gen TV station's ATSC 1.0 simulcast signal must continue to cover the station's entire community of license and the host station must be assigned to the same Designated Market Area (DMA) as the originating station. For 3.0 signals aired on a host channel, only the DMA requirement applies.

[40] To qualify for expedited processing and receive more favorable treatment, the Next Gen TV station must provide ATSC 1.0 service to at least 95 percent of the predicted population within the NLSC of its original ATSC 1.0 facility.

[41] We tentatively conclude that this coverage requirement can be met by relying on up to two hosted simulcast multicast streams.

[42] We note that in 2019, the Commission permitted television broadcast stations to air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream. The Commission found, however, that it was ''premature at [the] time to decide how to apply children's programming rules to stations that broadcast in ATSC 3.0 and shift some of their Core Programming to a multicast stream that may not be simulcast in ATSC 1.0.''

broadcasters sufficient flexibility to locate and select a simulcast partner. Application of this threshold is intended to preserve the maximum amount of ATSC 1.0 programming to the greatest number of viewers while facilitating the deployment of ATSC 3.0 and new innovative broadcast services. We seek comment on these tentative conclusions and on whether this approach will preserve existing viewership while providing broadcasters a reasonable amount of flexibility during the transition. Alternatively, we seek comment on any alternative minimum coverage requirement or other standard to achieve the stated goals.

35. *Licensing.* We propose to apply our licensing process for primary simulcast streams to guest multicast streams aired on a host station.[43] Thus, an originating station's multicast streams aired as guest streams on a host will be licensed as additional temporary channels of the originating broadcaster. That is, each of the originating station's guest multicast streams aired on a host would be considered an additional, separate channel under the originating station's single, unified license.[44] We seek comment on this proposal.

36. *Form 2100.* We propose to modify our Next Gen TV license application form (FCC Form 2100) to accommodate multicast licensing and any other changes adopted in the final order to this proceeding. We seek comment on what information we should collect in this regard, including what information we could collect to provide more transparency about Next Gen TV broadcasters' hosting arrangements. For example, based on our proposals above, we might collect the following information for each programming stream (primary and multicast) that the applicant would license on a host station: (1) Each guest stream's channel number (RF and virtual) as aired on the host (*i.e.,* channel 10.2, 10.3 etc.); (2) resolution (*i.e.,* HD or SD); (3) network programming affiliation (if any); and (4) whether the stream will be simulcast. If we adopt any limits on spectrum or programming aggregation, we also seek comment on what information we would require in order to implement such limits. We might also, for example, collect the following information in order to identify each partner host station used by the applicant: (1) Host's call sign and facility identification number; (2) host's DMA; and (3) the predicted percentage of population within the noise limited service contour served by the station's original ATSC 1.0 signal that will be served by the host, including identifying areas of service loss by providing a contour overlap map. We seek comment on whether the information discussed in this paragraph would be useful to the Commission and the public as well as the burden on broadcasters if required to provide this information. We seek comment on whether additional information not discussed in this paragraph should be collected. To avoid administratively expensive and time-consuming changes to the form for a temporary licensing process, and expedite the availability of the revised form, we propose to collect much of this information through one or more required exhibits. We seek comment on this proposed approach. Finally, we seek comment on how to make this information accessible to the public and interested parties.[45]

37. *Timing.* As set forth above, we tentatively conclude that any rules adopted pursuant to this FNPRM should apply until and unless the Commission eliminates the mandatory local simulcasting requirement.[46] As we have made clear, and again emphasize, these arrangements are intended to be temporary, but continue to be necessary, given the standard is not backward-compatible with existing TV sets or receivers.[47] We find it to be most sensible to apply these rules for the same duration as the ATSC 3.0 rules applicable to primary streams because they are intended to achieve the same purposes, which are to preserve existing 1.0 viewership while giving broadcasters the flexibility to transition 3.0. We seek comment on this tentative conclusion. We also seek particular comment on whether to sunset the ''substantially similar'' requirement for simulcast multicast streams on the same schedule as the primary stream simulcast requirement, currently scheduled to sunset on July 17, 2023.[48]

38. *Alternative or additional proposals.* Finally, we seek comment on any other ways not previously considered in which modification of our rules would not only help facilitate the 3.0 transition but also preserve existing ATSC 1.0 service to viewers.

39. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,[49] 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[50] 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.

IV. Procedural Matters

40. *Initial RFA Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),[51] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA is below.

41. *Initial Paperwork Reduction Act Analysis.* This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general

[43] The 2017 *Next Gen TV First Report and Order* authorized a Next Gen TV station to obtain a separate authorization for its primary stream (1.0 or 3.0) aired on a partner host station. Under these proposed rules, a Next Gen TV station could seek to obtain separate authorizations for each host station used to air any programming stream, and would no longer be limited to the two authorizations contemplated in the *Next Gen TV First Report and Order.*

[44] The guest stream aired on a partner host station will be considered part of the guest station's license and may not be separately assigned to a third party.

[45] We note that a Next Gen TV station's ATSC 3.0 license application (Form 2100) is available through the Commission's Licensing and Management System (LMS).

[46] Although there is no expiration date for the local simulcasting requirement, the Commission has stated that it ''intends that the local simulcasting requirement be temporary'' and will consider in a future proceeding when it would be appropriate to eliminate the requirement.

[47] ATVA expresses concern about the potential for a Next Gen TV broadcaster to exercise ''permanent'' control over the spectrum of multiple competitors in its market. We believe ATVA's concerns are overstated given the transitional nature of the proposed rules.

[48] The ''substantially similar'' sunset is scheduled for review in 2022 as part of the Commission's broader review of the transition and the state of the Next Gen TV marketplace.

[49] Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' 47 U.S.C. 151.

[50] The term ''equity'' is used here consistent with Executive Order 13985 as 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.

[51] 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA).[52] Public and agency comments are due February 11, 2022. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) way to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[53] the Commission will seek specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

42. Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number.

43. To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

44. *OMB Control Number:* 3060–1254.

Title: Next Gen TV/ATSC 3.0 Local Simulcasting Rules; 47 CFR 73.3801 (full-power TV), 73.6029 (Class A TV), and 74.782 (low-power TV) and FCC Form 2100 (Next Gen TV License Application).

Form No.: FCC Form 2100 (Next Gen TV License Application).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and/or state, local or tribal governments.

Number of Respondents: 1,222 respondents 11,260 responses.

Estimated Time per Response: 0.017 hours to 8 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping Requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535.

Total Annual Burden: 3,752 hours.

Total Annual Costs: $147,000.

Needs and Uses: The *FNPRM* proposes changes to its Next Gen TV rules to allow Next Gen TV broadcasters to include within their license certain of their non-primary video programming streams (multicast streams) that are aired in a different service on ''host'' stations during a transitional period, using the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on ''host'' station facilities.

Statutory Authority: Sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535.

45. *Ex Parte Rules—Permit-But-Disclose.* 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. 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 rule 1.1206(b). In proceedings governed by rule 1.49(f) 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.

46. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,[54] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[55]

V. Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act of 1980, as amended

[52] The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[53] The Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). *See* 44 U.S.C. 3506(c)(4).

[54] 47 CFR 1.415, 1.419.

[55] *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

(RFA),[56] 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 proposed in the *Notice of Proposed Rulemaking* (*NPRM*). 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 on the *NPRM* provided on the first page of the *NPRM.* The Commission will send a copy of this entire *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[57] In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rule Changes

48. In this *Second Further Notice of Proposed Rulemaking* (*FNPRM*), we consider changes to our ATSC 3.0 (3.0 or Next Gen TV) rules to make it easier for Next Gen TV broadcasters to continue to provide viewers with existing *programming* that is offered on non-primary multicast video programming streams (multicast streams) after these stations begin ATSC 3.0 service. We propose to revise our rules to allow ATSC 3.0 broadcasters to treat as part of their license certain multicast streams that are aired as a ''guest'' signal on a partner ''host'' station during the mandatory local simulcasting period, using the same licensing framework, and to a large extent the same regulatory regime, established for the simulcast of primary video programming streams on ''host'' station facilities.[58] We therefore tentatively conclude that we should permit Next Gen TV stations to license one or more simulcast multicast streams on a host station or stations, whether that guest stream is the 3.0 broadcast or the ATSC 1.0 (1.0) simulcast. Second, we propose, with limitations, that Next Gen TV stations which are broadcasting in 3.0 on their own channel may license one or more multicast stream aired only in 1.0 format on a host station or stations even if they are not simulcasting that stream in 3.0. Third, we seek comment on whether our rules should permit an originating station to rely on simulcasting its primary stream on two separate host stations in order to minimize service loss caused by its transition to 3.0. In addition, we seek comment on certain policy concerns raised regarding these new potential licensing arrangements and tentatively conclude to apply certain ATSC 3.0 transition rules currently in place for primary streams to both simulcast and non-simulcast licensed multicast streams aired on host stations, with certain exceptions. Under this proposal for multicast licensing, the Commission would authorize a Next Gen TV station to either (1) include its multicast streams under its authorization on the primary host's channel; or (2) obtain a separate authorization for any 1.0 or 3.0 multicast stream(s) aired on a host's channel that is not the primary host's channel. We propose to amend our Next Gen TV local simulcasting rules to accommodate multicast licensing.

49. We seek to craft rules that will protect current OTA viewers by facilitating and encouraging Next Gen TV stations to preserve 1.0 multicast streams during the transition while also creating an environment that does not stifle innovative new services that may be offered to OTA viewers through the deployment of ATSC 3.0 service. Pursuant to the current ATSC 3.0 rules, Next Gen TV stations are not required to simulcast their *multicast* streams but may choose to air them pursuant to private contractual arrangements. NAB explains that some host stations may be reluctant, however, to accept legal responsibility when airing another station's multicast stream(s), even if they can obtain indemnification from such station through a private contractual agreement. Further, many Next Gen Broadcasters cannot simulcast all of their multicast streams because of capacity and other practical constraints. The licensed multicast stream approach proposed herein would address these concerns by providing the industry with regulatory certainty about the legal treatment of multicast streams and facilitating their carriage on multiple stations. A licensed multicast approach would not only make clear that the originating station (and not the host station) is responsible for regulatory compliance regarding the multicast stream being aired on a host station but also give the Commission clear enforcement authority over the originating station in the event of a rule violation on the hosted multicast programming stream. In addition, this approach would facilitate noncommercial educational (NCE) stations' 3.0 deployment by allowing them to serve as hosts to commercial stations' multicast streams without violating the prohibition on broadcasting advertisements over spectrum dedicated to noncommercial use.[59]

B. Legal Basis

50. The *proposed* action is authorized pursuant to sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 325(b), 336, 338, 399b, 403, 534, and 535.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

51. 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.[60] 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.[61] The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

52. *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

[56] 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[57] 5 U.S.C. 603(a).

[58] A ''host'' station is one whose facilities are being used to transmit programming originated by another station (''guest'') as part of a local simulcasting arrangement.

[59] 47 U.S.C. 399B (prohibiting noncommercial stations from making their ''facilities available to any person for the broadcasting of any advertisement'').

[60] 5 U.S.C. 603(b)(3).

[61] 15 U.S.C. 632(a)(1). Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

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. Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

53. *Cable Companies and Systems (Rate Regulation).* The Commission has 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 currently 1,096 active cable companies in the United States. Of this total, all but five cable companies (or ''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. Current 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.

54. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''an operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 46,006,823 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 460,068 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but five incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

55. *Direct Broadcast Satellite (''DBS'') Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' *The* Wired Telecommunications Carriers industry is defined in paragraph 6, *supra*. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1,500 employees. Census data for 2017 indicate that 3,054 wireline firms were operational during that year. Of that number, 2,964 operated with fewer than 250 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, based on data developed internally by the FCC, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV and DISH Network. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

56. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. 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. Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

57. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. 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. Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

58. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. 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. Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities

authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

59. *Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) [62] and Educational Broadband Service (EBS) [63] to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

60. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined in paragraph 6, *supra.* 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. Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's internal records indicate that as of August 2021, there are 2,451 active EBS licenses. The Commission estimates that of these 2,451 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.[64]

61. *Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. ILECs and small ILECs are included in the SBA's economic census category, Wired Telecommunications Carriers. 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. Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

62. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. These entities are included in the SBA's economic census category, Wired Telecommunications Carriers. 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. Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

63. *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 2017 Economic Census reports that 744 firms in this category operated in that year. Of this number, 657 had annual receipts of less than $25 million, 48 had annual receipts ranging from $25 million to $99,999,999, and 39 had annual receipts of $100 million or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

64. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374. Of this total, 1,282 stations (or 94.2%) had revenues of $41.5 million or less in 2018, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 15, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates the number of licensed noncommercial educational (NCE) television stations to be 384. The Commission does not compile and 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.

65. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control)

[62] BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS).

[63] EBS was previously referred to as the Instructional Television Fixed Service (ITFS).

[64] The term ''small entity'' within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000).

affiliations [65] 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.

66. There are also 386 Class A stations. Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,985 LPTV stations and 3,306 TV translator stations. Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

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

67. The *FNPRM* proposes to authorize Next Gen TV broadcasters to air their multicast streams as guest signals on host stations during the mandatory local simulcasting period. We propose to apply our MVPD notice rules in place for primary streams to multicast streams that are currently carried by an MVPD and which will be relocated to a host station or terminated as a result of the station's transition. MVPD carriage of such multicast signals would be determined through retransmission consent negotiations, as there is no mandatory carriage for multicast streams. In addition, we propose to apply our on-air consumer notice rules for 1.0 primary simulcast streams relocated to a host station or terminated as a result of the station's transition. Under this proposal, a Next Gen TV station that relocates its 1.0 multicast stream to a host station or terminates such multicast stream as a result of the station's transition to ATSC 3.0 must air daily PSAs or crawls every day for 30 days prior to the date that the stations will relocate or terminate the 1.0 multicast stream.

E. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

68. The RFA requires an agency to describe any significant 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.

69. These proposals would not impose a negative economic impact on any small entities involved because they provide increased flexibility to broadcasters without imposing additional obligations. Indeed, by expanding the ability of broadcasters to place licensed streams on additional host partners, our proposals may allow small broadcast entities transitioning to ATSC 3.0 to experience positive economic impacts through partnerships with unaffiliated third parties. NCE television stations in particular, both large and small, will experience positive benefits from the proposals in this item, which could improve their ability to participate in the transition to Next Gen TV. In addition, we expect the proposed multicast licensing approach to minimize administrative burdens for all broadcasters, including small broadcasters. The proposed rules would streamline the current process whereby broadcasters request special temporary authority on a case-by-case basis.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule.

70. None.

VI. Ordering Clauses

71. *It is ordered*, pursuant to the authority found in sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535, this Further Notice of Proposed Rulemaking *is hereby adopted* and *notice is hereby given* of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

72. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 74

Communications equipment, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.3801 is amended by revising paragraph (f)(5) and adding paragraph (i) to read as follows:

§ 73.3801 Full Power television simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(f) * * *

(5) *Expedited processing.* An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 primary signal on the facilities of a host station, that station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

* * * * *

(i) *Multicast Streams.* A Next Gen TV station is not required to license, under paragraph (f) of this section, a ''guest'' multicast stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a ''multicast'' stream refers to a video programming stream other than the primary video programming stream.

[65] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.''

(1) *1.0 Multicast Streams.* A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(2) *3.0 Multicast Streams.* A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) Next Gen TV stations may rely on a multicast stream they are airing via a host partner to comply with the Commission's children's television programming requirement in § 73.671 of this Part. Such a stream must either be carried on the same host as the Next Gen TV station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.

■ 3. Section 73.6029 is amended by revising paragraph (f)(5) and adding paragraph (i) to read as follows:

§ 73.6029 Class A television simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(f) * * *

(5) *Expedited processing.* An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 *primary* signal on the facilities of a host station, *that* station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

* * * * *

(i) *Multicast Streams.* A Next Gen TV station is not required to license, under paragraph (f) of this section, a ''guest'' multicast stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a ''multicast'' stream refers to a video programming stream other than the primary video programming stream.

(1) *1.0 Multicast Streams.* A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(2) *3.0 Multicast Streams.* A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) Next Gen TV stations may rely on a multicast stream they are airing via a host partner to comply with the Commission's children's television programming requirement in § 73.671 of this part. Such a stream must either be carried on the same host as the Next Gen TV station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 4. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

■ 5. Section 74.782 is amended by revising paragraph (g)(5) and adding paragraph (j) to read as follows:

§ 74.782 Low power television and TV translator simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(g) * * *

(5) *Expedited processing.* An application filed in accordance with the streamlined process in paragraph (f)(3) of this section will receive expedited processing provided, for stations requesting to air an ATSC 1.0 primary signal on the facilities of a host station, that station will provide ATSC 1.0 service to at least 95 percent of the predicted population within the noise limited service contour of its original ATSC 1.0 facility.

* * * * *

(j) *Multicast Streams.* A Next Gen TV station is not required to license, under paragraph (f) of this section, a ''guest'' multicast stream that it originates and which is aired on a host station. If it chooses to do so, it and each of its licensed guest multicast streams must comply with the requirements of this section (including those otherwise applicable only to primary streams), except for paragraph (f)(5) and as otherwise provided in this paragraph. For purposes of this section, a ''multicast'' stream refers to a video programming stream other than the primary video programming stream.

(1) *1.0 Multicast Streams.* A Next Gen TV station may license its guest ATSC 1.0 multicast stream(s) aired on one or more ATSC 1.0 hosts pursuant to paragraph (f) of this section. Non-simulcast streams are not required to comply with paragraph (b) of this section.

(2) *3.0 Multicast Streams.* A Next Gen TV station may license its guest ATSC 3.0 multicast stream(s) aired on one or more ATSC 3.0 hosts pursuant to paragraph (f) of this section.

(3) Next Gen TV stations may rely on a multicast stream they are airing via a host partner to comply with the Commission's children's television programming requirement in § 73.671 of this part. Such a stream must either be carried on the same host as the Next Gen TV station's primary stream, or on a host that serves at least 95 percent of the predicted population served by the applicant's pre-transition 1.0 signal.

[FR Doc. 2021–26375 Filed 12–10–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 13, 18, 22, 25, 27, and 52

[FAR Case 2020–014, Docket No. FAR–2020–0014, Sequence No. 1]

RIN 9000–AO14

Federal Acquisition Regulation: United States-Mexico-Canada Agreement

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the United States-Mexico-Canada Agreement Implementation Act.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before February 11, 2022 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020–014 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2020–014''. Select the link ''Comment Now'' that corresponds with FAR Case 2020–014. Follow the instructions provided on the ''Comment Now'' screen. Please include your name,

company name (if any), and ''FAR Case 2020–014'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR case 2020–014'' in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential 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. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at *michaelo.jackson@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite ''FAR Case 2020–014.''

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing a proposed rule amending the FAR to implement the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113). On June 12, 2017, the President announced his intention to commence negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA). On November 30, 2018, the Governments of the United States, Mexico, and Canada (the Parties) signed the protocol replacing NAFTA with the United States-Mexico-Canada Agreement (USMCA). On December 10, 2019, the Parties signed the protocol of amendment to the USMCA. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Implementation Act, through which Congress approved the USMCA. On July 1, 2020, the USMCA entered into full force. (See U.S. Trade Representative Determination published June 29, 2020, 85 FR 39037.)

II. Discussion and Analysis

A. Chapter 13 of the USMCA

Chapter 13 of the USMCA sets forth certain obligations between the United States and Mexico with respect to Government procurement of goods and services, as specified in Annex 13–A of the USMCA. Chapter 13 of the USMCA applies only between Mexico and the United States and does not cover Canada.

Section 1–201 of Executive Order 12260 of December 31, 1980, delegates the functions of the President under sections 301 and 302 of the Trade Agreements Act of 1979 (Trade Agreements Act) (19 U.S.C. 2511–2512) to the U.S. Trade Representative.

In conformity with sections 301 and 302 of the Trade Agreements Act and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 13 of the USMCA, the U.S. Trade Representative has determined that:

1. Mexico is a country that has become a party to the USMCA and will provide appropriate reciprocal competitive Government procurement opportunities to United States products and suppliers of such products. In accordance with section 301(b)(1) of the Trade Agreements Act, Mexico is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Mexico (*i.e.,* goods and services covered by the Schedule of the United States in Annex 13–A of the USMCA) and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement is waived if it would, if applied to such products and suppliers, result in treatment less favorable than accorded to:

a. United States products and suppliers of such products; or

b. Eligible products of another foreign country or instrumentality which is a party to the Agreement on Government Procurement referred to in section 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(17)) and suppliers of such products.

With respect to Mexico, this waiver shall be applied by all entities listed in the Schedule of the United States in Annex 13–A of USMCA.

3. The designation in paragraph 1 and the waiver in paragraph 2 are subject to modification or withdrawal by the U.S. Trade Representative.

B. Canada's Status as a Designated Country

Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement (WTO GPA), Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (government procurement) applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country are deleted, including the $25,000 threshold. Mexico thresholds remain unchanged.

C. Changes to the FAR Made by This Case

Part 18

- FAR 18.120, Use of patented technology under the North American Free Trade Agreement. This proposed rule would remove and reserve this section in its entirety, as waiver of NAFTA is no longer applicable.

Part 22

- FAR 22.1503(b)—FAR section 22.1503 refers to the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor. Requirements of FAR subpart 22.15 do not apply to certain countries of origin in FAR 22.1503(b). Canada currently appears as such a country in paragraph (b)(1). The language on Canada is removed from FAR 22.1503(b)(1) where the anticipated value of the acquisition is $25,000 or more. Canada is added to the list of countries at FAR 22.1503(b)(3) where the anticipated value of the acquisition is $182,000. The source for the countries in paragraph (b)(3) is the definition of WTO GPA countries at FAR 25.003.
- FAR 22.1505(a)—For solicitations estimated to equal or exceed $25,000, the contracting officer currently must exclude from the solicitation's List of products any end products from countries identified at FAR 22.1503(b). The $25,000 is the free trade agreement threshold for Canada, which is no longer applicable. The proposed rule will change this to $50,000, which is the threshold for Israel.

Part 25

- FAR 25.400(a)(2)(i)—The proposed rule would remove all references to the NAFTA, replacing them with the new USMCA language, including statutory references, and explanatory language concerning the USMCA Government Procurement Agreement as now applicable only to the United States and Mexico.
- FAR 25.401(a)(6)—The list of exceptions to the trade agreements would include any goods and services specifically excluded under individual trade agreements. An example is given of USTR-negotiated exceptions, which usually would be found at agency regulations supplementing the FAR, as well as being listed in the annexes of each trade agreement.
- FAR 25.402(b)—The proposed rule would remove references to ''Canada'' and the thresholds for Canada in the table and corresponding columns.
- FAR 25.1101(b)(1)—The prescription at FAR 25.1101(b)(1)(i)(A) is adjusted for the clause at FAR

52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act. The $25,000 threshold for Canada is removed and replaced with the $50,000 threshold for Israel, for use when the acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is now $50,000 or more, but is less than $182,000. The prescription for Alternate I is removed at FAR 25.1101(b)(1)(ii), as the Alternate is no longer necessary.

• FAR 25.1101(b)(2)—In the prescription for FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, the Alternate I is deleted as no longer necessary.

Part 27

• The proposed rule seeks to revise the section heading of FAR 27.204–1, Use of patented technology under the North American Free Trade Agreement, to replace NAFTA with USMCA and remove all the language covered under NAFTA at FAR 27.204–1, instead instructing contracting officers that when questions arise with regard to use of patented technology under the USMCA, the contracting officer should consult with legal counsel. In FAR 27.204–1 and 27.204–2, notes are added about the content of the USMCA.

Part 52

• FAR 52.204–8(c)(1)(xxi)(A) and (B)—Annual Representations and Certifications, removes the Canadian Free Trade Act threshold of $25,000, to become the Israeli Trade Act threshold of $50,000 in paragraph (A). Paragraph (B) is being removed as it is the prescription for Alternate I of FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate; that Alternate is being removed.

• FAR 52.212–3, Offeror Representations and Certifications—Commercial Items (g)—This is the commercial item equivalent of FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, including its Alternate I (see below).

• FAR 52.222–19(a)—Removing from the Child Labor clause the $25,000 threshold for Canada from paragraph (a)(1) and in the list of countries in paragraph (a)(3) adding ''Canada''.

• FAR 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act and FAR 52.225–4, Buy American—Free Trade Agreement—Israeli Trade Act Certificate—the proposed rule would remove Alternate I, which references ''Canadian end product'' and making it reserved; with conforming changes revising Alternates II and III.

• FAR 52.225–5, Trade Agreements—in paragraph (2) of the definition of ''Designated country'', the proposed rule is removing Canada from the list of Free Trade Agreement countries.

• FAR 52.225–11(a)(2)—Buy American—Construction Materials Under Trade Agreements, in paragraph (2) of the definition of ''Designated country'', the proposed rule is removing Canada from the list of Free Trade Agreement countries, and revising Alternate I to remove ''NAFTA'' and replacing it with ''United States-Mexico-Canada Agreement''.

• FAR 52.225–23(a)(2), Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements—in paragraph (2) of the definitions of ''Designated country'' and ''Recovery Act designated country'', the proposed rule is removing Canada from the list of Free Trade Agreement countries.

• Conforming changes. The proposed rule is making conforming changes at FAR 4.20, FAR 13.302–5, and FAR part 25 (changing ''NAFTA'' to ''USMCA''), and in the clauses at FAR 52.212–5 and 52.213–4.

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 proposed rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial items, including COTS items.

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, GSA, and NASA will send the rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rulemaking is not anticipated to be a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this propose 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. 601–612, because although the proposed rule removes Canada as a Free Trade Agreement designated country and deletes the associated $25,000 threshold, Canada remains a WTO GPA designated country, at $182,000. The Mexico thresholds remain unchanged. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

The Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) are proposing to revise the Federal Acquisition Regulation (FAR) to implement the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113). On November 30, 2018, the Governments of the United States, Mexico, and Canada (the Parties) signed the protocol replacing NAFTA with the United States-Mexico-Canada Agreement (USMCA). On December 10, 2019, the Parties signed the protocol of amendment to the USMCA. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Act, through which Congress approved the USMCA. On July 1, 2020, the USMCA entered into full force.

The objective of the proposed rule is to implement the USMCA Implementation Act. The proposed rule makes changes in the FAR to conform to Chapter 13 of the USMCA, which sets forth certain obligations between the United States and Mexico with respect to Government procurement of goods and services, as specified in Annex 13–A of the USMCA. Chapter 13 of the USMCA applies only between Mexico and the United States and does not cover Canada. Although Canada is still a designated country under the World Trade Organization Government Procurement Agreement, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA (government procurement) applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country in the FAR are deleted, including the $25,000 threshold.

Canadian end products will still receive nondiscriminatory treatment with respect to the Buy American statute, but starting at $182,000 rather than $25,000.

Mexico thresholds remain unchanged.

The legal basis for the rulemaking is the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113).

Based on fiscal year 2019 data from the Federal Procurement Data System (FPDS), 129,308 small businesses were awarded Government contracts. Based on the data analysis approved under OMB Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry; impacts to small businesses are anticipated to be negligible. Alternate I of the provision, FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, which is applicable to Canada, is deleted. The Trade Agreement clause at FAR 52.225–5, and the standard Buy American construction trade agreements clause at FAR 52.225–11, were revised to delete references to Canada as a Free Trade Agreement Country, as well as the associated $25,000 threshold. Lastly, in regard to the FAR 52.225–23, Recovery Act clause, additional construction awards are not anticipated using Recovery Act funds.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The proposed rule does not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501–3521), Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the USMCA rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rulemaking consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020–014), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) does apply. However, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

List of Subjects in 48 CFR Parts 4, 13, 18, 22, 25, 27, and 52

Government procurement.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA propose to amend 48 CFR parts 4, 13, 18, 22, 25, 27, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 13, 18, 22, 25, 27, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.1202 [Amended]

■ 2. Amend section 4.1202 by removing from paragraph (a)(28) the phrase ''Alternates I, II, and III'' and adding ''Alternates II and III'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.302–5 [Amended]

■ 3. Amend section 13.302–5 by removing from paragraph (d)(3)(i) the phrase ''Alternate I or''.

PART 18—EMERGENCY ACQUISITIONS

18.120 [Removed and Reserved]

■ 4. Remove and reserve section 18.120.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 5. Amend section 22.1503 by—

■ a. Removing paragraph (b)(1);

■ b. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(1) through (3); and

■ c. Removing from the newly redesignated paragraph (b)(3) the phrase ''Bulgaria'' and adding the phrase ''Bulgaria, Canada'' in its place.

22.1505 [Amended]

■ 6. Amend section 22.1505 by removing from paragraph (a) the phrase ''$25,000'' and adding the phrase ''$50,000'' in its place.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

■ 7. Amend section 25.003 by—

■ a. Removing from the definition of ''Designated country'' in paragraph (2) the phrase ''Canada,''; and

■ b. Removing from the definition of ''Free Trade Agreement country'' the phrase ''Canada,''.

■ 8. Amend section 25.400 by revising paragraph (a)(2)(i) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) * * *

(i) USMCA (United States-Mexico-Canada Agreement, as approved by Congress in the United States-Mexico-Canada Agreement Implementation Act (Government Procurement Agreement applicable only to United States and Mexico) (Pub. L. 116–113) (19 U.S.C. chapter 29 (sections 4501–4732));

* * * * *

■ 9. Amend section 25.401 by—

■ a. Removing from the end of paragraph (a)(4) the word ''and''.

■ b. Removing from paragraph (a)(5) the phrase ''13.501(a).'' and adding the phrase ''13.501(a); and'' in its place;

■ c. Adding paragraph (a)(6);

■ d. In the table of paragraph (b), in the fourth column of the first row, removing the word ''NAFTA'' and adding the word ''USMCA'' in its place.

The addition reads as follows:

25.401 Exceptions.

(a) * * *

(6) Goods and services specifically excluded under individual trade agreements, such as exceptions negotiated by the U.S. Trade Representative for particular agencies. See the agency supplementary regulations.

25.402 [Amended]

■ 10. Amend section 25.402 in table 1 of paragraph (b) by—

■ a. Removing the word ''NAFTA'' and adding ''USMCA'' in its place;

■ b. Removing the entry for ''Canada''.

25.1101 [Amended]

■ 11. Amend section 25.1101 by—

■ a. Removing from paragraph (b)(1)(i)(A) the phrase ''$25,000'' and adding ''$50,000'' in its place;

■ b. Removing paragraph (b)(1)(ii);

■ c. Redesignating paragraphs (b)(1)(iii) and (iv) as paragraphs (b)(1)(ii) and (iii);

■ d. Removing paragraph (b)(2)(ii); and

■ e. Redesignating paragraphs (b)(2)(iii) and (iv) as paragraphs (b)(2)(ii) and (iii).

PART 27—PATENTS, DATA, AND COPYRIGHTS

■ 12. Revise section 27.204–1 to read as follows:

27.204–1 Use of patented technology under the United States-Mexico-Canada Agreement.

When questions arise with regard to use of patented technology under the United States-Mexico-Canada Agreement, the contracting officer should consult with legal counsel. Note that Article 20.6(a) of the Agreement discusses public health and pharmaceuticals.

■ 13. Amend section 27.204–2 by adding a sentence to the end of the paragraph to read as follows:

27.204–2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

* * * Article 20.40 of the United States-Mexico-Canada Agreement preserves parties' rights under Article 31.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 14. Amend section 52.204–8 by revising the date of the provision, and paragraph (c)(1)(xxi) to read as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (DATE)

* * * * *

(c)(1) * * *

(xxi) 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates II and III.) This provision applies to solicitations containing the clause at 52.225–3.

(A) If the acquisition value is less than $50,000, the basic provision applies.

(B) If the acquisition value is $50,000 or more but is less than $83,099, the provision with its Alternate II applies.

(C) If the acquisition value is $83,099 or more but is less than $100,000, the provision with its Alternate III applies.

* * * * *

■ 15. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing paragraph (g)(2);

■ c. Redesignating paragraphs (g)(3) through (5) as paragraphs (g)(2) through (4); and

■ d. Revising the newly redesignated paragraph (g)(2).

The revisions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (DATE)

* * * * *

(g) * * *

(2) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If *Alternate II* to the clause at 52.225–3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act'':

Israeli End Products:

Line Item No.		

[List as necessary]

* * * * *

■ 16. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(28) the date ''(JAN 2020)'' and adding ''(DATE)'' in its place;

■ c. Revising paragraphs (b)(49)(i) and (ii);

■ d. Removing from paragraph (b)(49)(iii) the date ''(JAN 2021)'' and adding ''(DATE)'' in its place; and

■ e. Removing from paragraph (b)(50) the date ''(OCT 2019)'' and adding ''(DATE)'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (DATE)

* * * * *

(b) * * *

____(49)(i) 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act (DATE) (19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501–4732), Public Law 103–182, 108–77, 108–78, 108–286, 108–302, 109–53, 109–169, 109–283, 110–138, 112–41, 112–42, and 112–43.

____(ii) Alternate I [RESERVED].

* * * * *

■ 17. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (b)(1)(ii) the date ''(JAN 2020)'' and adding ''(DATE)'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DATE)

* * * * *

■ 18. Amend section 52.222–19 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (a)(1);

■ c. Redesignating paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3); and

■ d. Removing from the newly redesignated paragraph (a)(3) the phrase ''Bulgaria'' and adding the phrase ''Bulgaria, Canada'' in its place.

The revision reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (DATE)

* * * * *

■ 19. Amend section 52.225–3 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition of ''*Free Trade Agreement country*'' removing ''Canada,'';

■ c. Revising Alternates I and II; and

■ d. In Alternate III:

■ i. Revising the date of the Alternate; and

■ ii Removing from the introductory text ''25.1101(b)(1)(iv)'' and adding ''25.1101(b)(1)(iii)'' in its place.

The revisions read as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act (DATE)

* * * * *

Alternate I [Reserved]

Alternate II (DATE). As prescribed in 25.1101(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Delivery of end products.* 41 U.S.C. chapter 83 provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)). In addition, the Contracting Officer has determined that the Israeli Trade Act

applies to this acquisition. Unless otherwise specified, this trade agreement applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.'' If the Contractor specified in its offer that the Contractor would supply an Israeli end product, then the Contractor shall supply an Israeli end product or, at the Contractor's option, a domestic end product.

Alternate III (DATE). * * *

* * * * *

■ 20. Amend section 52.225–4 by—

■ a. Revising Alternates I and II; and

■ b. In Alternate III:

■ i. Revising the date of the Alternate; and

■ ii Removing from the introductory text ''25.1101(b)(2)(iv)'' and adding ''25.1101(b)(2)(iii)'' in its place.

The revisions read as follows:

52.225–4 Buy American—Free Trade Agreement—Israeli Trade Act Certificate.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act Certificate (Feb 2021)

* * * * *

Alternate I [Reserved]

Alternate II (DATE). As prescribed in 25.1101(b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act—Balance of Payments Program'':

Israeli End Products:

Line Item No.		

[List as necessary]

Alternate III (DATE). * * *

* * * * *

■ 21. Amend section 52.225–5 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (a), in the definition ''*Designated country*'' removing from paragraph (2) the phase ''Canada,''.

The revision reads as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (DATE)

* * * * *

■ 22. Amend section 52.225–11 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition of ''Designated country'', removing from paragraph (2) the phrase ''Canada,'';

■ c. Revising the date of Alternate I; and

■ d. Removing from paragraph (b) the phrase ''NAFTA'' and adding ''United States-Mexico-Canada Agreement'' in its place.

The revisions read as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Buy American—Construction Materials Under Trade Agreements (DATE)

* * * * *

Alternate I (DATE). * * *

* * * * *

■ 23. Amend section 52.225–23 by—

■ a. Revising the date of the clause; and

■ b. In paragraph (a), in the definitions of ''*Designated country*'' and ''*Recovery Act designated country*'', removing from paragraph (2) the phrase ''Canada,''.

The revisions read as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (DATE)

* * * * *

[FR Doc. 2021–26094 Filed 12–10–21; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 86, No. 236
Monday, December 13, 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.

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Bankruptcy Rules; Notice of cancellation of open hearing.

SUMMARY: The following virtual public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 7, 2022. The announcement for this hearing was previously published in the **Federal Register** on August 11, 2021.

DATES: January 7, 2022.

FOR FURTHER INFORMATION CONTACT: Bridget Healy, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: December 8, 2021.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2021–26894 Filed 12–10–21; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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 January 12, 2022 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: Forest Products Removal Permits and Contracts.

OMB Control Number: 0596–0085.

Summary of Collection: The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651) hereinafter the ''2008 Farm Bill''), section 8105 authorizes that the Secretary of Agriculture may provide, free of charge, to federally recognized Indian Tribes trees, portions of trees, or forest products from National Forest System lands for noncommercial traditional and cultural purposes. Individuals and businesses that wish to remove forest products from national forest lands must request a permit. 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests. Regulations at 36 CFR 223.1 and 223.2 govern the sale of forest products such as Christmas trees, pinecones, moss, and mushrooms. Regulations at 36 CFR 223.5 through 223.11 set forth conditions under which free use of forest products may be obtained by individuals or organizations. Upon receiving a permit, the permittee must comply with the terms of the permit at 36 CFR 261.6 that designate the forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material.

Both the Forest Service (FS) and Department of the Interior, Bureau of Land Management (BLM) will use the Forest Products Removal Permit and Cash Receipt to collect information.

Need and Use of the Information: This information is collected from Individuals/Households, businesses wishing to remove forest products from National Forest System and/or Bureau of Land Management lands. Additionally, this information is collected from federally recognized Indian Tribes wishing to remove trees, portions of trees, or forest products from National Forest System lands for traditional and cultural purposes under the authority of section 8105 of the 2008 Farm Bill (and additionally reference 36 CFR 223.15). The collected information is required to determine if the requester meets the criteria for free-use or sale of forest products as authorized by regulations, and to ensure that the permittee/contractor complies with regulations and terms of the permit or contract.

This information allows Agency compliance personnel to identify permittees in the field.

Identification information is used to verify names and addresses, to record the individuals, and businesses obtaining forest products, and to record the Indian Tribes obtaining free use of trees, portions of trees, or forest products under the authority of section 8105 of the 2008 Farm Bill.

This information is necessary to ensure that individuals and businesses have not received product values in excess of the amount allowed by regulation in any one fiscal year.

Law enforcement and other personnel conducting field compliance checks use

the information to identify permittees, ensure that the person harvesting a forest product has a permit during the forest product collection, and to ensure that the forest product collection is being performed in the area described on the permit.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 174,198.

Frequency of Responses: Reporting: On occasion; Recordkeeping.

Total Burden Hours: 39,211.

Forest Service

Title: Community Forest and Open Space Conservation Program.

OMB Control Number: 0596–0227.

Summary of Collection: The Forest Service (FS) is authorized to implement the Community Forest and Open Space Program (CFP) under Section 8003 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234; 122 Stat. 2043), which amends the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). The purpose of the CFP is to achieve community benefits through grants to local governments, Indian Tribes, and nonprofit organizations to establish community forests by acquiring and protecting private forestlands.

Need and Use of the Information: The applicant will need to provide information as outlined in the rule and the request for proposal. Applicants representing local governments or non-profits will submit CFP applications to their State Foresters. Indian Tribes submit applications directly to the Forest Service. The State Forester or the equivalent Indian Tribe official, per section § 230.03 of the rule, will forward all applications to the FS. FS will use the information in the application to: (1) Determine that the applicant is eligible to receive funds under the program; (2) determine if the proposal meets the qualifications in the law and regulations; (3) evaluate and rank the proposals based on standard, consistent information; and (4) determine if the projects costs are allowable and sufficient cost share is provided. The FS would not be able to implement the program effectively or at all if the collection was conducted less frequently or not at all.

Description of Respondents: Non-profit Organizations; State, Local and Tribal Governments.

Number of Respondents: 50.

Frequency of Responses: Annually; Quarterly; Reporting and Record Keeping.

Total Burden Hours: 1,200.

Dated: December 8, 2021.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–26908 Filed 12–10–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Cold Storage Survey. Revisions to burden hours will be needed due to changes in the size of the target population, updated data collection plan, and the estimated average burden minutes to compete each questionnaire. The questionnaires have had some minor modifications to accommodate changes in the products stored by the industry, and to make the questionnaires easier to complete. The target population of cold storage operators (both mandatory and voluntary samples) will be contacted for this data on a monthly basis. The capacity survey is conducted once every other year of all operations with refrigerated storage capacity. Most of these surveys are voluntary; the one exception is for operations that store certain manufactured dairy products that are required by Public Law 106–532 and 107–171 to respond.

DATES: Comments on this notice must be received by February 11, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0001, by any of the following methods:

- *Email: omb officer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 202–720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at 202–690–2388 or at *omb officer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cold Storage Survey.

OMB Control Number: 0535–0001.

Expiration Date of Approval: May 31, 2022.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: 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.

The monthly Cold Storage Survey provides information on national supplies of food commodities in refrigerated storage facilities. A biennial survey of refrigerated warehouse capacity is also conducted to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply. Information on stocks of food commodities that are in refrigerated facilitates have a major impact on the price, marketing, processing, and distribution of agricultural products.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting

statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Most of these surveys are voluntary; the one exception is for operations that store certain manufactured dairy products that are required by Public Law 106–532 and 107–171 to respond.

Estimate of Burden: Public reporting burden for this information collection is based on 2 individual surveys with expected responses of 15–30 minutes. The Refrigerated Capacity Survey is conducted once every 2 years, the Cold Storage survey is conducted monthly.

Respondents: Refrigerated storage facilities.

Estimated Number of Respondents: 1,500.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 85%, we estimate the burden to be 5,300 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, December 1, 2021.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2021–26939 Filed 12–10–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the List Sampling Frame Surveys. Revision to burden hours will be needed due to (1) The survey not being conducted for 2022 due to the Census of Agriculture, and the discontinuation of the June Area Research Project (JARP) currently in the inventory. Annually, NASS obtains lists of farm and ranch operators from different crop and livestock organizations. Before adding these names to our list of active operators we will contact the individuals to determine if they qualify as a farm or ranch and then collect basic information from them on the size and type of operation they have. These data will be used to eliminate any duplication we may have with names already on our list.

DATES: Comments on this notice must be received by February 11, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0140, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–5142. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: List Sampling Frame Surveys.

OMB Control Number: 0535–0140.

Expiration Date of Approval: May 31, 2022.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The List Sampling Frame Surveys are used to develop and maintain a complete list of possible farm and ranch operations. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for agricultural operation surveys and the Census of Agriculture. Data from these agricultural surveys are used by government agencies and educational institutions in planning, farm policy analysis, and program administration. More importantly, farmers and ranchers use NASS data to help make informed business decisions on what commodities to produce and when is the optimal time to market their products. NASS data is useful to farmers in comparing their farming practices with the economic and environmental data published by NASS.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and the Office of Management and Budget regulations at 5 CFR part 1320. All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 to 15 minutes per respondent.

Respondents: Potential Farmers and Ranchers.

Estimated Number of Respondents: 260,000 (annual average).

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 65% NASS estimates the burden to be approximately 60,000 hours (annually).

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, December 1, 2021.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2021–26940 Filed 12–10–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the custom works surveys. This clearance allows NASS to conduct custom works surveys in a timely manner for the cooperating institutions providing funding for the surveys. There will be no revision to annual burden hours for the surveys.

DATES: Comments on this notice must be received by February 11, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0266, by any of the following methods:

- *Email: omb officer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* 855–838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 202–720–5142. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS–OMB Clearance Officer, at 202–690–2388 or at *omb officer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Custom Works Surveys.

OMB Control Number: 0535–0266.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for a period of three years.

Abstract: 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.

The Custom Works program will survey farmers who potentially paid for custom services during a specified reference period to collect information on how much they paid for those services. These services include land tillage, application of fertilizers and chemicals, planting, harvesting, hauling, various livestock tasks, and many more tasks. The program will provide farm operators with estimates of the average prices paid for different custom services in their state and/or local area. All questionnaires included in this information collection will be voluntary. This project is conducted as a cooperative effort between NASS and state agricultural departments and/or universities. Funding will be provided by the cooperating institutions under full cost recovery. The time between when funding for an individual survey is secured and the desired start of data collection is expected often to be too short to allow for a separate OMB approval for each survey. With this request, NASS will be able to provide services in a timelier manner.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113, 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this information collection is based on similar surveys with expected response time of 20 minutes. The estimated sample size will be approximately 42,000. The frequency of data collection for each survey is as needed by the cooperating institution. The estimated number of responses per respondent is 1. Publicity materials and instruction sheets will account for approximately 5 minutes of additional burden per respondent. Respondents who refuse to complete a survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Farmers who potentially paid for custom services during the reference period.

Estimated Number of Respondents: 42,000.

Frequency of Responses: On occasion.

Estimated Total Burden on Respondents: 16,000 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, December 1, 2021.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2021–26941 Filed 12–10–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #RBS–21–BUSINESS–0026]

Notice of Funding Opportunity for the Biofuel Producer Program for Fiscal Year 2021

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS or Agency), an agency of the United States Department of Agriculture (USDA), announces the application window, application requirements and the availability of up to $700 million in payments to eligible biofuel producers for unexpected market losses as a result of COVID–19 in order to maintain a viable and significant biofuels market for agricultural producers that supply biofuel producers. The Biofuel Producer Program is authorized under Title I of Division B of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Applications for the Biofuel Producer Program must be received by 11:59 p.m. EDT on February 11, 2022.

ADDRESSES: Application materials, requirements and other important information is available on the Biofuel Producer Program's website at *https://www.rd.usda.gov/programs-services/energy-programs/biofuel-producer-relief-payments-program.* Application materials may also be obtained by contacting the Agency at *EnergyPrograms@usda.gov.*

Application submission: Applications must be submitted electronically to *EnergyPrograms@usda.gov* by the deadline stated in the **DATES** section of this Notice.

FOR FURTHER INFORMATION CONTACT: Lisa Noty, USDA Rural Development, Rural Business-Cooperative Service. Telephone: (712) 254–4366, email: *lisa.noty@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Title: Notice of Funding Opportunity for the Biofuel Producer Program for Fiscal Year 2021.

Announcement Type: Notice of Funding Opportunity.

Assistance Listings Number: 10.378.

Due Date for Applications: Applications must be submitted electronically to *EnergyPrograms@usda.gov* and must be received by 11:59 p.m. Eastern Daylight Time (EDT) February 11, 2022.

A. Program Description

1. *Purpose of the program.* The Biofuel Producer Program will make payments to eligible producers of eligible biofuel for unexpected market losses as a result of COVID–19. These payments to biofuel producers support the maintenance and viability of a significant market for agricultural producers of products such a corn, soybean or biomass that supply biofuel production. Payment to a biofuel producer will be based upon the volume of market loss the biofuel producer experienced in calendar year 2020. The producer's volume of market loss will be calculated by comparing the amount of fuel (gallons of eligible biofuel) they produced in calendar year 2020 to the amount of fuel (gallons of eligible biofuel) produced in calendar year 2019. Eligible biofuel (gallons of biofuel) produced by the eligible producer in 2020 to meet required contractual commitments resulting in a gross profit loss will be deducted from 2020 production by the Agency's calculation of program payments. Quantities of gaseous biofuel will be converted into gallons based on the British Thermal Unit (BTU) equivalent of one gallon of biodiesel using factors published by the Energy Information Administration (EIA).

The payments will be based on a fixed amount per gallon for all eligible producers. The fixed amount per gallon will be calculated by dividing the amount of program funding available by the total volume of market loss reported by eligible program applicants. USDA may limit the payment fixed amount per gallon.

2. *Statutory authority.* The CARES Act (Pub. L. 116–136) authorizes the Secretary of Agriculture to prevent, prepare for, and respond to coronavirus by providing support for agricultural producers impacted by coronavirus. This authority includes supporting agricultural producers that rely on biofuels producers as a market for their agricultural products such as corn, soybeans and biomass, by making payments to producers of biofuels in order to maintain a viable and significant market for such agricultural products in light of the adverse effects on that market from the coronavirus. In some cases, crops have been specifically developed for biofuel production, such as high-amylase corn varieties that are designed for the ethanol fermentation process. Many agricultural producers may be part of farmer-owned cooperatives that in some case require members to supply a certain amount of a crop to the plant.

3. *Definitions.* The following definitions are applicable to this Notice:

Agency means Rural Business-Cooperative Service, USDA, Rural Development.

Applicant means a sole proprietorship or legal entity who makes a request for payment under this Notice.

Eligible biofuel means renewable fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel, comprised of advanced biofuel, biomass-based diesel, cellulosic biofuel, or conventional biofuel, as such terms are defined in section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)) produced in the United States.

Eligible producer means a sole proprietorship or legal entity that produces an eligible biofuel. A sole proprietorship or legal entity that produces eligible biofuel as a third-party producer under a toll/bailment arrangement production contract is considered an eligible producer under this Notice. The following are not considered an eligible producer under this Notice:

i. A sole proprietorship or legal entity that exclusively contracts for the production of biofuel by a third-party

producer(s) under a toll/bailment arrangement/third party production contract.

ii. A sole proprietorship or legal entity that blends or otherwise combines biofuels into a blended biofuel.

Gross Profit means revenue minus the cost of goods sold. Gross profit only includes variable costs and does not account for fixed costs.

Recipient means a sole proprietorship or legal entity receiving a Biofuel Producer Program payment under this Notice.

B. Federal Award Information

Type of awards: Payment.

Available funds: Up to $700,000,000.

Payment amounts: The total number of payments and the funding provided per recipient will depend on the number of eligible recipients.

Due date for applications: Applications must be submitted electronically to *EnergyPrograms@usda.gov* and must be received by 11:59 p.m. EDT February 11, 2022.

Anticipated award date: Payments to participating biofuels producers will be made following the conclusion of the application cycle. The Agency anticipates only making one payment to selected applicants under this Notice.

Type of assistance instrument: Payment.

C. Eligibility Information

1. *Eligible applicants.* To be eligible for this program, the applicant must be an independent eligible producer or own and control multiple eligible producer entities as defined in section A.3 of this Notice. Eligible producers that are owned or controlled by a sole proprietorship or entity that owns or controls multiple eligible producers are not eligible applicants—in such cases, the sole proprietorship or entity that owns or controls multiple eligible producers may be an eligible applicant. In addition, to be eligible for this program, applicants must meet all requirements for program payments, and must meet the citizenship requirement specified in paragraphs i or ii, as applicable, of this section.

i. If the applicant is a sole proprietorship, the applicant must be a citizen or national of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or must reside in the U.S. after legal admittance for permanent residence.

ii. If the applicant is an entity other than a sole proprietorship, the applicant must be at least 51 percent owned by persons who are either citizens or nationals of the U.S., the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or legally admitted permanent residents residing in the U.S.

iii. The Agency will determine an applicant's eligibility for participation in this program.

iv. If additional information is needed for the Agency to determine an applicant's eligibility, the Agency will notify the applicant, in writing, as soon as practicable. This notification will identify, at a minimum, the additional information being requested and a timeframe in which to supply the information.

v. An otherwise eligible producer will be determined to be ineligible if the producer:

a. Refuses to allow the Agency to verify any information provided by the applicant under this program, including information for determining applicant eligibility and application payments; or

b. Fails to meet any of the conditions set out in this Notice or in other program documents; or

c. Fails to comply with all applicable Federal, tribal, state, and local laws.

2. *Eligible recipient.* Payments will be made to eligible producers of eligible biofuel for unexpected market losses as a result of COVID–19.

3. *Other.* Applicants must report all production of all eligible biofuel for all their production facilities under a single application and must include production facilities that did not experience market losses. A production facility may be reported by only one applicant. Application requirements and other important information is available on the program's website [Insert Web Address].

D. Application and Submission Information

1. *Web Address for requesting application package.* Applicants seeking to participate in this program must submit an application in accordance with this Notice. Application and supporting materials are available on the program's website at *https://www.rd.usda.gov/programs-services/energy-programs/biofuel-producer-relief-payments-program.*

2. *Electronic application and submission.* Applications must be submitted electronically to *EnergyPrograms@usda.gov.* Instructions and resources for completing the application are available on the program's website at *https://www.rd.usda.gov/programs-services/energy-programs/biofuel-producer-relief-payments-program.* No other form of application will be accepted.

3. *Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Award Management (SAM).* All applicants must have a DUNs number which can be obtained at no cost via a toll-free request line at (866) 705–5711 or online at *http://fedgov.dnb.com/webform.*

i. Each applicant must (a) be registered in the System for Award Management (SAM) before submitting its application and (b) provide a valid unique entity identifier in its application, unless determined exempt under 2 CFR 25.110. It is strongly recommended that applicants begin the registration process as soon as possible.

ii. Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

iii. Applicant must complete the Financial Assistance General Certifications and Representations in SAM.

iv. The Agency will not make an award until the applicant has complied with all applicable DUNS (unique entity identifier) and SAM requirements including maintaining an active SAM registration. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Content of Application.* Applications must contain all parts necessary for the Agency to determine applicant eligibility, conduct the application evaluation, and calculate payment, as applicable, in order to be considered.

i. A complete application is comprised of the following elements:

a. *Application form,* Form RD 4288–7.

b. *Application worksheet reporting production of eligible biofuel, Part B Attachment to Form RD 4288–7.* Applicants producing eligible biofuel in more than one production facility must report production for all of their production facilities including production facilities that did not experience market losses.

c. *Automated Clearing House Vendor/Miscellaneous Payment Enrollment Form, Form SF–3881.*

d. *Assurance Agreement,* Form RD 400–4.

e. *Disclosure of Lobbying Activities,* Form SF–LLL.

f. *Certification for Contracts, Grants and Loans* (RD Instruction 1940–Q; Exhibit A–1).

g. *Contracts and Financial Information.* Include copies of contracts and financial statements and supporting documentation for payment requests that include production in 2020 that was required to meet contractual commitments and resulted in a gross profit loss.

h. *Certifications.* The producer must furnish the Agency the Renewable Identification Number (RIN) for each biofuel and all required certifications before acceptance into the program and furnish access to the producer's records required by the Agency to verify compliance with program provisions. The required certifications depend on the type of biofuel produced.

1. *Alcohol.* For alcohol producers with authority from the Bureau of Alcohol, Tobacco and Firearms (ATF) to produce alcohol, certify to compliance of either:

i. The Alcohol Fuel Producers Permit (ATF F 5110.74) or

ii. The registration of Distilled Spirits Plant (ATF F 5110.41) and Operating Permit (ATF F 5110.23).

2. *Hydrous ethanol.* For hydrous ethanol that is upgraded by another distiller to anhydrous ethyl alcohol, the increased ethanol production is eligible for payment one time only. If the biofuel producer submitting the application under this notice is:

i. The hydrous ethanol producer, then the biofuel producer shall include with the application a certification, acceptable to the Agency, from the distiller stating that the:

A. Applicable hydrous ethanol produced is distilled and denatured for fuel use according to ATF requirements, and

B. Distiller will not submit an application for payment under this notice.

ii. The distiller that upgrades hydrous ethanol to anhydrous ethyl alcohol, then the biofuel producer shall include with the application a certification, acceptable to the Agency, from the hydrous ethanol producer stating that the hydrous ethanol producer will not submit an application for payment under this notice.

Note: The Agency may pay the first applicant to the exclusion of other possible applicants. Or, the Agency may require an agreement as to payment before paying either. Alternatively, the Agency may designate whether the distiller or the hydrous ethanol producer will be the payee where needed to ensure program integrity.

3. *Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass.* For these fuels, the biofuel producer's certification that the producer, the biofuel biorefinery, and the biofuel meet the definition, registration requirements as applicable under the Energy Independence and Security Act, and Clean Air Act, and quality requirements per applicable ASTM International standards and commercially acceptable quality standards of the local market. The biofuel producer must also provide the Renewable Identification Number (RIN) for each biofuel and BQ–9000 certification.

4. *Gaseous biofuel.* For gaseous biofuel producers, copy of contract and certification that the biofuel meets commercially acceptable pipeline quality standards of the local market.

ii. All applications determined to be insufficient to determine eligibility as stated in Sections C and D.3 of this Notice shall be deemed as incomplete and will not receive funding.

5. *Submission dates and times.* The deadline date for applications to be received, in order to be considered for funding, is specified in the **DATES** section at the beginning of this notice.

6. *Funding restrictions.* The following restrictions apply:

i. The Agency anticipates only making one payment to an eligible applicant under this Notice.

ii. An applicant that is otherwise an eligible producer under this Notice and also contracts for production of biofuel by a third-party producer under a toll/bailment arrangement/third party production contract, may not include the biofuel produced by the third party. The application for payment under this Notice will only include eligible biofuel produced by the eligible applicant and not the biofuel produced by a third party under a third-party contract.

7. *Other Submission Requirements.* The following requirements apply:

i. Applications must be submitted electronically.

ii. Only one application may be submitted per applicant.

A. Applications by an eligible producer requesting payments for multiple facilities must be submitted under a single application and must report production for all their production facilities including production facilities that did not experience market losses.

B. Applications requesting payments for multiple eligible producer entities controlled by a sole proprietorship or entity must be submitted under a single application by the controlling (parent) entity. Applicants must report production for all production facilities the controlling entity (parent) controls under a single application including production facilities that did not experience market losses.

E. Application Review Information

1. *Criteria.* The applicant must be an eligible applicant and meet the requirements of section C. Eligibility Information. The applicant must be an eligible producer and produce eligible biofuel. Payment to an eligible producer will be based upon the volume of market loss the biofuel producer experienced in calendar year 2020 based on the requirements specified in this notice. Market loss will be calculated by comparing the amount of fuel (gallons of eligible biofuel) an applicant produced in calendar year 2019 to the amount of fuel (gallons of eligible biofuel) produced in the calendar year 2020. Applicants producing eligible biofuel in more than one production facility, market loss will be calculated based on the production for all of their production facilities including production facilities that did not experience market losses.

2. *Review and selection process.* The Agency will make its determination as to whether or not the applicant, producer, and biofuel is eligible for payment. If an applicant, producer, or biofuel is determined to be ineligible, the Agency will notify the applicant, in writing, of its determination and inform of any review and appeal rights. Payments to successfully appealed applications will be limited to available funding. After an application is submitted, eligible producers may be required to submit additional clarification if their original submittal is not sufficient to verify eligibility for payment or amount of payment.

3. *Payment provisions.* Payments will be made to all eligible producers based on the requirements specified in this notice in accordance with the provisions of this section.

i. Market loss. Eligible producers of eligible biofuel produced in the United States, shall demonstrate unexpected market losses as a result of COVID–19 by furnishing data containing:

a. Amount of eligible biofuel (gallons of biofuel) produced by the eligible producer in the calendar year 2019 as part of the application worksheet described in section D.4.i.b. of this Notice.

b. Amount of eligible biofuel (gallons of biofuel) produced by the eligible producer in the calendar year 2020 as part of the application worksheet

described in section D.4.i.b. of this Notice.

c. Amount of eligible biofuel (gallons of biofuel) reported under (b), above, produced by the eligible producer in 2020 to meet required contractual commitments resulting in a gross profit loss.

d. A signed statement from the applicant attesting to the validity of the information furnished under (a)–(c) above contained in the application form described in section D.4.i.a. of this Notice.

e. Any supporting documentation or data that the applicant may believe will be useful in evaluating the volume of market loss experienced as a result of COVID–19.

ii. Execution of Payments. Based upon the volume of market loss experience data collected as a result of this Notice, the USDA will affix a target volume amount per gallon, limited by the amount of funding available under the authorizing legislation. The amount of payment to a recipient will not exceed $50 million. The maximum amount of payment will be applied for each controlling (parent) entity. The Agency will convert the production of gaseous biofuel into gallons based on the BTU equivalent of one gallon of biodiesel using factors published by the EIA.

iii. Payment liability. Any payment, or portion thereof, made under this Notice shall be made without regard to questions of title under state law and without regard to any claim or lien against the advanced biofuel, or proceeds thereof, in favor of the owner or any other creditor, except agencies of the U.S. Government or to the extent such payments are subject to offset for debts referred to the Treasury Offset Program.

iv. Refunds and interest payments. A biofuel producer who receives payments under this Notice may be required to refund such payments as specified in this section. If the Agency suspects fraudulent representation through its review and records inspections, the producer will be referred to the Office of Inspector General for appropriate action.

a. A biofuel producer receiving payments under this Notice shall become ineligible if the Agency determines the biofuel producer has: (1) Made any fraudulent representation; or (2) misrepresented any material fact affecting an Agency determination.

b. If an Agency determination that a producer is not eligible for participation under this Notice is appealed and overturned, the Agency will make an appropriate and applicable payment to the producer from program funds, to the extent such funds are available.

c. Any payment made to an entity determined by the Agency to be ineligible shall be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs as determined appropriate under 31 CFR 901.9.

d. When a refund is due, it shall be paid promptly. The Agency may use all collection remedies available to it in accordance to 7 CFR part 3, including but not limited to offset of federal and state payments through the Treasury Offset Program, reporting of the debt to commercial credit reporting agencies, debarment from receiving federal financial assistance under 31 U.S.C. 3720B, and referral to the Department of Justice for enforcement through litigation.

4. *Appeals.* Applicants may have either appeal or review rights for Agency decisions made under this Notice. Agency decisions that are adverse to the individual applicant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11. All appeal provisions will be concluded before proceeding with collection actions.

F. Federal Awarding Administration Information

1. *Federal award notices.* Applicants will be contacted in writing by the Agency to arrange transfer of program payments under this Section. If a producer is determined to be ineligible, the Agency will notify the producer, in writing, of its determination and inform the producer of any review and appeal rights. Payments to successfully appealed applications will be limited to available funding.

2. *Administrative and national policy requirements.* The Agency reserves the right to request/require that the applicant provide original signatures on forms submitted electronically.

3. *Reporting.* All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. If an applicant does not have an exception under 2 CFR 170.110(b), the applicant must then ensure that it has the necessary processes and systems in place to comply with the reporting requirements to receive funding.

In addition, the Agency is requesting that each applicant provide race, ethnicity, and gender information about the applicant. The information will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. *Applicants are encouraged to furnish this information with their applications but are not required to do so.* An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information.

G. Federal Awarding Agency Contacts

For further information, contact Lisa Noty, Loan and Grant Specialist, Program Operations Office, USDA Rural Business-Cooperative Service, 511 West 7th Street, Atlantic, Iowa 50022. Telephone: (712) 254–43661400. Email: *lisa.noty@usda.gov.* Persons with disabilities that require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

H. Other Information

1. *Congressional Review Act.* Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule as defined by 5 U.S.C. 804(2) because it is likely to result in an annual effect on the economy of $100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Application selection will not begin until after February 11, 2022. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the Biofuel Producer Program.

2. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Agency requested that the Office of Management and Budget (OMB) conduct an emergency review by December 13, 2021, of a new information collection that contains the Information Collection and Recordkeeping requirements contained in this notice.

Copies of all forms and instructions referenced in this Notice may be obtained from the program's website at *https://www.rd.usda.gov/programs-services/energy-programs/biofuel-producer-relief-payments-program.* Data furnished by the applicants will be used to determine eligibility for program

benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied. 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 will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumption 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 using appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

Title: Biofuel Producer Program.

Type of Request: New collection.

Abstract: The Biofuel Producer Program was authorized under Title I of Division B of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136). The purpose of the program is to make payments to eligible producers of eligible biofuel for unexpected market losses as a result of COVID–19.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.57 hours per response.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 633.

Estimated Total Recordkeeping Hours: 0.

Estimated Total Burden Hours: 996.

Estimated Total Annual Burden (including recordkeeping) on Respondents: 996 hours.

Copies of this information collection can be obtained from Pamela Bennett, Management Analyst, Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250. Phone: 202–720–9639. Email: *pamela.bennett@usda.gov.*

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

3. *Environmental review information.* Payments are being made to producers with existing facilities. Therefore, payments made under this Notice are categorically excluded from the environmental review process.

4. *Other federal statutes.* The applicant must certify to compliance with other Federal statutes and regulations by completing the Financial Assistance General Certifications and Representations in SAM, including, but not limited to the following:

i. 7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964. Civil Rights compliance includes, but is not limited to the following:

a. Race and ethnicity data will be collected in accordance with Office of Management and Budget (OMB) **Federal Register** Notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (published October 30, 1997 at 62 FR 58782). Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by RBCS.

b. The applicant must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 12250, and 7 CFR part 1901, subpart E.

ii. 2 CFR part 417—Governmentwide Debarment and Suspension (Non-procurement), or any successor regulations.

iii. 2 CFR parts 200 and 400 (Uniform Assistance Requirements, Cost Principles and Audit Requirements for Federal Awards), or any successor regulations.

iv. Subpart B of 2 CFR part 421, which adopts the Governmentwide implementation (2 CFR part 182) of the Drug-Free Workplace Act.

v. Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency.'' For information on limited English proficiency and agency-specific guidance go to *http://www.lep.gov/.*

vi. Federal Obligation Certification on Delinquent Debt.

5. *Nondiscrimination Statement.* In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2021–26876 Filed 12–10–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Property Management

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 October 6, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Economic Development Administration (EDA), Commerce.

Title: Property Management.

OMB Control Number: 0610–0103.

Form Number(s): None.

Type of Request: Regular submission; Extension without change of a currently approved information collection.

Number of Respondents: 150 (54 incidental use requests and 96 requests to release EDA's property interest each year).

Average Hours per Response: Each request takes an estimated 45 minutes initially, with an estimated two hours to provide additional documentation or respond to follow-up questions, as necessary.

Burden Hours: 412.50 hours.

Type of request	Number of respondents	Average hours per response	Estimated burden hours
Incidental use request	54	2.75	148.5
Release request	96	2.75	264
Total	150		412.5

Needs and Uses: To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. First, this collection of information allows EDA to determine whether an incidental use of property acquired or improved with EDA investment assistance is appropriate. Pursuant to 13 CFR part 314.3(g), an incidental use of property: (1) Does not interfere with the scope of the project or the economic purpose for which the investment was made; (2) provided that the recipient is in compliance with applicable law and the terms and conditions of the investment assistance, and (3) the incidental use of the property will not violate the terms and conditions of the investment assistance or otherwise adversely affect the economic useful life of the property. A recipient must request in writing EDA's approval to undertake an incidental use of property acquired or improved with EDA's investment assistance pursuant to.

Second, this collection of information allows EDA to determine whether to release its real property or tangible personal property interests. If a recipient wishes for EDA to release its real property or tangible personal property interests before the expiration of the property's estimated useful life, the recipient must submit a written request to EDA. Pursuant to 13 CFR 314.10(c), the recipient must disclose to EDA the intended future use of the property for which the release is requested.

Affected Public: Current recipients of EDA awards, including: (1) Cities or other political subdivisions of a State, including a special purpose unit of state or local government engaged in economic or infrastructure development activities; (2) States; (3) institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes.

Frequency: When requested by a financial assistance award recipient.

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et. seq*).

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view 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 0610–0103.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–26932 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Request To Amend an Investment Award and Project Service Maps

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 October 6, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Economic Development Administration (EDA), Commerce.

Title: Request to Amend an Investment Award and Project Service Maps.

OMB Control Number: 0610–0102.

Form Number(s): None.

Type of Request: Extension without change of a currently approved information collection.

Number of Respondents: 632.

Average Hours per Response: 2 hours for an amendment to a construction award, 1 hour for an amendment to a non-construction award, and 6 hours for a project service map.

Burden Hours: 1,242 hours.

Type of request	Number of respondents	Average hours per response	Estimated burden hours
Requests for amendments to construction awards	600	2 hours/request	1,200
Requests for amendment to non-construction awards	30	1 hour/request	30
Project service maps	2	6 hours/map	12
Total	632		1,242

Needs and Uses: To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applicants for, and recipients of, EDA investment assistance. EDA proposes to extend this information collection for when a recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award (see 13 CFR 302.7(a)). Additionally, EDA may require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being assisted (see 13 CFR 302.16(c)).

Affected Public: Current recipients of EDA awards, including: (1) Cities or other political subdivisions of a State, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) States; (3) institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; (6) Indian Tribes; and (7) (for training, research, and technical assistance awards only) individuals and for-profit businesses.

Frequency: As needed to amend an investment award.

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et. seq).*

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view 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 0610–0102.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–26933 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–159–2021]

Approval of Expansion of Subzone 18F; Lam Research Corporation, Livermore, California

On October 21, 2021, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of San Jose, grantee of FTZ 18, requesting an expansion of Subzone 18F, subject to the existing activation limit of FTZ 18, on behalf of Lam Research Corporation, in Livermore, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 59361–59362, October 27, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to expand Subzone 18F was approved on December 7, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 18's 2,000-acre activation limit.

Dated: December 7, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–26888 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–090]

Certain Steel Wheels 12 to 16.5 inches in Diameter From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Investigation and Notice of Amended Final Antidumping Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 18, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00188, Slip Op. 21–156 (CIT November 18, 2021) sustaining the Department of Commerce (Commerce)'s remand redetermination pertaining to the antidumping duty (AD) investigation of certain steel wheels 12 to 16.5 inches in diameter (certain steel wheels) from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination with respect to the dumping margin assigned to entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a Physical Vapor Deposition (PVD) process produced and/or exported from the China by Zhejiang Jingu Company Limited (Jingu), or produced by Xingmin Intelligent Transportation Systems (Group) (Xingmin Intelligent) and imported by Trans Texas Tire LLC (Trans Texas).

DATES: Applicable November 29, 2021.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5848.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2019, Commerce published its final determination in the AD

investigation of certain steel wheels China.[1] Commerce subsequently published the AD order on certain steel wheels from China.[2]

As initiated, the scope of the underlying investigation excluded ''certain on the road steel wheels that are coated entirely with chrome.'' [3] Prior to the preliminary affirmative determination in the underlying investigation, Dexstar Wheel Division of Americana Development, Inc. (the petitioner) filed additional scope comments regarding the exclusion of chrome wheels, specifically requesting that Commerce confirm that the chrome wheel exclusion did not include PVD chrome wheels.[4] However, due to the proximity of the date on which the petitioner's comments (and relevant rebuttal comments) were received relative to the statutory deadline for the issuance of the *Preliminary Determination,* Commerce deferred consideration of the petitioner's comments to the final determination.[5] Accordingly, the scope language in Commerce's *Preliminary Determination* remained unchanged from that of the *Initiation Notice* with respect to the exclusion of steel wheels coated entirely with chrome, and did not explicitly address whether this exclusionary language covered PVD chrome wheels.[6]

Subsequent to the *Preliminary Determination,* Commerce solicited additional information with respect to this issue, and parties provided further information and argumentation in response. Commerce then evaluated the record with respect to this issue for the first time in its Final Scope Memo finding with respect to PVD chrome wheels that:

based on evidence and information in the Petition, we find that the petitioner intended the exclusion to cover electroplated chrome wheels and was not intended to cover other types of chrome-adhering processes; nor were other types of chrome adhering processes, such as PVD, considered anywhere on the record prior to the respondent party's clarification request, in which case the petitioner promptly and consistently maintained its intent with respect to the chrome exclusion language. Thus, we do not find that limiting the exclusion to electroplating expands the scope, as the exclusion was never meant to cover PVD chrome wheels and, therefore, carving out an exception for PVD wheels from the exclusion is a clarification and not an impermissible expansion of the scope.[7]

Accordingly, the scope of the *Final Determination* and resulting AD order provided the following with respect to chrome-coated wheels:

> Excluded from this scope are the following: . . . (3) certain on-the-road steel wheels that are coated entirely in chrome. This exclusion is limited to chrome wheels coated entirely in chrome and produced through a chromium electroplating process, and does not extend to wheels that have been finished with other processes, including, but not limited to, Physical Vapor Deposition (PVD){.}

Further, in the Final Scope Memo, Commerce noted that ''the clarification that the exclusion in the scope for chrome wheels does not cover PVD chrome wheels is a clarification, based on the petitioner's original intent in the Petition, not an expansion of the scope. Thus, PVD chrome wheels are subject to duties from the start of suspension of liquidation, which was the preliminary determinations,'' and declined to revise the scope language to specify that the clarification of the exclusion for chrome wheels applies only to entries following the *Final Determination.*[8]

Trans Texas and Jingu challenged Commerce's scope determination before the CIT, arguing that Commerce unlawfully expanded the scope of the AD investigation (and resulting order) to include PVD chrome wheels. Trans Texas and Jingu further argued that, even if the inclusion of PVD chrome wheels was lawful, Commerce erred by retroactively assessing antidumping duties on PVD chrome wheel imports back to the date of its *Preliminary Determination.*

In its *Remand Order,* the Court determined that, while Commerce adequately explained its decision to include in the final scope of the investigation steel trailer wheels coated in chrome through a PVD process, antidumping duties on PVD chrome wheels retroactively imposed back to the date of Commerce's preliminary determination were not imposed in accordance with law.[9] In particular, the Court held that retroactive assessment of duties back to the date of Commerce's preliminary determination was impermissible because Commerce did not provide adequate notice of the inclusion of PVD chrome wheels prior to the Final Scope Memo,[10] and, thus, remanded the *Final Determination* for Commerce to reformulate its instructions consistent with the *Remand Order.*[11]

On June 14, 2021, Commerce issued its Final Results of Redetermination, noting our intent to issue an amended final determination to clarify the date of imposition of antidumping duties to be the date of publication of the *Final Determination* and to issue instructions to U.S. Customs and Border Protection (CBP) with respect to Trans Texas and Jingu providing that entries of PVD chrome wheels entered, or withdrawn from warehouse, for consumption on or after April 22, 2019, up to and including July 8, 2019, are excluded from the scope of the investigation, consistent with the Court's *Remand Order.*[12] These instructions give effect to the Court's holding that ''reasonably informed importers were not provided clear or meaningful notice of the inclusion of PVD chrome wheels until the publication of the Final Scope Memo.'' [13]

On November 18, 2021, the CIT sustained Commerce's final redetermination, and entered final judgment.[14]

Timken Notice

In its decision in *Timken,*[15] as clarified by *Diamond Sawblades,*[16] the

[1] *See Certain Steel Trailer Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances,* 84 FR 32707 (July 9, 2019) (*Final Determination*).

[2] *See Certain Steel Trailer Wheels 12 to 16.5 Inches from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 84 FR 45952 (September 3, 2019) (*Order*).

[3] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 45095 (September 5, 2018) (*Initiation Notice*).

[4] *See* Petitioner's Letter, ''Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Clarification of the Exclusion of Chrome Wheels,'' dated March 28, 2019.

[5] *See* Memorandum, ''Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated April 15, 2019.

[6] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances,* 84 FR 16643 (April 22, 2019) (*Preliminary Determination*) at Appendix 1.

[7] *See* Memorandum, ''Certain Steel Wheels from the People's Republic of China: Final Scope Decision Memorandum for the Final Antidumping Duty and Countervailing Duty Determinations,'' dated July 1, 2019 (Final Scope Memo) at 15.

[8] *Id.* at 16.

[9] *See Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00188, Slip Op. 21–62 (CIT May 18, 2021) (*Remand Order*) at 12 and 20.

[10] *See* Final Scope Memo.

[11] *See Remand Order* at 20–21.

[12] *See* Final Results of Redetermination Pursuant to Court Remand, *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00188; Slip Op. 21–62, dated June 14, 2021 (Final Results of Redetermination).

[13] *See Remand Order* at 20.

[14] *See Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00188, Slip Op. 21–156 (CIT November 18, 2021).

[15] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[16] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's November 18, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination and Liquidation of Suspended Entries

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to the dumping margin assigned to entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a PVD process produced and/or exported from China by Jingu, or produced by Xingmin Intelligent and imported by Trans Texas, which were entered or withdrawn from warehouse, for consumption on or after April 22, 2019 (the date of publication of the *Preliminary Determination* in the **Federal Register**), up to and including July 8, 2019 (the day before the publication of the *Final Determination* in the **Federal Register**), and which remained unliquidated as of the date of the relevant preliminary injunction (September 4, 2020, in the case of merchandise produced and/or exported by Jingu; and November 27, 2019, in the case of merchandise produced by Xingmin Intelligent and imported by Trans Texas).

Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. Specifically, we will direct CBP to suspend or continue to suspend liquidation of such entries at a zero percent cash deposit rate during the pendency of the appeals process until specific liquidation instructions are issued, and we will notify CBP that it is authorized to grant a refund of cash deposits for such entries, if requested by the importer prior to liquidation pursuant to 19 U.S.C. 1520(a)(4). In the event the Court's ruling is not appealed or, if appealed, upheld by the Court of Appeals for the Federal Circuit, Commerce will instruct CBP that entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a PVD process, which: (a) Were the subject of the *Final Determination;* (b) were produced and/or exported from China by Jingu, or were produced by Xingmin Intelligent and imported by Trans Texas; (c) were entered, or withdrawn from warehouse, for consumption on or after April 22, 2019 up to and including July 8, 2019; and (d) remain unliquidated as of September 4, 2020 (for wheels produced and/or exported from China by Jingu) or remain unliquidated as of November 27, 2019 (for wheels produced by Xingmin Intelligent Transportation Systems (Group) and imported by Trans Texas); are outside of the scope of the AD order on certain steel trailer wheels from China.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: November 24, 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. 2021–26997 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–091]

Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation and Notice of Amended Final Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 18, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00189, Slip Op. 21–157 (CIT November 18, 2021) sustaining the Department of Commerce (Commerce)'s remand redetermination pertaining to the countervailing duty (CVD) investigation of certain steel wheels 12 to 16.5 inches in diameter (certain steel wheels) from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final determination in that investigation, and that Commerce is amending the final determination and the resulting CVD order with respect to the CVD margin assigned to entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a Physical Vapor Deposition (PVD) process produced and/or exported from the China by Zhejiang Jingu Company Limited (Jingu), or produced by Xingmin Intelligent Transportation Systems (Group) (Xingmin Intelligent) and imported by Trans Texas Tire LLC (Trans Texas).

DATES: Applicable November 29, 2021.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5848.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2019, Commerce published its final determination in the CVD investigation of certain steel wheels China.[1] Commerce subsequently published the CVD order on certain steel wheels from China.[2]

As initiated, the scope of the underlying investigation excluded ''certain on the road steel wheels that are coated entirely with chrome.'' [3] This scope exclusion remained unchanged in the CVD preliminary determination published on February 25, 2019.[4] Subsequent to the *Preliminary Determination,* though prior to the preliminary determination in the less-than-fair-value (LTFV) investigation, Dexstar Wheel Division of Americana Development, Inc. (the petitioner) filed additional scope comments regarding the exclusion of chrome wheels, specifically requesting that Commerce confirm that the chrome wheel exclusion did not include PVD chrome wheels.[5] However, due to the proximity of the date on which the petitioner's comments (and relevant rebuttal

[1] *See Certain Steel Trailer Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances,* 84 FR 32723 (July 9, 2019) (*Final Determination*).

[2] *See Certain Steel Trailer Wheels 12 to 16.5 Inches from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 84 FR 45952 (September 3, 2019) (*Order*).

[3] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 83 FR 45100 (September 5, 2018) (*Initiation Notice*).

[4] *See Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 84 FR 5989 (February 25, 2019) (*Preliminary Determination*) at Appendix 1.

[5] *See* Petitioner's Letter, ''Certain Steel Wheels (12 to 16.5 Inches in Diameter) from China: Petitioner's Clarification of the Exclusion of Chrome Wheels,'' dated March 28, 2019.

comments) were received relative to the statutory deadline for the issuance of the LTFV preliminary determination, Commerce deferred consideration of the petitioner's comments to the final determinations of the LTFV and CVD investigations.[6] Accordingly, the scope language in Commerce's *Initiation Notice* and *Preliminary Determination* did not explicitly address whether the scope exclusion for steel wheels coated entirely with chrome covered PVD chrome wheels.

Based on the petitioner's scope comments, Commerce solicited additional information with respect to PVD chrome wheels, and parties provided further information and argumentation in response. Commerce then evaluated the record with respect to this issue for the first time in its Final Scope Memo, finding with respect to PVD chrome wheels that:

> based on evidence and information in the Petition, we find that the petitioner intended the exclusion to cover electroplated chrome wheels and was not intended to cover other types of chrome-adhering processes; nor were other types of chrome adhering processes, such as PVD, considered anywhere on the record prior to the respondent party's clarification request, in which case the petitioner promptly and consistently maintained its intent with respect to the chrome exclusion language. Thus, we do not find that limiting the exclusion to electroplating expands the scope, as the exclusion was never meant to cover PVD chrome wheels and, therefore, carving out an exception for PVD wheels from the exclusion is a clarification and not an impermissible expansion of the scope.[7]

Accordingly, the scope of the *Final Determination* and resulting CVD order provided the following with respect to chrome-coated wheels:

> Excluded from this scope are the following: . . . (3) certain on-the-road steel wheels that are coated entirely in chrome. This exclusion is limited to chrome wheels coated entirely in chrome and produced through a chromium electroplating process, and does not extend to wheels that have been finished with other processes, including, but not limited to, Physical Vapor Deposition (PVD){.}

Further, in the Final Scope Memo, Commerce noted that ''the clarification that the exclusion in the scope for chrome wheels does not cover PVD chrome wheels is a clarification, based on the petitioner's original intent in the Petition, not an expansion of the scope. Thus, PVD chrome wheels are subject to duties from the start of suspension of liquidation, which was the preliminary determinations,'' and declined to revise the scope language to specify that the clarification of the exclusion for chrome wheels applies only to entries following the *Final Determination*.[8]

Trans Texas and Jingu challenged Commerce's scope determination before the CIT, arguing that Commerce unlawfully expanded the scope of the CVD investigation (and resulting order) to include PVD chrome wheels. Trans Texas and Jingu further argued that, even if the inclusion of PVD chrome wheels was lawful, Commerce erred by retroactively assessing countervailing duties on PVD chrome wheel imports back to the date of its *Preliminary Determination.*

In its *Remand Order,* the Court determined that, while Commerce adequately explained its decision to include in the final scope of the investigation steel trailer wheels coated in chrome through a PVD process, countervailing duties on PVD chrome wheels retroactively imposed back to the date of Commerce's preliminary determination were not imposed in accordance with law.[9] In particular, the Court held that retroactive assessment of duties back to the date of Commerce's preliminary determination was impermissible because Commerce did not provide adequate notice of the inclusion of PVD chrome wheels prior to the Final Scope Memo [10] and, thus, remanded the *Final Determination* for Commerce to reformulate its instructions consistent with the *Remand Order.*[11]

On June 14, 2021, Commerce issued its Final Results of Redetermination, noting our intent to issue an amended final determination to clarify the date of imposition of countervailing duties to be the date of publication of the *Final Determination* and to issue instructions to U.S. Customs and Border Protection (CBP) with respect to Trans Texas and Jingu providing that entries of PVD chrome wheels entered, or withdrawn from warehouse, for consumption on or after February 25, 2019, up to July 8, 2019, are excluded from the scope of the investigation, consistent with the Court's *Remand Order.*[12] These instructions give effect to the Court's holding that ''reasonably informed importers were not provided clear or meaningful notice of the inclusion of PVD chrome wheels until the publication of the Final Scope Memo.'' [13]

On November 18, 2021, the CIT sustained Commerce's final redetermination, and entered final judgment.[14]

Timken Notice

In its decision in *Timken,*[15] as clarified by *Diamond Sawblades,*[16] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's November 18, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination and Liquidation of Suspended Entries

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to the CVD margin assigned to entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a PVD process produced and/or exported from China by Jingu, or produced by Xingmin Intelligent and imported by Trans Texas, which were entered or withdrawn from warehouse, for consumption on or after February 25, 2019 (the date of publication of the *Preliminary Determination* in the **Federal Register**), up to and including June 24, 2019 (the day on which CVD provisional measures expired), and which remained unliquidated as of the date of the relevant preliminary injunction (September 4, 2020, in the case of merchandise produced and/or exported by Jingu; and November 27, 2019, in the case of merchandise

[6] *See* Memorandum, ''Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Scope Decision Memorandum,'' dated April 15, 2019.

[7] *See* Memorandum, ''Certain Steel Wheels from the People's Republic of China: Final Scope Decision Memorandum for the Final Antidumping Duty and Countervailing Duty Determinations,'' dated July 1, 2019 (Final Scope Memo) at 15.

[8] *Id.* at 16.

[9] *See Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00189, Slip Op. 21–63 (CIT May 18, 2021) (*Remand Order*) at 16 and 20–21.

[10] *See* Final Scope Memo.

[11] *See Remand Order* at 21–22 and 26.

[12] *See* Final Results of Redetermination Pursuant to Court Remand, *Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00189; Slip Op. 21–63, dated June 14, 2021 (Final Results of Redetermination).

[13] *See Remand Order* at 21.

[14] *See Trans Texas Tire, LLC and Zhejiang Jingu Company Limited* v. *United States,* Consol. Court No. 19–00189, Slip Op. 21–157 (CIT November 18, 2021).

[15] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[16] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

produced by Xingmin Intelligent and imported by Trans Texas).

Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. Specifically, we will direct CBP to suspend or continue to suspend liquidation of such entries at a zero percent cash deposit rate during the pendency of the appeals process until specific liquidation instructions are issued, and we will notify CBP that it is authorized to grant a refund of cash deposits for such entries, if requested by the importer prior to liquidation pursuant to 19 U.S.C. 1520(a)(4). In the event the Court's ruling is not appealed or, if appealed, upheld by the Court of Appeals for the Federal Circuit, Commerce will instruct CBP that entries of certain steel trailer wheels 12 to 16.5 inches in diameter coated in chrome through a PVD process, which: (a) Were the subject of the *Final Determination;* (b) were produced and/or exported from China by Jingu, or were produced by Xingmin Intelligent and imported by Trans Texas; (c) were entered, or withdrawn from warehouse, for consumption on or after February 25, 2019 up to and including June 24, 2019; and (d) remain unliquidated as of September 4, 2020 (for wheels produced and/or exported from China by Jingu) or remain unliquidated as of November 27, 2019 (for wheels produced by Xingmin Intelligent and imported by Trans Texas); are outside of the scope of the CVD order on certain steel trailer wheels from China.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: November 24, 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. 2021–26998 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB639]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. (Permit No. 20430–01 and 25943), Amy Hapeman (Permit No. 25563), and Sara Young (Permit No. 25770); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
20430–01	0648–XE938	James Harvey, Ph.D., Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039.	84 FR 48600; September 16, 2019	November 30, 2021.
25563	0648–XB303	NMFS Alaska Fisheries Science Center, Marine Mammal Laboratory, 7600 Sand Point Way NE, Seattle, WA 98115 (Responsible Party: John Bengtson, Ph.D.).	86 FR 43528; August 9, 2021	November 8, 2021.
25770	0648–XB298	Institute of Marine Sciences, University of California at Santa Cruz, Santa Cruz, CA 95064 (Responsible Party: Daniel Costa, Ph.D.).	86 FR 42791; August 5, 2021	November 19, 2021.
25943	0648–XB509	Stephen Trumble, Ph.D., Baylor University, 101 Bagby Ave., Waco, TX 76706.	86 FR 57414; October 15, 2021	November 23, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (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), as applicable.

Dated: December 8, 2021.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–26917 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB630]

Gulf of Mexico Fishery Management Council; Reopening of Federal Funding Opportunity

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

ACTION: Notice; reopening of request for proposals to address expanded sampling of the fleet for effort monitoring in the Gulf of Mexico shrimp industry.

SUMMARY: The Gulf of Mexico Fishery Management Council is reopening the

requesting proposals from highly-qualified contractors to organize and expand a vessel position monitoring system for the federally permitted Gulf of Mexico Shrimp industry.

DATES: This will be a 12–18 month project and a maximum $350,000 is available to fund the work. Proposal Submission Deadline: January 10, 2022 by 11:59 p.m. EST.

ADDRESSES: *Council address:* Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; *carrie.simmons@gulfcouncil.org;* telephone: (813) 348–1630 ext. 2310.

SUPPLEMENTARY INFORMATION:

Deadline for Reopened Proposal Submission: Monday, January 10, 2022 by 11:59 p.m. EST

The Gulf of Mexico Fishery Management Council (Council) published a notice in the **Federal Register** on July 28, 2021 seeking submissions of a highly-qualified contractor to organize and expand a vessel position monitoring system for the federally permitted Gulf of Mexico Shrimp industry (86 FR 40494). This request for submissions is hereby reopened.

The current Gulf of Mexico electronic logbook (ELB) program that utilized a 3G cellular network to transmit data is no longer supported, and the server became unviable for data storage in December 2020.

The Council, in coordination with NMFS, is seeking to develop a new program that will provide for continued collection, storage, and transmission of shrimp vessel position data that are used to estimate shrimping effort. This new program is intended to replace the current Shrimp ELB program which no longer transmits data through the 3G cellular network.

The need for this study is to test the P-Sea WindPlot software program with a portion of the shrimp fleet in the near term to determine if it meets the needs of industry, Council, and NMFS. The newly developed program will ultimately need to meet NMFS hardware and software approval to be utilized throughout the shrimp industry.

Proposals should identify by region/state the number of vessels that will volunteer to participate in the proposed pilot program for vessel position monitoring in the Gulf of Mexico. The proposed work should clearly define methodology and intent for meeting the NMFS software and hardware requirements while documenting the estimated costs to the industry. The proposal should detail the methodology proposed for archiving the vessel location, data retention, and automatic transmission of the data to NMFS when within cellular/satellite range of land.

The Council will develop an agreement with the selected contractor(s) with milestones and deliverables after the review and selection process. The selected contractor(s) will work with Council staff.

Background

During its January 2021 meeting, the Council identified unspent Council funds from the 2020 fiscal year. The Council is considering funding an expanded study that utilizes P-Sea WindPlot software as a replacement for the recently discontinued shrimp ELB program. Preliminary meetings with industry, such as the Shrimp Advisory Panel meeting suggest that a majority of the shrimp fleet currently use the P-Sea WindPlot software program, which is installed on a desktop or laptop computer housed onboard the vessel; thus, the learning curve and potential annual cellular/satellite expenses are anticipated to be minimal. Further, leaders in the Gulf of Mexico shrimp industry support using this type of software program.

Scope of Work

The contractor will be responsible for all data products outlined below and is encouraged to contribute additional products and suggestions in the proposal for this work. The selected contractor will also be responsible for presenting the mid-term and final project summary report to the Council's Scientific and Statistical Committees and to the Council. The proposed scope of work should include the following:

- The proposal must consider the use of P-Sea WindPlot software to collect the vessel position data for shrimp vessels, as this is the preferred software by industry.
  - The version(s) of P-sea WindPlot required would be: WindPlot 7.29 or Windplot 7.28 versions updated later than May 2021 (contractor should include budgetary considerations for these versions in the proposal).
  - File type is binary. Currently, P-sea WindPlot collects latitude and longitude date and time stamp—every 10 minutes as the default. However, the software version listed above allow for different latitude and longitude and time stamp intervals other than 10 minutes (See the example of DAT file contents in Attachment 1).
  - Approximate size of file that would be generated prior to data compression is estimated to be 1 megabyte for a 30-day trip at sea with pings every 10 minutes.
  - The contractor may also propose testing other hardware/software options simultaneously that meet the needs of industry, Council, and NMFS. The proposal should include the rationale and viability of any other hardware-software options proposed.
- The proposal should detail the methodology proposed for archiving the vessel position location, data retention, security, and automatic transmission of the data to a secure server when within cellular/satellite range of land. The contractor will be requested to provide an example of a detailed authentication process since the NMFS security and authentication requirements are not yet determined for the shrimp industry. The contractor should describe a server or similar storage system that would be used to demonstrate the automatic data transmission.
- The proposal should identify, by state, the number of shrimp vessels actively participating in the fishery that will volunteer to participate in the proposed work in the Gulf of Mexico. This should be a representative subsample of the fleet using a random stratified approach.
- The proposed work should clearly define methodology and intent for meeting the NMFS software and hardware requirements approval process. For example, outline the methodology proposed to automatically transmit vessel position data, from the hardware/software device(s) onboard the shrimp vessel to a secure server when within cellular/satellite range.
- The proposal should detail the estimated costs to the industry for hardware/software, vessel position data storage, and monthly cellular/satellite transmission fees. The proposal should outline details about analysis of data from individual position points per vessel in the program that will be synthesized into vessel effort monitoring on a monthly basis.

Results and outcomes from this work will be provided to the Council and NMFS Southeast Fisheries Science Center.

The contractor will be responsible for all data products outlined below and is encouraged to contribute additional products and suggestions in the proposal for this work. The selected contractor will also be responsible for presenting the mid-term and final project summary report to the Council's

Scientific and Statistical Committees and to the Council. The proposed scope of work should include the following:

- The proposal must consider the use of P-Sea WindPlot software to collect the vessel position data for shrimp vessels, as this is the preferred software by industry. However, the contractor may also propose testing other hardware/software options simultaneously that meet the needs of industry, Council, and NMFS. The proposal should include the rationale and viability of any other hardware-software options proposed.
- The proposal should detail the methodology proposed for archiving the vessel position location, data retention, security, and automatic transmission of the data to a secure server when within cellular/satellite range of land.
- The proposal should identify, by state, the number of shrimp vessels actively participating in the fishery that will volunteer to participate in the proposed work in the Gulf of Mexico. This should be a representative subsample of the fleet using a random stratified approach.
- The proposed work should clearly define methodology and intent for meeting the NMFS software and hardware requirements approval process. For example, outline the methodology proposed to automatically transmit vessel position data, from the hardware/software device(s) onboard the shrimp vessel to a secure server when within cellular/satellite range.
- The proposal should detail the estimated costs to the industry for hardware/software, vessel position data storage, and monthly cellular/satellite transmission fees. The proposal should outline details about analysis of data from individual position points per vessel in the program that will be synthesized into vessel effort monitoring on a monthly basis.

Results and outcomes from this work will be provided to the Council and NMFS Southeast Fisheries Science Center.

Application Process

Contractor Qualifications: The successful applicant or applicant team will have demonstrable experience in fisheries, marine ecology, spatial management, or related field.

How to Apply: Applicants should submit a proposal to Gulf of Mexico Fishery Management Council by email (*rfp.shrimpmonitoring@gulfcouncil.org*) by 11:59 p.m. EST on January 10, 2022. Requests for additional information can also be accepted at this email address or visit our website at *https://gulfcouncil.org/about/request-for-proposals/*. Proposals should include the following elements and should not exceed 25 pages, excluding the Qualifications of Applicant and Letters of Support:

Executive Summary: A summary of the work proposed, including a brief summary of the applicant's qualifications.

Proposed Scope of Work: See bulleted list above.

Qualifications of Applicant: A summary of the qualifications of the applicant and other team members, if applicable. A curriculum vitae should be included for each individual who is expected to work on the project.

Proposed Budget: A detailed budget, including the basis for the charges (*e.g.,* hourly rates, fixed fees, approved federally negotiated overhead rate and other costs consistent with federally allowable costs for sub-contractors). Travel costs for meeting with industry volunteers should be detailed. The proposal should also budget for traveling to SSC and Council meetings to present a mid-term and a final report, for an approximate total of four in-person meetings.

Letters of Support: Letters demonstrating collaboration with shrimp industry leaders will be ranked higher.

Proposed Timeline: A detailed timeline for working with industry representatives, testing of hardware/software devices, data transmission testing, data analyses, and mid-term and final reports should be provided.

Applicant References: Names, titles, full addresses, email addresses, and phone numbers for three clients for whom the applicant has provided similar services to those requested or are familiar with the applicant's work and the quality of the applicant's work products.

Proposal Evaluation Criteria and Next Steps

Proposals will be evaluated based on methodology and scope outlined in the proposed work plan including but not limited to the ability to deliver, in a timely manner a quality work product, references, timeline, and budget. The Council may request additional information as deemed necessary or negotiate modifications prior to providing support for a proposal. Once a proposal is selected for funding, a formal contract will be developed with the applicants.

Disclaimer

1. This project is being funded by Federal funding authorized under the Magnuson-Stevens Fishery Conservation and Management Act through NOAA Fisheries Service and the Gulf of Mexico Fishery Management Council NOAA award number: NA20NMF4410011. Compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Pub. L. 104–208 as amended), the current requirements of the Federal Office of Management and Budget, the Department of Commerce financial assistance standard terms and conditions, the National Oceanic and Atmospheric financial assistance administrative terms, all special award conditions specific to this award and all parts of the Uniform Guidance at Title 2 of the Code of Federal Regulations must be maintained.

2. The contractor is responsible for all costs conducting the work and presenting the mid-term and final results to the Scientific and Statistical Committees and Council.

3. Proposals and their accompanying documentation will not be returned, but retained as part of the Council's administrative documents.

4. All applicants included in the proposal must disclose any conflicts of interest and/or pending civil/criminal/fishery legal actions.

5. The Council reserves the right to accept or reject any or all applications received, negotiate with all qualified applicants, cancel or modify this request for proposals in part or in its entirety, or change the application guidelines, when it is in the best interests of the Council.

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

Dated: December 7, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–26851 Filed 12–10–21; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Civil Penalties; Notice of Adjusted Maximum Amounts

Correction

In notice document 2021–26082 appearing on page 68244 in the issue of Wednesday, December 1, 2021, make the following corrections:

On page 68244, in the third column, in the second line, ''January 1, 2022'' should appear as ''January 1, 2022 [1]''.

On the same page, in the same column, at the bottom of the page, footnote 1 should appear as:

[1] The Commission voted unanimously to approve publication in the **Federal Register** of this notice.

[FR Doc. C1–2021–26082 Filed 12–10–21; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0158]

Agency Information Collection Activities; Comment Request; Mandatory Civil Rights Data Collection

AGENCY: Office for Civil Rights (OCR), Department of Education (ED).

ACTION: Notice.

SUMMARY: The U.S. Department of Education (ED) is issuing this notice to inform the public that **Federal Register** Notice (Docket ID Number ED–2021–SCC–0158; FR DOC #2021–25246), published on November 19, 2021, and entitled ''Mandatory Civil Rights Data Collection'' has been withdrawn as of December 13, 2021 and replaced with this notice, which includes replacement documents related to the information collection listed in this notice. In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision to an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 11, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0158. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Policy, Evaluation and Policy Development, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 6W201, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to the collection activities, please contact Rosa Olmeda at *Rosa.Olmeda@ed.gov* or (202) 245–7264.

SUPPLEMENTARY INFORMATION: The U.S. Department of Education, 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: Mandatory Civil Rights Data Collection.

OMB Control Number: 1870–0504.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 17,884.

Total Estimated Number of Annual Burden Hours: 2,175,866.

Abstract:

The collection, use, and reporting of education data is an integral component of the mission of the U.S. Department of Education. ED has collected civil rights data about the nation's public schools via the Civil Rights Data Collection (CRDC) since 1968. For school years 2009–10 and 2011–12, the Office of Management and Budget (OMB) approved the CRDC part of the EDFacts information collection (1875–0240). EDFacts, an ED initiative to put performance data at the center of ED's policy, management, and budget decision-making processes for all preschool-grade 12 education programs, has transformed the way in which ED collects and uses data. For school years 2013–14, 2015–16, 2017–18, and 2020–21, the Office for Civil Rights cleared the CRDC as a separate collection from EDFacts while maintaining its transformative data collection policies and practices. As with previous CRDC collections, the purpose of the 2021–22 CRDC is to obtain vital data related to the civil rights laws' requirement that public local educational agencies (LEAs) and elementary and secondary schools provide equal educational opportunity. ED has analyzed the uses of many data elements collected in the 2015–16 and 2017–18 CRDCs and sought advice from experts across ED to refine, improve, and where appropriate, add or remove data elements from the collection. ED also made the CRDC data definitions and metrics consistent with other mandatory collections across ED wherever possible. ED seeks OMB approval under the Paperwork Reduction Act to collect from LEAs the elementary and secondary education data described in the sections of Attachment A. In addition to reviewing and commenting on the proposed changes (detailed in Supporting Statement A and Attachments A–1, A–2, A–3, and A–4), ED requests that LEAs and other stakeholders respond to the directed questions found in Attachment A–5.

Dated: December 8, 2021.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–26873 Filed 12–10–21; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Correction to Public Comment Period on VVSG Lifecycle Policy

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice; correction.

SUMMARY: The U.S. Election Assistance Commission published a notice in the **Federal Register** requesting public comments on a proposed VVSG Lifecycle Policy, which is available at *https://www.regulations.gov* (docket ID: EAC–2021–0001). The Notice appeared in the **Federal Register** on November 9, 2021 in FR Doc. 2021–24501, on pages 62156–62157 (86 FR 62156).

The **DATES** section should be corrected to read:

Correction

DATES: Comments must be received no later than 5 p.m. Eastern Standard Time on December 14, 2021.

FOR FURTHER INFORMATION CONTACT: Jon Panek, phone (301) 960–1216, email *jpanek@eac.gov;* U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

Kevin Rayburn,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021–26934 Filed 12–10–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Notice of Data Availability: Comments Received on the Department's Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste Dated January 12, 2017

AGENCY: Office of Spent Fuel and Waste Disposition, Office of Nuclear Energy, Department of Energy.

ACTION: Notice of data availability.

SUMMARY: The U.S. Department of Energy (DOE or Department) Office of Nuclear Energy (NE) is announcing this notice of data availability (NODA) regarding comments received, as well as a summary of the comments, on DOE's ''Draft Consent-Based Siting Process for Consolidated Storage and Disposal Facilities for Spent Nuclear Fuel and High-Level Radioactive Waste,'' dated January 12, 2017 (2017 Draft CBS Process). The Department is making this information available to inform the public as to the content of the comments received on the 2017 Draft CBS Process and to be available for use in formulating responses to DOE's recently issued request for information (RFI) on how to site federal facilities for the temporary, consolidated storage of spent nuclear fuel using a consent-based approach, dated December 1, 2021.

FOR FURTHER INFORMATION CONTACT: Please send any questions to *consentbasedsiting@hq.doe.gov,* or to Alisa Trunzo at 301–903–9600.

SUPPLEMENTARY INFORMATION:

Background

The actual comments received on DOE's 2017 Draft CBS Process and a comment summary are available at *https://www.energy.gov/ne/consent-based-siting.* The Department is making this information available to inform the public as to the content of the comments received on the 2017 Draft CBS Process and to be available for use in formulating responses to DOE's recently issued request for information (RFI) on how to site federal facilities for the temporary, consolidated storage of spent nuclear fuel using a consent-based approach (86 FR 68244, dated December 1, 2021), available at *https://www.federalregister.gov/documents/2021/12/01/2021-25724/notice-of-request-for-information-rfi-on-using-a-consent-based-siting-process-to-identify-federal.* The comment summary is intended to summarize the views expressed in the comments and does not contain any DOE analysis of or positions on those comments.

Additional data/information that may be useful in formulating responses to the RFI is available at *https://www.energy.gov/ne/consent-based-siting.*

Signing Authority

This document of the Department of Energy was signed on December 7, 2021, by Dr. Kathryn Huff, Principal Deputy Assistant Secretary for the Office of Nuclear 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 December 8, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–26886 Filed 12–10–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6470–008]

Winooski Hydroelectric Company, Vermont; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6470–008.

c. *Date Filed:* July 30, 2021.

d. *Applicant:* Winooski Hydroelectric Company (WHC).

e. *Name of Project:* Winooski 8 Hydroelectric Project (project).

f. *Location:* On the Winooski River in Washington County, Vermont. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mathew Rubin, General Partner, Winooski Hydroelectric Company, 26 State Street, Montpelier, Vermont 05602; (802) 793–5939; or email at *m@mrubin.biz.*

i. *FERC Contact:* Kristen Sinclair at (202) 502–6587, or *kristen.sinclair@ferc.gov.*

j. *Deadline for filing scoping comments:* February 5, 2022.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Winooski 8 Hydroelectric Project (P–6470–008).

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

l. The existing project consists of: (1) A 222.5-foot-long, 26-foot-high concrete gravity dam impounding a reservoir with a storage capacity of approximately 20 acre-feet at an elevation of 611.0 feet (when the flashboards are not in place) and 615.0 feet (when the flashboards are in place); (2) a 148-foot-long spillway with 4-foot-high flashboards built into the crest of the dam; (3) a 24-foot-long, hydraulically operated crest gate; (4) a 1,100-square-foot forebay located adjacent to the project impoundment; (5) a 33.5-foot-wide, 28-foot-high concrete intake structure containing three separate intake bays each fitted with a hydraulically operated trashrack with 2-inch spacing between the bars; (6) a 1,550-square-foot powerhouse that contains two semi-Kaplan turbines and one fixed propeller turbine for a total installed capacity of 856 kilowatts; (7) a 100-foot-long tailrace; (8) a 1,000 kilovolt-amp station transformer; (9) a 30-foot long, 13-kilovolt transmission line and (10) appurtenant facilities. The project creates an approximately 160-foot-long bypassed reach of the Winooski River.

WHC voluntarily operates the project in a run-of-river mode. Article 24 of the current license requires WHC to: (1) Maintain a year-round minimum flow of 25 cubic feet per second (cfs) in the bypassed reach (currently via discharge releases from Unit 1).

WHC proposes to: (1) Continue operating the project in a run-of-river mode; (2) continue its current practice of increasing generation flows above inflow rates when the reservoir is drawdown for maintenance, and storing 10 percent of inflow to refill the impoundment; (3) conduct a mussel survey during the first planned impoundment drawdown following the issuance of a new license; (4) implement a proposed Sediment Dredging Management Plan; (5) increase minimum flows in the bypassed reach to 41 cfs during daytime hours from May 1 through October 31 and to 36 cfs the remainder of the year (*i.e.,* during nighttime hours from May 1 through October 31 and during day and night from November 1 through April 30) through a combination of spill and flow through Unit 1 to enhance aesthetics and aquatic habitat in the bypassed reach; (6) when inflow drops below proposed minimum flow levels, prioritize spill flows over the dam rather than discharging flows through Unit 1; and (7) continue to consult with the Vermont Division of Historic Preservation before beginning any land-disturbing activities or alterations to known historic structures within the project boundary.

WHC also proposes to add 3.6 acres to the existing project boundary to enclose the 4,100-foot-long dirt road currently used by WHC to access the dam and powerhouse, and to enclose an existing unimproved recreation site that provides access to the river for boating and fishing activities downstream of the dam.

m. 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 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

n. You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process

Commission staff will prepare either an environmental assessment (EA) or an Environmental Impact Statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued December 7, 2021.

Copies of the SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *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. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: December 7, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26904 Filed 12–10–21; 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: RP21–937–000.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Motion Filing: Motion Tariff Records into Effect RP21–937–000 to be effective 1/1/2022.

Filed Date: 12/7/21.

Accession Number: 20211207–5029.

Comment Date: 5 p.m. ET 12/20/21.

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: RP21–778–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Report Filing: Rate Case (RP21–778) Test Period Update Filing to be effective N/A.

Filed Date: 12/3/21.

Accession Number: 20211203–5177.

Comment Date: 5 p.m. ET 12/15/21.

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: December 7, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26901 Filed 12–10–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
CP22–21–000; CP22–22–000	12–6–2021	FERC Staff.[1]
Exempt:		
1. EL21–85–000; EL21–103–000	10–26–2021	U.S. Congress.[2]
2. CP17–40–000	12–6–2021	FERC Staff.[3]

[1] Emailed comments dated 12/3/2021 from Robert Rutkowski.
[2] U.S. Senators Charles Grassley, Joni K. Ernst, and Representatives Ashley Hinson, Mariannette Miller-Meeks, and Randy Feenstra.
[3] Telephone Memorandum dated 12/6/2021 regarding call between Commission staff and United States Senator Roy Blunt of Missouri.

Dated: December 7, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26896 Filed 12–10–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–27–000.

Applicants: El Sauz Ranch Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of El Sauz Ranch Wind, LLC.

Filed Date: 12/6/21.

Accession Number: 20211206–5246.

Comment Date: 5 p.m. ET 12/27/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1521–006; ER10–1520–006; ER10–1522–005; ER20–2493–001.

Applicants: OTCF, LLC, Occidental Chemical Corporation, Occidental Power Services, Inc., Occidental Power Marketing, L.P.

Description: Occidental Power Marketing, L.P., et al. submits Supplement to June 29, 2021 Updated Market Power Analysis for the Central Regional.

Filed Date: 12/3/21.

Accession Number: 20211203–5127.

Comment Date: 5 p.m. ET 2/1/22.

Docket Numbers: ER19–13–000; ER19–1816–000; ER20–2265–000.

Applicants: Pacific Gas and Electric Company, Pacific Gas and Electric Company, Pacific Gas and Electric Company.

Description: Annual Formula Transmission Rate Update Filing for Rate Year 2022 of Pacific Gas and Electric Company.

Filed Date: 12/1/21.

Accession Number: 20211201–5328.

Comment Date: 5 p.m. ET 12/22/21.

Docket Numbers: ER20–2878–000.

Applicants: Pacific Gas and Electric Company.

Description: Wholesale Distribution Tariff for Rate Year 2022 of Pacific Gas and Electric Company.

Filed Date: 12/1/21.

Accession Number: 20211201–5330.

Comment Date: 5 p.m. ET 12/22/21.

Docket Numbers: ER21–1118–004.

Applicants: Louisville Gas and Electric Company.

Description: Compliance filing: SEEM Attachment S Compliance Filing to be effective 12/31/9998.

Filed Date: 12/7/21.

Accession Number: 20211207–5047.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER21–1154–001.

Applicants: ISO New England Inc., Fitchburg Gas and Electric Light Company.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: FG&E, Docket No. ER21–1154; Amended Supplemental Order No. 864 Compliance Filing to be effective 1/1/2020.

Filed Date: 12/7/21.

Accession Number: 20211207–5114.

Comment Date: 5 p.m. ET 12/17/21.

Docket Numbers: ER21–1241–001.

Applicants: ISO New England Inc., New England Power Company.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: New England Power; ER21–1241 Amended Order 864 Compliance Filing to be effective 1/1/2020.

Filed Date: 12/7/21.

Accession Number: 20211207–5094.

Comment Date: 5 p.m. ET 12/17/21.

Docket Numbers: ER21–2926–000.

Applicants: Caddo Wind, LLC.

Description: Filing Withdrawal: Withdraw of Supplement to Application for Market-Based Rate Authorization to be effective N/A.

Filed Date: 12/7/21.

Accession Number: 20211207–5142.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–306–001.

Applicants: Duke Energy Carolinas, LLC.

Description: Tariff Amendment: Errata Filing—DEF Revised Depreciation Rates to be effective 1/1/2022.

Filed Date: 12/7/21.

Accession Number: 20211207–5096.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–414–001.

Applicants: AES Marketing and Trading, LLC.

Description: Tariff Amendment: AES Marketing and Trading, LLC MBR Supplement to be effective 11/17/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5053.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–46–002.

Applicants: Parkway Generation Essex, LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 12/1/2021.

Filed Date: 12/6/21.

Accession Number: 20211206–5176.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–564–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6262; Queue No. K11 to be effective 11/4/2021.

Filed Date: 12/6/21.

Accession Number: 20211206–5206.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–566–000.

Applicants: Southern California Edison Company.

Description: Compliance filing: WDAT Storage Settlement Compliance Filing to be effective 6/15/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5066.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–567–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Seminole Solar (Seminole I Solar) LGIA Filing to be effective 11/22/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5081.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–568–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Seminole Solar (Seminole II Solar) LGIA Filing to be effective 11/22/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5082.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–569–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Seminole Solar (Seminole III Solar) LGIA Filing to be effective 11/22/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5086.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–570–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Seminole Solar (Seminole IV Solar) LGIA Filing to be effective 11/22/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5087.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–571–000.

Applicants: Assembly Solar I, LLC.

Description: § 205(d) Rate Filing: COC update 2021 to be effective 12/8/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5117.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–572–000.

Applicants: Assembly Solar II, LLC.

Description: § 205(d) Rate Filing: COC update 2021 to be effective 12/8/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5121.

Comment Date: 5 p.m. ET 12/28/21.

Docket Numbers: ER22–573–000.

Applicants: Assembly Solar III, LLC.

Description: § 205(d) Rate Filing: COC update 2021 to be effective 12/8/2021.

Filed Date: 12/7/21.

Accession Number: 20211207–5127.

Comment Date: 5 p.m. ET 12/28/21.

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: December 7, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26897 Filed 12–10–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–259]

Northwestern Corporation; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance of Article 403.

b. *Project No:* 2188–259.

c. *Date Filed:* November 9, 2021, and supplemented on November 12, 2021.

d. *Applicant:* Northwestern Corporation (licensee).

e. *Name of Project:* Missouri-Madison Hydroelectric Project.

f. *Location:* The project consists of nine hydroelectric developments located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade counties, in southwestern Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mary Gail Sullivan, Director, Environmental and Lands, Northwestern Corporation, 11 East Park Street, Butte, Montana 59701, (406) 497–3382, *marygail.sullivan@northwestern.com.*

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 6, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2188–259. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a temporary variance from the reservoir elevation requirements for the Hebgen Development required by item (4) of Article 403 of the licensee. Specifically, the Hebgen reservoir dropped below the minimum required elevation of 6,530.26 feet beginning July 22 through October 1, 2021. The reservoir elevation fell below the requirements due to low winter snowpack, minimal inflow, and hot and dry conditions in 2021 reducing availability of water in the Madison River drainage and Hebgen reservoir. In addition, maintaining the required minimum and pulse flows contributed to accelerated drafting of Hebgen reservoir in 2021. The variance has concluded, and the licensee's filing requesting a temporary variance is after-the-fact, as required by Commission staff's September 10, 2021 letter.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 7, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26895 Filed 12–10–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2628–065]

Alabama Power Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2628–065.

c. *Date Filed:* November 23, 2021.

d. *Applicant:* Alabama Power Company (Alabama Power).

e. *Name of Project:* R.L. Harris Hydroelectric Project (Harris Project).

f. *Location:* The Harris Project is located on the Tallapoosa River near the City of Lineville in Randolph, Clay, and Cleburne Counties, Alabama. The Harris Project also includes land within the James D. Martin-Skyline Wildlife Management Area located approximately 110 miles north of Harris Reservoir in Jackson County, Alabama. The project occupies 4.90 acres of federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Angie Anderegg, Harris Relicensing Project Manager, Alabama Power Company; 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35203–8180; (205) 257–2251, or email at *arsegars@southernco.com.*

i. *FERC Contact:* Sarah Salazar at (202) 502–6863, or email at *sarah.salazar@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The Harris Project consists of: (1) The 29-mile-long, 9,870-acre Harris Lake at a normal full pool elevation of 793 feet mean sea level (msl); (2) a 151.5-foot-high concrete dam; (3) a 310-foot-long gated spillway with five 40.5-feet-high by 40-feet-wide radial gates for passing flood flows, and one radial trash gate; (4) a variable level powerhouse intake, integral with the dam, which can draw water from lake elevations

between 746 feet and 764 feet msl; (5) a 186-foot-long, 150-foot-high concrete powerhouse, integral with the dam, housing two vertical Francis turbines with a maximum hydraulic capacity of 8,000 cubic feet per second (cfs) and a rated total installed capacity of 135 megawatts (MW); (6) two 115 kilovolt transmission lines, which extend 1.5 miles from the dam to the Crooked Creek Transmission sub-station; and (7) appurtenant facilities.

Alabama Power proposes to install, operate, and maintain a Francis-type minimum flow unit to provide a continuous minimum flow of approximately 300 cfs in the Tallapoosa River downstream from Harris Dam. Based on preliminary design, the proposed minimum flow unit would have a generating capacity of about 2.5 MW.

The Harris Project is a peaking facility that generates about 151,878 megawatt-hours of electricity annually. Alabama Power operates the project to target lake surface elevations as guided by the project's operating curve. In addition, the U.S. Army Corps of Engineers' Alabama-Coosa-Tallapoosa River Basin Water Control Manual describes flood management regulations, drought management provisions, and navigation requirements for the Harris Project.

l. A copy of the application can be viewed on the Commission's website at *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 on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	December 2021.
Request Additional Information	January 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis	April 2022.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 7, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26898 Filed 12–10–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ22–3–000]

City of Anaheim, California; Notice of Filing

Take notice that on November 30, 2021, the City of Anaheim, California submitted its tariff filing: Revised Transmission Revenue Requirement and Transmission Revenue Balancing Account Adjustment with an effective date of January 1, 2022.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on December 14, 2021.

Dated: December 7, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26900 Filed 12–10–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2021–0629; FRL 9252–01–R9]

Final Agency Action To Issue a Prevention of Significant Deterioration Non-Applicability Determination for the AltAir Renewable Fuels Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final agency action.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) issued a final agency action for a Clean Air Act Prevention of Significant Deterioration (PSD) Non-Applicability Determination to AltAir Paramount, LLC (''AltAir''), for its Renewable Fuels Project in California's South Coast Air Basin. AltAir plans to convert the remainder of the existing Paramount Crude Oil Refinery into a renewable

fuels facility. As part of this Renewable Fuels Project, existing equipment will be re-used and re-purposed, new equipment will be installed, unneeded equipment will be eliminated or permanently idled, and project upgrades to existing equipment will be made to improve efficiencies and reduce operational emissions. In its Non-Applicability Determination, the EPA determined that the Renewable Fuels Project will not result in a major PSD modification.

DATES: The PSD Non-Applicability Determination issued on November 3, 2021, was a final agency action. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final agency action may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of December 13, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0629. Publicly available docket materials, including the determination letter and supporting documentation, are available through *https://www.regulations.gov,* or by contacting the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Weeda Ward, Permits Office (Air–3–1), U.S. Environmental Protection Agency, Region 9, (213) 244–1812, *ward.laweeda@epa.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Final Action

On November 3, 2021, EPA notified AltAir that based on EPA's review of AltAir's PSD Applicability Evaluation, the Renewable Fuels Project is not a major modification that requires a PSD permit under 40 CFR 52.21.

Dated: November 10, 2021.

Elizabeth Adams,

Acting Regional Administrator Region IX.

[FR Doc. 2021–26670 Filed 12–10–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1261; FR ID 61604]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 11, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1261.

Title: Creation of Interstitial 12.5 Kilohertz Channels in the 800 MHz Band Between 809–817/854–862 MHz.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 732 respondents, 366 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 732 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for applicants filing applications to license channels in the 809–817/854–862 MHz band segment (800 MHz Mid-Band) to include confidential information with their application. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. Section 90.621(d)(4) adopted in the Commission's Report and Order FCC 18–143 requires an applicant to include a letter of concurrence from an incumbent licensee if the applicant files an application which causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis when the applicant seeks to license channels in the 800 MHz Mid-Band. In the case of the forward analysis, the incumbent licensee must agree in its concurrence

letter to accept any interference that occurs as a result of the contour overlap. In the case of the reciprocal analysis, the incumbent licensee must state in its concurrence letter that it does not object to the applicant receiving contour overlap from the incumbent's facility. The purpose of requiring applicants to obtain letters of concurrence if their application causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis is to ensure incumbents in the 800 MHz Mid-Band are aware of the contour overlap before an application is granted.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–26910 Filed 12–10–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, December 16, 2021 at 10:00 a.m.

PLACE: Virtual meeting. *Note:* Because of the Covid–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2021–11: DSCC and DCCC

Draft Advisory Opinion 2021–13: Matthew P. Hoh

Audit Division Recommendation Memorandum on the Republican Party of Minnesota—Federal (A19–09)

Audit Division Recommendation Memorandum on the Connecticut Democratic State Central Committee (A19–19)

Election of Officers for 2022

Remarks and Employee Recognition by Chair Broussard

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021–27034 Filed 12–9–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 December 28, 2021.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *First Bancorp of Oklahoma, Inc., Oklahoma City, Oklahoma;* through its new wholly-owned subsidiary, GLS National, LLC, Oklahoma City, Oklahoma to acquire assets of Guaranteed Lending Specialists, LLC, Tulsa, Oklahoma, and will thereby engage in lending activities and financial and investment advisory activities pursuant to section 225.28(b)(1) and (b)(6)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–26919 Filed 12–10–21; 8:45 am]

BILLING CODE 6210–01–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 December 28, 2021.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Shaul Kopelowitz, Monsey, New York;* to acquire additional voting shares of Pacific Enterprise Bancorp, and thereby indirectly acquire voting shares of Pacific Enterprise Bank, both of Irvine, California.

Board of Governors of the Federal Reserve System, December 8, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–26918 Filed 12–10–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0600]

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 ''CDC Model Performance Evaluation Program (MPEP) for Mycobacterium tuberculosis Susceptibility testing'' 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 August 27, 2021 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

CDC Model Performance Evaluation Program (MPEP) for *Mycobacterium tuberculosis* Susceptibility testing (OMB Control No. 0920–0600, Exp. 2/20/2022)—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting a Revision to approved information collection from participants in the CDC Model Performance for *Mycobacterium tuberculosis* Drug Susceptibility Testing for a period of three years. Revision of this information will not require changes in the scope of the project. This Revision includes (a) modification of the Instructions to Participants Letter; (b) modification of the MPEP *Mycobacterium tuberculosis* Results Worksheet; (c) modification of online data collection instrument; (d) modification of the MPEP *Mycobacterium tuberculosis* Minimum Inhibitory Concentration Results Worksheet; (e) removal of Reminder Telephone Script; and (f) modification of Aggregate Report Letter.

While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, corrections, homeless populations, and individuals infected with HIV in major metropolitan areas. To reach the goal of eliminating TB, the Model Performance Evaluation Program (MPEP) for *Mycobacterium tuberculosis* Susceptibility Testing is used to monitor and evaluate performance and practices among US laboratories performing *M. tuberculosis* susceptibility testing. Participation in this program is one way laboratories can ensure high-quality laboratory testing, resulting in accurate and reliable testing results.

By providing laboratories a self-assessment tool to test for drug resistant *M. tuberculosis* strains, the program aids laboratories in optimizing their skills in susceptibility testing. The information obtained from the laboratories on susceptibility practices and procedures is used to establish variables related to good performance, assessing training needs, and aid with the development of practice standards. Participants in this program include domestic clinical and public health laboratories. Data collection from laboratory participants occurs twice per year. The data collected in this program will include the susceptibility test results of primary and secondary drugs, drug concentrations, and test methods performed by laboratories on a set of performance evaluation (PE) isolates. The PE isolates are sent to participants twice a year. Participants also report demographic data such as laboratory type and the number of drug susceptibility tests performed annually.

CDC is requesting OMB approval for an estimated 129 annual burden hours. Participation of respondents is voluntary, and there is no cost to participants 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)
Domestic Laboratory	Participant Biosafety Compliance Letter of Agreement	80	1	5/60
	MPEP *Mycobacterium tuberculosis* Results Worksheet	80	2	30/60
	Online Survey Instrument	80	2	15/60
	MPEP *Mycobacterium tuberculosis* Minimum Inhibitory Concentration Results Form.	4	2	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–26902 Filed 12–10–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0891]

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 ''World Trade Center Health Program Enrollment, Petitions, Designated Representative/HIPAA Authorization, and Member Satisfaction'' 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 July 22, 2021 to obtain comments from the public and affected agencies. CDC received three comments related to the previous notice but were unrelated to the package. 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, using 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

World Trade Center Health Program Enrollment, Petitions, Designated Representative/HIPAA Authorization, and Member Satisfaction (OMB Control No. 0920–0891, Exp. 12/31/2021)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH seeks to request OMB approval to revise the currently approved information collection activities that support the World Trade Center (WTC) Health Program. The James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347, as amended by Pub. L. 114–113) created the WTC Health Program to provide medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

Since its inception in 2011, the WTC Health Program has been approved to collect information from applicants and Program members concerning enrollment, appointment of a designated representative or third party, member satisfaction, and petitions regarding adding a new WTC-related health condition to determine coverage under the Program. The currently approved total estimated burden is 14,063 hours annually (see OMB Control No. 0920–0891, Exp. 12/31/2021). The WTC Health Program has determined that some existing forms need to be updated and some need to be removed from the burden table.

For this revision, the burden hours on the WTC Health Program Applications for Enrollment increased due to an expected increase of application volume. The Program updated the enrollment applications for plain language and improved processing. We estimate 15,837 individuals will submit either a FDNY, General Responder, Pentagon/Shanksville Responder, or WTC Survivor application annually. The burden estimate for the applications is 7,919 hours. This is an increase from 2018 when the estimated annualized burden was 2,251. Of the Applications for Enrollment, we expect to receive per year, we estimate 3,830 of them are General Responder applications from the NY/NJ area and will have to select which clinic they would like to visit. It is expected that it will take the member 0.25 hours to complete the postcard. The burden hours for the General Responder Clinic Postcard are 958 hours.

The Program finds it necessary to update and add new forms to allow applicants and Program members to grant permission to share information with a designated representative or third person about an individual's application or case. We estimate that 1,300 applicants and members will submit a Designated Representative Appointment Form and Designated Representative HIPAA Authorization Form annually. These forms will take approximately 0.25 hours to complete. The burden estimate for these forms is 650 hours.

The Program proposes to extend this information collection to account for adding the WTCHP HIPAA Authorization for Deceased Individuals, WTCHP General HIPAA Authorization to Third Parties, and Designated Representative Revocation Form. The WTCHP HIPAA Authorization for Deceased Individuals was created so a family member and/or personal representative of a deceased applicant or member can request program documentation and/or medical records related to the deceased applicant/member. The WTCHP General HIPAA Authorization to Third Parties was created for members to give the Program permission to share information about their case with a third party, such as a lawyer. The Designated Representative Revocation Form was created for members who wish to remove or replace a currently appointed designated representative. We estimate that 30 applicants or members will submit a

WTCHP HIPAA Authorization for Deceased Individuals, 30 applicants will submit a WTCHP General HIPAA Authorization to Third Parties form, and 15 applicants or members will submit a Designated Representative Revocation Form annually. These forms will take no longer than 0.25 hours to complete. The total burden estimate for the WTCHP HIPAA Authorization for Deceased Individuals form and the WTCHP General HIPAA Authorization to Third Parties form is eight hours. The total burden estimate for the Designated Representative Revocation Form is four hours.

The Program also finds it necessary to add a Member Satisfaction Survey. This survey is for WTC Health Program members and asks for feedback about their satisfaction in the Program, at their clinic, and how they would like to receive Program communications. The survey should take no longer than 0.5 hours to complete for a burden estimate of 3,300 burden hours.

The Petition for the addition of a new WTC-Related Health Condition for Coverage was previously approved in 2018. The burden hours for the Petition form decreased to 35 as the Program has received less petitions than anticipated in 2018. The Zadroga Act identified a list of health conditions for which individuals who are enrolled in the WTC Health Program may be monitored or treated [Title XXXIII, § 3312(a)(3)]; those conditions are reiterated and expanded in the associated WTC Health Program regulations at 42 CFR 88.15. Under the regulations, interested parties may submit a petition to request that a new health condition be added to the list of conditions specified in § 88.15. The forms should take no longer than one hour to complete for a burden estimate of 35 burden hours.

CDC requests OMB approval for an estimated 12,882 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 per response (in hours)
FDNY Responder	WTC Health Program FDNY Responder Eligibility Application for Enrollment.	140	1	30/60
General Responder	WTC Health Program Responder Eligibility Application for Enrollment (Other than FDNY).	6,215	1	30/60
Pentagon/Shanksville Responder	WTC Health Program Pentagon/Shanksville Responder Application for Enrollment.	242	1	30/60
WTC Survivor	WTC Health Program Survivor Eligibility Application for Enrollment (all languages).	9,240	1	30/60
General responder	Clinic Selection Postcard for new general responders in NY/NJ to select a clinic.	3,830	1	15/60
Interested Party	Petition for the addition of health conditions	35	1	1
Program Applicants or Members	Designated Representative Appointment Form	1,300	1	15/60
Program Applicants or Members	Designated Representative HIPAA Release Form to allow the sharing of member information with a third party.	1,300	1	15/60
Program Members	Member Satisfaction Survey	6,600	1	30/60
General Public	WTCHP HIPAA Authorization for Deceased Individuals	30	1	15/60
Designated Representative	WTCHP General HIPAA Authorization to Third Parties	30	1	15/60
Designated (DR) Representative Revocation Form.	DR form that removes the members current designated representative.	15	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–26903 Filed 12–10–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Federal Tax Refund Offset, Administrative Offset, and Passport Denial

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) is requesting the federal Office of Management and Budget (OMB) to approve the Federal Tax Refund Offset, Administrative Offset, and Passport Denial with minor edits to the ''Comments'' section of the record specifications to clarify the corresponding fields for an additional three years. The current OMB approval expires on June 30, 2022.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Federal Tax Refund Offset and Administrative Offset programs collect past-due child and spousal support by intercepting certain federal payments, including federal tax refunds, of parents who have been ordered to pay support and are delinquent. The Federal Offset Program is a cooperative effort among the U.S. Department of the Treasury's Bureau of the Fiscal Service, OCSE, and state child support enforcement agencies. The Passport Denial Program reports noncustodial parents who owe child and spousal support above a specified threshold to the U.S. Department of State, which will then deny passports to these individuals. State child support enforcement agencies routinely submit the names, Social Security numbers,

and the amount(s) of past-due child and spousal support of noncustodial parents who are delinquent in making payments to OCSE.

Respondents: Child Support Enforcement Agencies.

ANNUAL BURDEN ESTIMATES

Information collection instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Input Record Specifications	54	52	.3	842.4
Output Record Specifications	54	52	.46	1,291.68
Payment File	54	52	.14	393.12
Annual Certification Letter	54	1	.4	21.6
Child Support Portal Processing Screens	173	281	.01	486.13

Estimated Total Annual Burden Hours: 3,034.93.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 652(b); 42 U.S.C. 664; 26 U.S.C. 6402(c); 31 CFR 285.3; 45 CFR 302.60; 45 CFR 303.72; 31 U.S.C. 3701 *et seq.;* 31 U.S.C. 3716(h); 31 CFR 285.1; 42 U.S.C. 652(k); 42 U.S.C. 654(31); 22 CFR 51.60; 42 U.S.C. 654(31); 42 U.S.C. 664; 31 CFR 285.1; and 31 CFR 285.3.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–26916 Filed 12–10–21; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Electronic Document Exchange (OMB No.: 0970–0435)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), is requesting the federal Office of Management and Budget (OMB) to approve the Electronic Document Exchange (EDE), with minor revisions, for an additional three years. State child support agencies use the EDE to improve case processing. The current OMB approval expires on June 30, 2022.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The EDE provides a centralized, secure system for authorized users in state child support agencies to electronically exchange child support and spousal support case information with other state child support agencies. EDE benefits state child support agencies by reducing delays, costs, and barriers associated with interstate case processing, increasing state collections, improving document security, standardizing data sharing, increasing state participation, and improving case processing, resulting in better overall child and spousal support outcomes. OCSE made minor updates to the Portal screens to enhance functionality.

Respondents: State Child Support Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
EDE Screens	49	4,662	0.017	3,883

Estimated Total Annual Burden Hours: 3,883.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 652(a)(7); 42 U.S.C. 666(c)(1); and 45 CFR 303.7(a)(5).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–26847 Filed 12–10–21; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Regional Partnership Grants National Cross-Site Evaluation and Evaluation Technical Assistance (OMB #0970–0527)

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting an extension with minor changes to the approved information collection: Regional Partnership Grants National Cross-Site Evaluation and Evaluation Technical Assistance (OMB #0970–0527). The proposed information collection will be used in a national cross-site evaluation of the fifth and sixth cohorts of CB's Regional Partnership Grants (RPG). The cross-site evaluation will use surveys, interviews, progress reports, and data on participant enrollment, services, and outcomes.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Child and Family Services Improvement Act of 2006 (Pub. L. 109–288) amended section 437 of the Social Security Act (42 U.S.C. 629g(f)) and authorized CB to fund discretionary grants to improve safety, well-being, and permanency outcomes for children at risk of or in out-of-home placement because of their caregiver's substance misuse. In response, HHS launched a competitive grants program called ''Targeted Grants to Increase the Well-Being of, and to Improve the Permanency Outcomes for, Children Affected by Methamphetamine and Other Substance Abuse,'' which is also known as the RPG program. Reauthorized in 2011 and again most recently by the Bipartisan Budget Act of 2018 (Pub. L. 115–123) in 2018, these grants are designed to support partnerships between child welfare agencies, substance use disorder treatment organizations, and other social services systems, and thereby improve the well-being, permanency, and safety outcomes of children and families. Under four prior rounds of RPG, CB has issued 91 grants to organizations such as child welfare or substance use treatment providers or family court systems to develop interagency collaborations and integration of programs, activities, and services designed to increase well-being, improve permanency, and enhance the safety of children who are in an out-of-home placement or at risk of being placed in out-of-home care as a result of a parent's or caretaker's substance misuse. In 2018 CB awarded 10 grants in a fifth cohort (RPG5) and 9 additional grants in a sixth cohort (RPG6) in 2019. The current information collection request (ICR) is for data collection activities associated with the 18 grantees in the fifth and sixth cohorts. The first three cohorts were included in previous ICRs (OMB Control Numbers 0970–0353 and 0970–0444), and the fourth cohort was covered in the previous 3-year clearance under this ICR (OMB #0970–0527).

The RPG cross-site evaluation will extend our understanding of the types of programs and services grantees provided to participants, how grantees leveraged their partnerships to coordinate services for children and families, how grantees plan to sustain their programs after their grants end, and the outcomes for children and families enrolled in RPG programs. First, the cross-site evaluation will assess the coordination of partners' service systems (*e.g.,* shared participant data, joint staff training) to better understand how partners' collaborative efforts affected the services offered to families (partnerships analysis). The cross-site evaluation will also focus on the partnership between the child welfare and substance use treatment agencies to add to the research base about how these agencies can collaborate to address the needs of children and families affected by substance misuse. Second, the evaluation will describe the characteristics of participants served by RPG programs, the types of services provided to families, the dosage of each type of service received by families, and the level of participant engagement with the services provided (enrollment and services analysis). Third, the evaluation will describe supports within the partnership that can help improve and sustain RPG services, such as continuous use of data for service improvement, identification of a lead organization, and policies, resources, and funding sources that will be needed after grant funding ends. Finally, the evaluation will assess the outcomes of children and adults served through the RPG program, such as child behavioral problems, adult depressive symptoms, or adult substance use and treatment (outcomes and impacts analysis).

The evaluation is being undertaken by CB and its contractor Mathematica and its subcontractor, WRMA Inc. The evaluator is required to advise CB on the instruments grantees use to collect data from program participants for required local evaluations. Grantees will secure approval from their local institutional review boards for collecting these data.

This ICR requests a renewal of clearance for the OMB package #0970–0527, which was originally approved in May 2019, for obtaining participant data from grantees that they collect for their local evaluations and for directly collecting additional data from grantees and their partners and providers for the cross-site evaluation. This ICR requests an extension to allow more time for the information collection and includes a revision to add the sustainability survey as a new data collection activity. Specifically, this ICR requests clearance for the following data collection activities: (1) Site visits with grantees, (2) a web-based survey about grantee partnerships, (3) a web-based survey about sustainability planning, (4) semiannual progress reports, (5) enrollment and services data provided by grantees, and (6) outcomes and impacts data provided by grantees.

Respondents: Respondents include grantee staff or contractors (such as local evaluators) and partner staff. Specific types of respondents and the expected number per data collection effort are noted in the burden table below.

ANNUAL BURDEN ESTIMATES

Data collection activity	Total number of respondents	Number of responses per respondent (each year)	Average burden hours per response (in hours)	Total annual burden hours
Site Visit and Key Informant Data Collection				
Program director individual interview	8	0.33	2	5
Program manager/supervisor individual interviews	8	0.33	1	3
Frontline staff interviews	16	0.33	1	5
Partner representative interviews	24	0.33	1	8
Partner survey	40	0.33	0.42	6
Sustainability survey	126	0.42	0.33	18
Enrollment, client and service data				
Semi-annual progress reports	18	2	16.5	594
Case enrollment data	54	33	0.25	446
Case closure	54	33	0.0167	30
Case closure—prenatal	18	10	0.01672	3
Service log entries	108	1,560	0.033	5,560
Outcome and impact data				
Administrative Data:				
Obtain access to administrative data	18	1	41	738
Report administrative data	18	2	144	5,184
Standardized instruments:				
Enter data into local database	18	100	.625	1,125
Review records and submit	18	2	25	900
Data entry for comparison study sites (16 grantees)	16	100	.625	1,000
Estimated Total Burden Hours				15,625

Estimated Total Annual Burden Hours: 15,625.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: The Child and Family Services Improvement Act of 2006 (Pub. L. 109–288) created the competitive RPG program. The September 30, 2011, passage of the Child and Family Services Improvement and Innovation Act (Pub. L. 112–34) extended funding for the RPG program from federal fiscal year (FFY) 2012 to FFY 2016. In 2018, the president signed the Bipartisan Budget Act of 2018 (Pub. L. 115–123) into law reauthorizing the RPG program through FFY 2021 and added a focus on opioid abuse.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–26913 Filed 12–10–21; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Administration for Native Americans Annual Data Report (ADR) (OMB #0970–0475)

AGENCY: Administration for Native Americans, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families' (ACF) Administration for Native Americans (ANA) is requesting a 2-year extension to the following information collection: Annual Data Report (ADR) (OMB #0970–0475; expiration date: 2/28/2022). There are no changes requested to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ANA collects the information in the ADR on an annual basis to monitor the performance of grantees and better gauge grantee progress. The majority of grantees submit this information through the On-going Progress Report (OMB #0970–0452), but there is a subset of about 80 grantees who still use the ADR and will continue to use the ADR through the end of their grants.

The ADR information collection is conducted in accordance with sec. 811 [42 U.S.C. 2992] of the Native American Programs Act and will allow ANA to report quantifiable results across all program areas. It also provides grantees with parameters for reporting their progress and helps ANA better monitor and determine the effectiveness of their projects.

Respondents: Tribal Government, Native non-profit organizations, and

Tribal Colleges and Universities receiving ANA funding.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ANA ADR	80	1	1	80

Estimated Total Annual Burden Hours: 80.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 2992.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–26912 Filed 12–10–21; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1285]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on February 10, 2022, from 10 a.m. to 3 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2021–N–1285. The docket will close on February 9, 2022. Submit either electronic or written comments on this public meeting by February 9, 2022. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 9, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 9, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before January 27, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–1285 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 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 be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2855, Fax: 301–847–8533, *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss biologics license application 761222, for sintilimab injection, submitted by Innovent Biologics (Suzhou) Co., Ltd. The proposed indication (use) for this product is in combination with pemetrexed and platinum-based chemotherapy for the first-line treatment of patients with Stage IIIB, IIIC, or Stage IV non-squamous non-small cell lung cancer with no epidermal growth factor receptor or anaplastic lymphoma kinase genomic tumor aberrations.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before January 27, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 19, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 20, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 7, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26891 Filed 12–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0406]

Bowel Cleansing for Colonoscopy: Efficacy and Safety Considerations for Developing New Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Bowel Cleansing for Colonoscopy: Efficacy and Safety Considerations for Developing New Products.'' The purpose of this draft guidance is to provide FDA's current thinking regarding the necessary attributes of patients for enrollment in clinical trials, efficacy assessments, and safety assessments. The draft guidance is intended to serve as a focus for continued discussion among FDA's Division of Gastroenterology, pharmaceutical sponsors, the academic community, and the public.

DATES: Submit either electronic or written comments on the draft guidance

by February 11, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0406 for ''Bowel Cleansing for Colonoscopy: Efficacy and Safety Considerations for Developing New Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Omolara Adewuni, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5373, Silver Spring, MD 20993–0002, 240–402–7745.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Bowel Cleansing for Colonoscopy: Efficacy and Safety Considerations for Developing New Products.'' The purpose of this guidance is to provide FDA's current thinking regarding the necessary attributes of patients for enrollment in clinical trials, efficacy assessments, and safety assessments for development of products for bowel cleansing in preparation for a colonoscopy.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Bowel Cleansing for Colonoscopy: Efficacy and Safety Considerations for Developing New Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information about efficacy considerations of drugs and for the submission of marketing applications in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information for the submission of data or information, including submissions about fixed-dose combination drugs in 21 CFR 314.50 and 601.2 have been approved under OMB control numbers 0910–0001 and 0910–0338. The collections of information about the clinical development of drugs, including trial population and design in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information about treatment-related adverse events have been approved under OMB control number 0910–0230.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/*

guidances-drugs or *https://www.regulations.gov.*

Dated: December 6, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26923 Filed 12–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0861]

Cover Letter Attachments for Controlled Correspondences and Abbreviated New Drug Application Submissions; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Cover Letter Attachments for Controlled Correspondences and Abbreviated New Drug Application Submissions.'' This guidance is intended to assist prospective applicants, applicants, and holders of abbreviated new drug applications (ANDAs) with optional attachments that can be used when preparing cover letters that accompany controlled correspondence to the Office of Generic Drugs (OGD), as well as original ANDAs, amendments to ANDAs, and supplements to approved ANDAs submitted to FDA.

DATES: Submit either electronic or written comments on the draft guidance by February 11, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0861 for ''Cover Letter Attachments for Controlled Correspondences and ANDA Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Nicole Park, Office of Generic Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Rm. 1725, Silver Spring, MD 20993–0002, 240–402–7764, *Nicole.Park@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Cover Letter Attachments for Controlled Correspondences and ANDA Submissions.'' This guidance is intended to assist prospective applicants, applicants, and holders of ANDAs with optional attachments that can be used when preparing cover letters that accompany controlled correspondence to OGD, as well as original ANDAs, amendments to ANDAs, and supplements to approved ANDAs submitted to FDA.

A cover letter is generally included with controlled correspondence to OGD and submissions to an ANDA file. While a cover letter is not required content for an ANDA, the cover letter is a part of the electronic common technical

document (eCTD) hierarchy and is included in Module 1 of an ANDA submission.

The cover letter provides an overview of the submission and helps FDA ensure that the submission is properly triaged and assigned to the appropriate assessors. In an effort to ensure that submissions are effectively managed by FDA and acted upon within the performance review goal dates set by the Generic Drug User Fee Amendments, FDA has developed cover letter attachments to accompany, not replace, applicants' cover letters for common submissions, including controlled correspondence, original ANDAs and amendments to ANDAs, as well as supplements to approved ANDAs. These cover letter attachments have been designed as a checklist to reflect common types of information applicants are expected to address in their cover letters. The attachments are intended both to serve as a useful guide to help applicants prepare their cover letters, and to assist FDA in the triage and management of submissions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Cover Letter Attachments for Controlled Correspondences and ANDA Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 (including subpart C) for to the content and format of ANDAs, including original ANDAs, amendments to ANDAs, and supplements to approved ANDAs, submitted by applicants and approved by FDA have been approved under OMB control number 0910–0001. The collections of information for Form FDA 356h (NDA and ANDA cover letter) have been approved under OMB control number 0910–0338.

Applicants submit to FDA controlled correspondence along with cover letters related to generic drug development and FDA approval. Such submissions have been approved under OMB control number 0910–0797. The collections of information in 21 CFR part 11 for electronic records and electronic signatures have been approved under OMB control number 0910–0303. The collections of information in 21 CFR part 211 about the manufacture of the drug have been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 6, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26893 Filed 12–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1301]

Q3C(R8) Impurities: Guidance for Residual Solvents; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Q3C(R8) Impurities: Guidance for Residual Solvents.'' The guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. This guidance provides recommendations for permitted daily exposures (PDEs) for three additional residual solvents: 2-Methyltetrahydrofuran, cyclopentyl methyl ether, and tert-butyl alcohol. The PDEs were developed according to the methods for establishing exposure limits included in the guidance for industry ''Q3C: Impurities Residual Solvents'' (Q3C guidance). The Q3C PDE levels are added and revised as new toxicological data for solvents become available. This guidance finalizes the draft guidance entitled ''Q3C(R8) Recommendations for the Permitted Daily Exposures for Three Solvents—2-Methyltetrahydrofuran, Cyclopentyl Methyl Ether, and Tert-Butyl Alcohol—According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents'' issued on May 27, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on December 13, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1301 for ''Q3C(R8) Impurities: Guidance for Residual Solvents.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at

https://www.regulations.gov or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Timothy McGovern, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 22, Rm. 6426, Silver Spring, MD 20993–0002, 240–402–0477; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Q3C(R8) Impurities: Guideline for Residual Solvents.'' The guidance was prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner. By harmonizing the regulatory requirements in regions around the world, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (refer to *https://www.ich.org/*).

ICH works by involving technical experts from both regulators and industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In the **Federal Register** of May 27, 2020 (85 FR 31785), FDA published a notice announcing the availability of a draft guidance entitled ''Q3C(R8) Recommendations for the Permitted Daily Exposures for Three Solvents—2-Methyltetrahydrofuran, Cyclopentyl Methyl Ether, and Tert-Butyl Alcohol—According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents.'' The notice gave interested persons an opportunity to submit comments. In the **Federal Register** of June 5, 2020 (85 FR 34638), FDA issued a correction providing that the date by which to submit comments was July 27, 2020.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies in April 2021.

First published in December 1997, the Q3C guidance provides recommendations on the use of less toxic solvents in the manufacture of drug substances and dosage forms and sets pharmaceutical limits for residual solvents (organic volatile chemicals) in drug products. Q3C PDE levels are added and revised as new toxicological data for solvents become available. As part of the maintenance process, the Q3C(R8) guidance provides final PDEs for three additional residual solvents: 2-methyltetrahydrofuran, cyclopentyl methyl ether, and tert-butyl alcohol. Additional information regarding supporting studies was incorporated into the guidance based on comments received, but the recommended PDEs for the three new residual solvents are identical to those published in the draft guidance issued on May 27, 2020. This

guidance finalizes the guidance issued on May 27, 2020.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Q3C(R8) Impurities: Guidance for Residual Solvents.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 58 have been approved under OMB control number 0910–0119.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.regulations.gov, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: December 6, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26889 Filed 12–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1287]

Actavis LLC, et al.; Withdrawal of Approval of Six Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of six abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of January 12, 2022.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 202603	Methoxsalen Capsules, 10 milligrams (mg)	Actavis LLC, (an indirect, wholly owned subsidiary of Teva Pharmaceuticals USA, Inc.), 400 Interpace Pkwy., Bldg. A, Parsippany, NJ 07054.
ANDA 205274	Amoxicillin Tablets, 125 mg and 250 mg	Hikma Pharmaceuticals LLC, 1809 Wilson Rd., Columbus, OH 43228.
ANDA 205513	Carisoprodol Tablets, 250 mg and 350 mg	Strides Pharma Global Pte. Limited, U.S. Agent, Strides Pharma Inc., 2 Tower Center Blvd., Suite 1102, East Brunswick, NJ 08816.
ANDA 206410	Itraconazole Capsules, 100 mg	Do.
ANDA 207536	Flucytosine Capsules, 250 mg and 500 mg	Do.
ANDA 208227	Dutasteride Capsules, 0.5 mg	Do.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of January 12, 2022. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on January 12, 2022, may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: December 7, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26892 Filed 12–10–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Single-Source Supplement for Title X Services in Texas

AGENCY: Office of Population Affairs, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Office of Population Affairs (OPA) announces the award of a single-source supplement to provide Title X family planning services in Texas to Women's Health and Family Planning Association of Texas (d.b.a. Every Body Texas). The supplement will enable Every Body Texas to expand provision of emergency contraception and other family planning services to clients across the state of Texas to address the anticipated increased demand for family planning services following passage of TX SB8.

DATES: December 13, 2021.

FOR FURTHER INFORMATION CONTACT: Jessica Swafford Marcella, Deputy Assistant Secretary for Population

Affairs, Office of Population Affairs, Office of the Assistant Secretary for Health, Department of Health and Human Services at *Jessica.marcella@hhs.gov* and 240–453–2800.

SUPPLEMENTARY INFORMATION:

Recipient: Every Body Texas, Austin, TX.

Purpose of the Award: The purpose of this award is to address the anticipated need for family planning services across the state of Texas in response to TX SB8. With this funding, Every Body Texas will expand the provision of emergency contraception and other family planning services to clients across the state of Texas through their existing Title X network.

Amount of Award: $750,000.

Project Period: The project period for the supplemental award will not exceed the recipient's current project period, which is scheduled to end on March 31, 2022.

OPA currently provides $15,820,000 in Title X funding to Every Body Texas. With their Title X funding, Every Body Texas provides Title X family planning services across Texas through a network of 36 subrecipients and 192 service sites. In 2019, Every Body Texas provided family planning services to 176,697 clients across the State of Texas.

Supplemental funding will enable Every Body Texas to expand provision of emergency contraception and other family planning services to clients across the state of Texas through their existing Title X network, in response to TX SB8. Title X family planning services are services that assist in preventing or achieving pregnancy. Title X clinics must provide a broad range of acceptable and effective family planning methods and services, including: Contraceptive education, counseling, and methods (includes hormonal methods; fertility awareness-based methods; barrier methods; abstinence; and/or permanent sterilization); services centered around pre-conception health and achieving pregnancy (includes infertility services; STI prevention, education, screening, and treatment; HIV testing and referral); and pregnancy diagnosis and counseling. The broad range of family planning services does not include abortion as a method of family planning.

This award is being made non-competitively because Every Body Texas is the only existing Title X grantee providing services across the entire state of Texas. Issuing a single-source supplemental award to Every Body Texas would expand services across the entire state.

Dated: November 30, 2021.

Jessica Swafford Marcella,

Deputy Assistant Secretary for Population Affairs, Office of Population Affairs, Office of the Assistant Secretary for Health.

[FR Doc. 2021–26850 Filed 12–10–21; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions (OMB No. 0917–0028)

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, the Indian Health Service (IHS) invites the general public to take this opportunity to comment on the information collection titled, ''Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions,'' Office of Management and Budget (OMB) Control Number 0917–0028. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID: IHS_FRDOC_0001).

DATES: February 11, 2022. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

For Comments: Submit comments to Sharon Duran by one of the following methods:

- *Email: Sharon.Duran@ihs.gov.*

Comments submitted in response to this notice will be made available to the public by publishing them in the 30-day **Federal Register** notice for this information collection. For this reason, please do not include information of a confidential nature, such as sensitive personal information or proprietary information. If comments are submitted via email, the 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

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** on November 27, 2018, and allowed 30 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 February 28, 2022, to OMB for approval of an extension, and to solicit comments on specific aspects for the proposed information collection.

Title: Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions (OMB No. 0917–0028). *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0028, Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions. There are no program changes or adjustments in burden hours. *Form(s):* Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions. *Need and Use of Information Collection:* This is a request for approval of the collection of information as required by section 408 of the Indian Child Protection and Family Violence Prevention Act, Public Law 101–630 [104 stat. 4544, 25 U.S.C. 3201–3210]; 34 U.S.C. 20351; and 42 CFR part 136, subpart K.

The IHS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment, in a position having regular contact with, or control over, Indian children. 25 U.S.C. 3207(a)(1) and (2). Section 3207(a)(3) of Title 25 requires regulations prescribing the minimum standards of character for individuals appointed to positions involving regular contact with, or control over, Indian children, and section 3207(b) provides that such standards shall ensure that no such individuals have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two or more misdemeanor offenses, under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation,

contact or prostitution; crimes against persons; or offenses committed against children.

In addition, 34 U.S.C. 20351 (formerly codified at 42 U.S.C. 13041, which was transferred to 34 U.S.C. 20351) requires each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision of child care services to children under the age of 18 to assure that all existing and newly hired employees undergo a criminal history background check. The background investigation is to be initiated through the personnel program of the applicable Federal agency. This section requires employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in positions involved with the provision of child care services to children under the age of 18, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so, requiring a description of the disposition of the arrest or charge.

Affected Public: Individuals and households. *Type of Respondents:* Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED ANNUAL BURDEN HOURS

Data collection instrument(s)	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden responses (in hours)
Addendum to Declaration for Federal Employment (OMB 0917–0028)	3000	1	12/60	600
Total	3000	.....	.....	600

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Chris Buchanan,

Acting Deputy Director, Indian Health Service.

[FR Doc. 2021–26925 Filed 12–10–21; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; BRAIN Initiative: New Concepts and Early-Stage Research for Recording and Modulation in the Nervous System (R21).

Date: January 28, 2022.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Chief, Scientific Review Branch, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700 B Rockledge Drive, Suite 3400, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: December 8, 2021.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–26922 Filed 12–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials and Comparative Effectiveness Studies in Neurology.

Date: December 14–15, 2021.

Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 7, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–26866 Filed 12–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public by videocast as indicated below.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NACBIB, January 2022.
Date: January 19, 2022.
Open: 12:00 p.m. to 3:15 p.m.
Agenda: Report from the Institute Director, Council Members and other Institute Staff.
Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).
Closed: 3:30 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David T. George, Ph.D., Associate Director for Research Administration, Office of Research Administration, National Institute of Biomedical Imaging, and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892, *georged@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nibib.nih.gov/about-nibib/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 8, 2021.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–26930 Filed 12–10–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–2039]

National Offshore Safety Advisory Committee; Vacancy

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Request for applications; re-solicitation for a member representing individuals employed in offshore operations.

SUMMARY: The Coast Guard is re-soliciting applications from persons interested in membership on the National Offshore Safety Advisory Committee (Committee) to fill a vacant position representing individuals employed in offshore operations. This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the Coast Guard.

DATES: Your completed application should reach the Coast Guard on or before February 11, 2022.

ADDRESSES: Applications should include a cover letter expressing interest in an appointment to the Committee and a resume detailing their experience along with a brief biography. Applications should be submitted: Via email with subject line ''Application for NOSAC'' to Mr. Patrick Clark at *Patrick.W.Clark@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Patrick W. Clark, Designated Federal Officer of the National Offshore Safety Advisory Committee; Telephone 202–372–1358; or Email at *Patrick.W.Clark@uscg.mil.*

SUPPLEMENTARY INFORMATION: On March 17, 2020, the Coast Guard published a request in the **Federal Register** (85 FR 15211) for applications for membership in the National Offshore Safety Advisory Committee. The Coast Guard is re-soliciting applications from persons interested in membership on the National Offshore Safety Advisory Committee to represent the viewpoint of individuals employed in offshore operations. Applicants who responded to the previous notices do not need to reapply.

The National Offshore Safety Advisory Committee is a Federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act* (5 U.S.C. Appendix), and the administrative provisions in § 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* (specifically, 46 U.S.C. 15109).

The Committee was established on December 4, 2018, by § 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* Public Law 115–282, 132 Stat. 4192 and amended by § 8331 of the *Elijah E. Cummings Coast Guard Authorization Act of 2020,* Public Law 116–283. That authority is codified in 46 U.S.C. 15106. The Committee will advise the Secretary of Homeland Security on matters relating to activities directly involved with, or in support of, the exploration of offshore mineral and energy resources, to the extent that such matters are within the jurisdiction of the Coast Guard.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently. The meetings are generally held in cities that have high concentrations of maritime personnel and related marine industry businesses.

All members serve at their own expense and receive no salary or other compensation from the Federal Government.

Under the provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a

member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

While there are two positions on the advisory committee representing the viewpoints of individuals employed in offshore operations, there is currently only one vacancy.

The Department of Homeland Security does not discriminate in selection of Committee members based on race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, email your cover letter and resume along with the brief biography to Patrick W. Clark, Designated Federal Officer of the National Offshore Safety Advisory Committee, via the transmittal method provided in the **ADDRESSES** section by the deadline in the **DATES** section of this notice.

Date: December 2, 2021.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2021–26867 Filed 12–10–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0665]

Guidance: Change 1 to NVIC 21–14 Guidelines for Qualification for STCW Endorsement for Vessel Security Officers

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Change 1 to Guidelines for Qualification for STCW Endorsements for Vessel Security Officers, Vessel Personnel with Designated Security Duties, and Security Awareness, NVIC 21–14. This change notice revises NVIC 21–14 to indicate that the Coast Guard has determined that certain sea service aboard military and government owned or operated vessels may be credited toward meeting the sea service requirement for the STCW endorsement for vessel security officer (VSO).

DATES: Change 1 to NVIC 21–14 is effective as of October 29, 2021.

ADDRESSES: To view documents mentioned in this notice, search the docket number USCG–2020–0665 using the Federal eRulemaking Portal at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this document, contact the Mariner Credentialing Program Policy Division (CG–MMC–2), Coast Guard; telephone 202–372–2357; email *MMCPolicy@uscg.mil.*

SUPPLEMENTARY INFORMATION: After publication of NVIC 21–14, COMDTPUB 16721, in 2014, the Coast Guard became aware of the need to address the question of whether sea service acquired on military and government owned or operated vessels should be allowed to be used to qualify for a STCW endorsement as VSOs. This change notice revises NVIC 21–14 to indicate that the Coast Guard has determined that sea service accrued aboard certain military and government owned or operated vessels may be credited toward the sea service requirements in 33 CFR 104.215(d)(1)(v)(A) and 33 CFR 104.215(d)(1)(v)(B).

Section 33 CFR 104.215(d)(1)(v)(A) requires 12 months of sea service on a vessel subject to 33 CFR 104.105 to qualify for a STCW endorsement as VSO. Section 33 CFR 104.215(d)(1)(v)(B) requires 6 months of sea service on a vessel subject to 33 CFR 104.105, and satisfaction of a knowledge requirement to qualify for an STCW endorsement as VSO.

The Coast Guard determined that service onboard government owned or operated vessels, such as Military Sealift Command vessels (designated USNS), USACE vessels, and NOAA vessels, of at least 100 gross register tons (GRT) will be creditable toward both 33 CFR 104.215(d)(1)(v)(A) and 33 CFR 104.215(d)(1)(v)(B). The Coast Guard will credit sea service earned on these vessels toward the full sea service requirements because they are operated similarly to a merchant vessel.

The Coast Guard also determined that up to 5 months of service on military vessels will be accepted towards the 6 month minimum sea service requirement in 33 CFR 104.215(d)(1)(v)(B). The remaining month could be accrued on vessels subject to 33 CFR 104.105 or the government owned or operated vessels of at least 100 GRT listed above.

The regulations at 46 CFR 10.232(d)(1) allow the use of military service towards credentials when the Coast Guard determines it is equivalent to sea service acquired on merchant vessels. The purpose of the sea service requirements for a STCW endorsement as VSO is to ensure that the mariner is familiar with general merchant vessel operations. The Coast Guard has determined that the mariner can demonstrate the necessary merchant vessel operational experience with a combination of military sea service, a minimum of 30 days sea service on government owned or operated vessels or any vessel subject to 33 CFR 104.105, and by satisfying the knowledge requirements in 33 CFR 104.215. The policy uses a minimum tonnage of 100 gross register tons to be consistent with requirements for merchant mariners.

In addition, this policy supports the intent of 10 U.S.C. 2015 and Executive Order 13860 of March 4, 2019, titled ''Supporting the Transition of Active Duty Service Members and Military Veterans Into the Merchant Marine,'' by supporting practices that ensure that members of the United States Armed Forces receive appropriate credit for their military training and experience toward merchant mariner credentialing requirements.

As part of this change to NVIC 21–14, the Coast Guard makes some other minor changes to provide clarity. First, we note in the list of requirements to qualify for a VSO endorsement, the mariner must meet the physical examination requirements in 46 CFR part 10, subpart C. This requirement already exists and applies to this endorsement per 46 CFR 11.337(b). We are adding it to the NVIC so that it is more clear that the physical examination requirements are also a requirement, in addition to what is listed in 33 CFR 104.215(d). Second, we add a statement that the evidence of knowledge of vessel operations obtained through training or equivalent job experience required for 33 CFR 104.215(d)(3) may be documented on agency, company, or vessel letterhead. This new instruction describes a method the mariner can use to provide evidence of training and job experience to the Coast Guard in their VSO endorsement application.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: October 29, 2021.

J.W. Mauger,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2021–26878 Filed 12–10–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES960000.L14400000.ET0000.223; MNES–059784]

Notice of Public Meetings for Withdrawal Application of Federal Lands; Cook, Lake, and Saint Louis Counties, MN

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) will hold joint public meetings to provide opportunities for public comment on the USFS application to withdraw approximately 225,378 acres of National Forest System lands in the Rainy River Watershed on the Superior National Forest in northeastern Minnesota from disposition under the mineral and geothermal leasing laws for 20 years, subject to valid existing rights. In addition, the public meetings will provide the public with an initial opportunity to participate in the environmental assessment being performed in accordance with the National Environmental Policy Act (NEPA).

DATES: Public meetings will be held virtually on the following dates and times via Zoom:

- Wednesday, January 12, 2022, 1 p.m. to 4 p.m., Central Standard Time
- Saturday, January 15, 2022, 10 a.m. to 1 p.m., Central Standard Time
- Tuesday, January 18, 2022, 5 p.m. to 8 p.m., Central Standard Time

The BLM is accepting written comments regarding the withdrawal application and the scope of the environmental assessment until January 19, 2022.

ADDRESSES: Send written comments to F. David Radford, Deputy State Director of Geospatial Services, BLM, Eastern States Office, RE: Superior National Forest Withdrawal Application, 5275 Leesburg Pike, Falls Church, Virginia 22041; or by email to *BLM_ES_Lands@blm.gov* (please include Superior National Forest Withdrawal Application in the subject line).

The withdrawal application materials and public meeting information are available online at *https://go.usa.gov/xeWCn.* The Zoom link to register for the meetings will be available on this website not later than two weeks before the first meeting.

FOR FURTHER INFORMATION CONTACT: F. David Radford, BLM Eastern States Office, telephone: (703) 558–7759, email: *fradford@blm.gov* during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at (800) 877–8339 to contact Mr. Radford. The Service is available 24 hours a day, 7 days a week to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On October 21, 2021, the BLM published a notice in the **Federal Register** announcing the receipt of a withdrawal application filed by the USFS (86 FR 58299). A 90-day public comment period on the proposal was initiated upon publication, which will close on January 19, 2022. The withdrawal application requests that the Secretary of the Interior withdraw all Federal lands and interests in lands (excluding lands with federally owned fractional mineral interests) situated within the exterior boundaries of the area depicted on the map submitted with the application, titled Appendix B: Superior National Forest, dated September 20, 2021, from disposition under the United States mineral and geothermal leasing laws for a period of 20 years, subject to valid existing rights.

The USFS will serve as the lead agency for preparing the environmental assessment to evaluate the impacts of the proposed withdrawal. Comments submitted during the 90-day public comment period will be used to inform the scope and contents of the NEPA analysis of the proposed withdrawal. Public comments previously submitted for the Superior National Forest: Minnesota Application for Withdrawal, which was canceled on September 6, 2018, will be considered during this analysis. The USFS will designate the BLM as a cooperating agency for the NEPA analysis (40 CFR 1508.1(e)). The BLM will independently evaluate and review the analysis and any other documents needed for the Secretary of the Interior to make a decision on the proposed withdrawal.

Comments, including the names and street addresses of respondents, will be available for public review by appointment at the location listed previously in the **ADDRESSES** section during regular business hours.

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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 2310.3–1)

Leah Baker,

Acting BLM Eastern States State Director.

[FR Doc. 2021–27036 Filed 12–10–21; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORL00000.L18200000.XZ0000.LXSS020H0000.223.HAG 22–0003]

Notice of Public Meetings for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior Bureau of Land Management's (BLM) Southeast Oregon Resource Advisory Council (RAC) will meet as follows.

DATES: The Southeast Oregon RAC will meet on Wednesday, January 19, 2022, from 1 p.m. to 5 p.m. Pacific Time (PT) and on Thursday, January 20, from 8 a.m. to 12 noon PT. The RAC will meet again on Wednesday, April 20, 2022, from 1 p.m. to 5 p.m. PT, and on Thursday, April 21, from 8 a.m. to 12 noon PT. A public comment period will be offered at the end of each day's meeting.

ADDRESSES: Both the January and April meetings will be held virtually through the Zoom meeting application. Participation information and the final agenda will be available 30 days in advance of the meeting and will be posted online at *www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/southeast-oregon-rac.*

Comments can be mailed to: BLM Lakeview District; Attn: Todd Forbes; 1301 South G Street; Lakeview, OR 97630. All comments received will be provided to the Southeast Oregon RAC members.

FOR FURTHER INFORMATION CONTACT: Lisa McNee, Public Affairs Specialist, 1301 South G Street, Lakeview, Oregon 97630; telephone: (541) 947–6811; email: *lmcnee@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay

Service (FRS) at (800) 877–8339 to contact Lisa McNee during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC is chartered and the 15 members are appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, non-commodity, and local interests. The RAC serves in an advisory capacity to BLM and U.S. Forest Service officials concerning planning and management of public land and national forest resources located, in whole or part, within the boundaries of the BLM's Vale Field Office of the Vale District, Burns District, Lakeview District, and Fremont-Winema and Malheur National Forests. All meetings are open to the public in their entirety. Information to be distributed to the RAC is requested before the start of each meeting.

Both the January and April meetings will include updates and opportunities for RAC input regarding the Southeast Oregon and Lakeview Resource Management Plan Amendment processes; discussion on rangeland and grazing, and wild horse and burro herd management areas; review of and/or recommendations regarding proposed actions by the Burns, Vale, or Lakeview BLM Districts; and any other business that may reasonably come before the RAC. At the January meeting, the RAC will have a discussion on commercial and dispersed recreation and opportunities for maintaining and enhancing public land access. Topics for the April meeting include discussions on programmatic environmental impact statements and categorical exclusions and how they relate to land management in eastern Oregon.

As noted earlier (see **DATES**), the public may address the Southeast Oregon RAC during the public comment portion of the meeting on January 19 and 20 and April 20 and 21, 2022. Depending on the number of persons wishing to speak, the time for individual comments may be limited.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Angela Bulla,

Lakeview Deputy District Manager.

[FR Doc. 2021–26875 Filed 12–10–21; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC00000.L12200000.MA0000.241A00.223L1109AF (MO#4500158770)]

Notice of Public Meeting, Missouri Basin Resource Advisory Council Meeting, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Missouri Basin Resource Advisory Council (RAC) will meet as indicated.

DATES: The Missouri Basin RAC meeting will be held from 9 a.m. to 4 p.m. Mountain Time on January 12, 2022.

ADDRESSES: The meeting will be held virtually on the ZOOM platform. The meeting link and participation instructions will be made available to the public via news media and on the Missouri Basin RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/missouri-basin-rac.*

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Missouri Basin RAC Coordinator, BLM Eastern Montana/Dakotas District Office, 111 Garryowen Road, Miles City, Montana 59301; telephone: (406) 233–2831; email: *mjacobse@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 677–8339 to contact Mark Jacobsen during normal business hours. The FRS is available 24 hours a day, 7 days a week to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public-land management in Central and Eastern Montana, North Dakota, and South Dakota. Meeting agenda topics will include Central and Eastern Montana/Dakotas District reports, Field Office manager reports, the Revised North Dakota Resource Management Plan, individual RAC member reports on resource-related issues, a public comment period, and other topics and items of interest the council may wish to discuss. All meetings are open to the public and the public may address or present written comments to the RAC. A public comment period will be held at 2:45 p.m. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to phone in and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM, see the **FOR FURTHER INFORMATION CONTACT** section earlier.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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: 43 CFR 1784.4–2)

John Mehlhoff,

Montana/Dakotas State Director.

[FR Doc. 2021–26837 Filed 12–10–21; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1550–1553 (Final)]

Polyester Textured Yarn From Indonesia, Malaysia, Thailand, and Vietnam

Determinations

On the basis of the record [1] developed in these subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of polyester textured yarn from Indonesia, Malaysia, Thailand, and Vietnam, provided for in subheadings 5402.33.30 and 5402.33.60 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

(''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted these investigations effective October 28, 2020, following receipt of petitions filed with the Commission and Commerce by Nan Ya Plastics Corp. America, Lake City, South Carolina, and Unifi Manufacturing, Inc., Greensboro, North Carolina. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of polyester textured yarn from Indonesia, Malaysia, Thailand, and Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 24, 2021 (86 FR 33354). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on October 14, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on December 7, 2021. The views of the Commission are contained in USITC Publication 5246 (November 2021), entitled *Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and Vietnam:* Investigation Nos. 731–TA–1550–1553 (Final).

By order of the Commission.

Issued: December 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26905 Filed 12–10–21; 8:45 am]

BILLING CODE 7020–02–P

[2] 86 FR 58869, 86 FR 58875, 86 FR 58877, 86 FR 58883 (October 25, 2021).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–534–537 and 731–TA–1274–1278 (Review)]

Certain Corrosion-Resistant (CORE) Steel Products From China, India, Italy, South Korea, and Taiwan; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full five year reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty and countervailing duty orders on certain corrosion-resistant (CORE) steel products from China, India, Italy, South Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: December 7, 2021.

FOR FURTHER INFORMATION CONTACT: Angela Newell ((202) 205–2060), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 7, 2021, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (86 FR 69069, December 6, 2021); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on April 27, 2022, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 19, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the

hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 11, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 18, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 6, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 2, 2022. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 2, 2022. On June 28, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 1, 2022, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 7, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26872 Filed 12–10–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1237]

Certain Cloud-Connected Wood-Pellet Grills and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 6, 2021, the presiding chief administrative law judge (''CALJ'') issued an Initial Determination on Violation of Section 337. The CALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

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 on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A limited exclusion order directed to certain cloud-connected wood-pellet grills and components thereof imported, sold for importation, and/or sold after importation by respondent GMG Products LLC (''GMG'') of Lakeside, Oregon; and a cease and desist order directed to GMG. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the CALJ's Recommended Determination on Remedy and Bonding issued in this investigation on December 6, 2021. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would

affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by the close of business on January 5, 2022.

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 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1237'') 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.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26937 Filed 12–10–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–586]

Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses; Written Submission Deadline

AGENCY: International Trade Commission.

ACTION: Notice of request for written submissions from the public regarding Investigation No. 332–586.

SUMMARY: The Commission seeks information from the public on the impacts of foreign censorship on U.S. businesses, in connection with Investigation No. 332–586, *Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses.*

DATES: *January 14, 2022:* Deadline for filing written submissions for Investigation No. 332–586.

ADDRESSES: All Commission offices are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Due to the COVID 19 pandemic, the Commission's building is currently closed to the public. Once the building reopens, persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: The project leaders for this investigation are Ricky Ubee, Shova KC, and George Serletis. The Commission is currently unable to accept paper correspondence for this investigation. Please direct all questions and comments about this investigation electronically to the project leaders via email at *foreign.censorship@usitc.gov* or by phone at 202–205–3493.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission seeks written submissions in connection with Investigation No. 332–586, *Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation and report were requested by the Committee on Finance (Committee) of the U.S. Senate in a letter dated April 7, 2021 (revised from a request received January 4, 2021). This investigation was initiated on May 6, 2021 and notice was published in the **Federal Register** on May 12, 2021 (86 FR 26064).

As stated in the initiating notice for this investigation, the Committee has asked the Commission to provide an analysis of the impacts of foreign censorship policies and practices in key markets on U.S. businesses. The report will include, to the extent practicable, including through the use of survey data, an analysis of the trade and economic effects of such policies and practices on affected businesses in the United States and their global operations. The analysis will include to the extent practicable, quantitative and qualitative impacts of the identified policies, including by reference, where identifiable, to:

a. Impact on employment;

b. direct costs (*e.g.,* compliance and entry costs);

c. foregone revenue and sales;

d. self-censorship; and

e. other effects the Commission considers relevant for the Committee to know.

Written Submissions: ''Written submissions'' refers to any written

submissions that interested persons wish to make, regardless of whether they appeared at the hearing, and may include new information or updates of information previously provided. Written submissions should provide information that will assist the Commission in analyzing foreign censorship's impacts on (1) employment, (2) direct costs to businesses (*e.g.,* compliance and entry costs), (3) foregone revenue and sales, (4) self-censorship, and (5) other effects that you view as falling within the scope of the Committee's request. The Commission is scheduled to deliver its report to the Committee by July 5, 2022.

All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

In accordance with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8) the document must identify on its cover (1) the investigation number and title and the type of document filed (*i.e.,* written submission), (2) the name and signature of the person filing it, (3) the name of the organization that the submission is filed on behalf of, and (4) whether it contains confidential business information (CBI). If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

Confidential Business Information: Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the Committee, the Commission will not include any confidential business information in its report. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the report should include a summary with their written submission on or before January 14, 2022 and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the part 2 report'' at the top of the page. The summary may not exceed 500 words should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the written submission can be found.

By order of the Commission.

Issued: December 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26911 Filed 12–10–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1118 (Bond Return)]

Certain Movable Barrier Operator Systems and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Denying Respondents' Motion for Return of Bonds; Termination of Bond Return Proceeding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined not to review an initial determination (''ID'') (Order No. 45) denying a motion filed by respondents Nortek Security & Control, LLC of Carlsbad, California; Nortek, Inc. of Providence, Rhode Island; and GTO Access Systems, LLC of Tallahassee, Florida (collectively, ''Nortek'') for return of bonds posted in the above-captioned investigation. The bond return proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket system (''EDIS'') at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *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 June 11, 2018, based on a complaint, as supplemented, filed by The Chamberlain Group, Inc. (''CGI'') of Oak Brook, Illinois. 83 FR 27020–21 (June 11, 2018). The complaint alleges a violation of section 337 the Tariff Act, as amended, 19 U.S.C. 1337 (''Section 337'') in the importation, sale for importation, or sale in the United States after importation of certain movable barrier operator (''MBO'') systems that purportedly infringe one or more of the asserted claims of U.S. Patent Nos. 7,775,223 (''the '223 patent); 8,587,404 (''the '404 patent''); and 6,741,052 (''the

'052 patent''). *Id.* The Commission's notice of investigation named Nortek as respondents. *Id.* The Office of Unfair Import Investigations was not named as a party to this investigation. *See id.*

The Commission subsequently terminated the investigation with respect to certain patent claims withdrawn by CGI. *See* Order No. 16 (Feb. 5, 2019), *unreviewed by* Comm'n Notice (March 6, 2019); Order No. 27 (June 7, 2019), *unreviewed by* Comm'n Notice (June 27, 2019); Order No. 31 (July 30, 2019), *unreviewed by* Comm'n Notice (Aug. 19, 2019); Order No. 32 (Sept. 27, 2019), *unreviewed by* Comm'n Notice (Oct. 17, 2019).

On November 25, 2019, the ALJ issued the final Initial Determination on Violation of Section 337 (''Final ID'') and Recommended Determination on Remedy and Bond (''RD''), finding no violation of Section 337 because the asserted claims of the '223 and '404 patents are not infringed and the asserted claim of the '052 patent is invalid. The RD sets forth the ALJ's recommendations on remedy and bond.

On the same date, the ALJ issued Order No. 38, granting CGI's motion for summary determination that it satisfied the economic prong of the domestic industry requirement, pursuant to Section 337(a)(3)(B) (19 U.S.C. 1337(a)(3)(B)). Order No. 38 (Nov. 25, 2019).

On February 19, 2020, the Commission issued a notice of its determination to review Order No. 38 and to partially review the Final ID with respect to certain issues relating to each of the three asserted patents. 85 FR 10723–26 (Feb. 25, 2020).

On April 22, 2020, the Commission issued its final determination, affirming the ID's finding that there was no violation with respect to either the '404 patent or '052 patent. Comm'n Notice at 3 (April 22, 2020). The Commission also vacated Order No. 38 and remanded the economic prong issue to the ALJ for further proceedings while the Commission continued to review issues relating to the '223 patent. *Id.;* Order Vacating and Remanding Order No. 38 (April 22, 2020) (''Remand Order'').

On July 10, 2020, the ALJ issued the Remand Initial Determination (''Remand ID''), finding that CGI satisfied the economic prong of the domestic industry requirement. Remand ID (July 10, 2020). On September 9, 2020, the Commission determined to review the Remand ID. 85 FR 57249–51 (Sept. 15, 2020).

On December 3, 2020, the Commission determined to affirm the Remand ID, reversed the ID's finding that Nortek did not infringe the '223 patent, and found that Nortek violated Section 337 by way of infringing claims 1 and 21 of the '223 patent. The Commission issued a limited exclusion order and cease and desist orders and directed Nortek to pay a bond equal to 100 percent of the entered value of the covered products imported during the period of Presidential review.

On June 16, 2020, CGI filed its notice of appeal from the final determination in the present investigation. The U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') docketed CGI's appeal as Appeal No. 20–1965. On April 1, 2021, Nortek filed its cross-appeal, which the Federal Circuit docketed as Appeal No. 21–1829 and consolidated with Appeal No. 20–1965. The appeals are presently pending before the Federal Circuit.

On June 8, 2021, Nortek filed a motion for return of the bonds it posted in connection with products imported during the period of Presidential review, pursuant to Commission Rule 210.50(d)(1). On June 23, 2021, CGI filed an opposition to Nortek's motion.

On October 22, 2021, the ALJ issued the subject ID (Order No. 45), denying Nortek's motion as untimely because it was not filed within 90 days of the expiration of the Presidential review period as well as premature because it was not filed within 30 days after the resolution of the appeal from the final determination. Order No. 45 (Oct. 22, 2021).

No party filed a petition for review of the subject ID.

Having reviewed the Remand ID, the parties' submissions, and the evidence of record, the Commission has determined not to review the subject ID.

The bond return proceeding is terminated.

The Commission voted to approve these determinations on December 8, 2021.

The authority for the Commission's determinations 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: December 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26938 Filed 12–10–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1220]

Certain Filament Light-Emitting Diodes and Products Containing Same (II); Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on November 19, 2021, the presiding administrative law judge (''ALJ'') issued a Final Initial Determination on Violation of section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation,

specifically: (1) A limited exclusion order directed to certain filament light-emitting diodes and products containing same imported, sold for importation, and/or sold after importation by respondents and intervenors: IKEA Supply AG; IKEA U.S. Retail LLC; IKEA of Sweden AB (collectively, ''IKEA''); General Electric Company; Savant Technologies LLC; Home Depot Product Authority, LLC; Home Depot U.S.A., Inc.; The Home Depot, Inc.; Feit Electric Company, Inc.; Satco Products, Inc.; Signify North America Corp.; and Global Value Lighting LLC (collectively, ''Respondents''); and (2) cease and desist orders directed against all Respondents, except IKEA. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on November 19, 2021. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainants, complainants' licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainants, complainants' licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on December 22, 2021.

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–1220'') 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.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 8, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26942 Filed 12–10–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–540–543 and 731–TA–1283–1287 and 1290 (Review)]

Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, and the United Kingdom; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing duty orders on cold-rolled steel flat products from Brazil, China, India, and Korea and the antidumping duty orders on cold-rolled steel flat products from Brazil, China, India, Japan, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: December 6, 2021.

FOR FURTHER INFORMATION CONTACT: Calvin Chang ((202) 205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 7, 2021, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (86 FR 52180, September 20, 2021); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C.

1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on May 2, 2022, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with these reviews beginning at 9:30 a.m. on May 24, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 13, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 23, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 12, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 6, 2022. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 6, 2022. On July 6, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 11, 2022, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 7, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26870 Filed 12–10–21; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Civil Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Civil Rules; Notice of cancellation of open hearing.

SUMMARY: The following virtual public hearing on proposed amendments to the Federal Rules of Civil Procedure has been canceled: Civil Rules Hearing on January 6, 2022. The announcement for this hearing was previously published in the **Federal Register** on August 11, 2021.

DATES: January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Bridget Healy, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: December 7, 2021.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2021–26868 Filed 12–10–21; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–927]

Importer of Controlled Substances Application: Noramco, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Noramco, Inc., has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 12, 2022. Such persons may also file a written request for a hearing on the application on or before January 12, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on September 22, 2021, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Nabilone	7379	II
Phenylacetone	8501	II
Opium, Raw	9600	II
Poppy Straw Concentrate	9670	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to import Phenylacetone (8501), and Poppy Straw Concentrate (9670) to bulk manufacture other controlled substances for distribution to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinols), the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–26906 Filed 12–10–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–932]

Bulk Manufacturer of Controlled Substances Application: SpecGX, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: SpecGX, LLC, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 11, 2022. Such persons may also file a written request for a hearing on the application on or before February 11, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on September 20, 2021, SpecGX LLC, 3600 North 2nd Street, Saint Louis, Missouri 63147, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Phenylacetone	8501	II

The company plans to manufacture the above-listed controlled substance in bulk for conversion to other controlled substances. No other activity for this drug code is authorized for this registration.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–26907 Filed 12–10–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Agency Information Collection Activities; Request for Public Comment

AGENCY: Employee Benefits Security Administration (EBSA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act, provides the general public and Federal agencies with an opportunity to comment on proposed 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. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of

the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at *reginfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before February 11, 2022.

ADDRESSES: James Butikofer, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210, or *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Current Actions

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0140.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 536,452.

Responses: 10,770,984.

Estimated Total Burden Hours: 1,183.

Estimated Total Burden Cost (Operating and Maintenance): $204,654.

Description: The Patient Protection and Affordable Care Act, Public Law 111–148 (the Affordable Care Act or the Act) was enacted on March 23, 2010. Section 1251 of the Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. On June 17, 2010, the Departments issued interim final regulations implementing section 1251 and requesting comment. On November 17, 2010, the Departments issued an amendment to the interim final regulations to permit certain changes in policies, certificates, or contracts of insurance without loss of grandfathered status. On November 18, 2015, the Departments issued final regulations that continue the information collections contained in the interim final regulations (29 CFR 2590.715–1251(a)(3)(i), 29 CFR 2590.715–1251(a)(2), 29 CFR 2590.715–1251(a)(3)(i)).

To maintain its status as a grandfathered health plan, plans must maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain, or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

In addition, grandfathered health plans must include a statement in plan materials provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Affordable Care Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Affordable Care Act, providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan, and what might cause a plan to change from grandfathered health plan status and to file complaints. However, grandfathered health plans are not required to provide the disclosure statement every time they send out a communication, such as an explanation of benefits, to a participant or beneficiary. Instead, grandfathered health plans will comply with this disclosure requirement if they includes the model disclosure language provided in the Departments' interim final grandfather regulations (or a similar statement) whenever a summary of the benefits under the plan is provided to participants and beneficiaries.

Grandfathered group health plans that change health insurance issuers must also provide the succeeding health insurance issuer (and the succeeding health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether the standards of paragraph (g)(1) of the final regulations are exceeded. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0140. The current approval is scheduled to expire on May 31, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Affordable Care Act Advance Notice of Rescission.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0141.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 100.

Responses: 1,504.

Estimated Total Burden Hours: 18.

Estimated Total Burden Cost (Operating and Maintenance): $196.

Description: The Patient Protection and Affordable Care Act, Public Law 111–148 (the Affordable Care Act or the Act) was enacted on March 23, 2010. Section 2712 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, and the Department's final regulation (26 CFR 54.9815–2712, 29 CFR 2590.715–2712, 45 CFR 147.2712) provides rules regarding rescissions of health coverage for group health plans and health insurance issuers offering group or individual health insurance coverage. Under the statute and final regulations, a group health plan, or a health insurance issuer offering group or individual health insurance coverage, generally must not rescind coverage except in the case of fraud or an intentional misrepresentation of a material fact. This standard applies to all rescissions, whether in the group, or individual insurance market, or for self-insured coverage. These rules also apply regardless of any contestability period of the plan or issuer.

The PHS Act section 2712 mandated a new advance notice requirement when coverage is rescinded where still permissible. Specifically, the second sentence in section 2712 provides that coverage may not be cancelled unless prior notice is provided, and then only as permitted under PHS Act sections 2702(c) and 2742(b). Under these interim final regulations, even if prior notice is provided, rescission is only permitted in cases of fraud or an intentional misrepresentation of a material fact as permitted under the cited provisions.

The final regulations provide that a group health plan, or health insurance issuer offering group health insurance coverage, must provide at least 30 days advance notice to an individual before coverage may be rescinded. The notice

must be provided regardless of whether the rescission is of group or individual coverage; or whether, in the case of group coverage, the coverage is insured or self-insured, or the rescission applies to an entire group or only to an individual within the group. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0141. The current approval is scheduled to expire on May 31, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0147.

Affected Public: Not-for-profit institutions, Businesses or other for-profits.

Respondents: 2,327,850.

Responses: 72,826,994.

Estimated Total Burden Hours: 328,265.

Estimated Total Burden Cost (Operating and Maintenance): $7,040,366.

Description: The Patient Protection and Affordable Care Act, Public Law 111–148, was signed into law on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, was signed into law on March 30, 2010 (collectively known as the ''Affordable Care Act''). The Affordable Care Act amends the Public Health Service Act (PHS Act) by adding section 2715 ''Development and Utilization of Uniform Explanation of Coverage Documents and Standardized Definitions.'' This section directed the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, policyholders, and certificate holders a summary of benefits and coverage (SBC) explanation that accurately describes the benefits and coverage under the applicable plan or coverage.

Section 2590.715–2715(a)(1) requires a group health plan and a health insurance issuer to provide a written summary of benefits and coverage (SBC) for each benefit package to entities and individuals at specified points in the enrollment process. As specified in § 2590.715–2715(a)(2), a plan or issuer will populate the SBC with the applicable plan or coverage information, including the following: (1) A description of the coverage, including cost sharing, for each category of benefits identified in guidance by the Secretary; (2) exceptions, reductions, and limitations of the coverage; (3) the cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations; (4) the renewability and continuation of coverage provisions; (5) coverage examples that illustrate common benefits scenarios (including pregnancy and serious or chronic medical conditions) and related cost sharing; (6) contact information for questions; (7) for issuers, an internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained; (8) for plans and issuers that maintain one or more networks of providers, an internet address (or similar contact information) for obtaining a list of network providers; (9) for plans and issuers that provide prescription drug coverage through a formulary, an internet address (or similar contact information) for obtaining information on prescription drug coverage; and (10) an internet address (or similar contact information) where a consumer may review and obtain the uniform glossary; and (11) a statement about whether the plan or coverage provides minimum essential coverage as defined under section 5000A(f) of the Internal Revenue Code and whether the plan's or coverage's share of the total allowed costs of coverage meets applicable requirements.

Because the statute additionally requires the Secretary to ''provide for the development of standards for the definitions of terms used in health insurance coverage,'' including specified insurance-related and medical terms, the Departments have interpreted this provision as requiring plans and issuers to make available a uniform glossary of health coverage and medical terms that is three double-sided pages in length. Plans and issuers must include an internet address in the SBC for consumers to access the glossary and provide a paper copy of the glossary within seven days upon request. Plans and issuers may not modify the glossary provided in guidance by the Departments.

Finally, ''if a group health plan or health insurance issuer makes any material modification in any of the terms of the plan or coverage involved (as defined for purposes of section 102 of the Employee Retirement Income Security Act) that is not reflected in the most recently provided summary of benefits and coverage, the plan or issuer must provide notice of such modification to enrollees not later than 60 days prior to the date on which such modification will become effective.'' Thus, the Departments require plans and issuers to provide 60-days advance notice of any material modification in any of the terms of the plan or coverage that (1) affects the information required to be included the SBC; (2) occurs during the plan or policy year, other than in connection with renewal or reissuance of the coverage; and (3) is not otherwise reflected in the most recently provided SBC. A plan or issuer may satisfy this requirement by providing either an updated SBC or a separate notice describing the modification. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0147. The current approval is scheduled to expire on May 31, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans—PTE 1976–1, PTE 1977–10, PTE 1978–6.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0058.

Affected Public: 3,483.

Respondents: Businesses or other for-profits, Not-for-profit institutions.

Responses: 3,483.

Estimated Total Burden Hours: 871.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description:

The three prohibited transaction class exemptions (PTEs) included in this ICR, (1) PTE 76–1, (2) PTE 77–10, and (3) PTE 78–6, exempt certain types of transactions commonly entered into by ''multiemployer'' plans from certain of the prohibitions contained in sections 406(a) and 407(a) of ERISA. The Department determined that, in the absence of these exemptions, the affected plans would not be able to operate efficiently or to enter into routine types of transactions necessary for their operations. In order to ensure that the class exemptions for these necessary transactions meet the statutory standards, the Department imposed conditions contained in the exemptions that are information collections. The information collections consist of recordkeeping and third-party disclosures. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0058. The current approval is scheduled to expire on June 30, 2022.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice for Health Reimbursement Arrangements Integrated with Individual Health Insurance Coverage.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0160.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 721,438.

Responses: 9,399,428.

Estimated Total Burden Hours: 196,992.

Estimated Total Burden Cost (Operating and Maintenance): $120,662.

Description:

The final rules removed the current prohibition on integrating Health Reimbursement Arrangements (HRAs) with individual health insurance coverage, if certain conditions are met. The following information collections are contained in the final rules: (1) Verification of Enrollment in Individual Coverage; (2) HRA Notice to Participants; (3) Notice to Participants that Individual Policy is not Subject to Title I of ERISA; (4) Participant Notification of Individual Coverage HRA of Cancelled or Discontinued Coverage; (5) Notice for Excepted Benefit HRAs. The information collection requirements are needed to notify the HRA that participants are enrolled in individual health insurance coverage, to help individuals understand the impact of enrolling in an HRA on their eligibility for the PTC, and that coverage is not subject to the rules and consumer protections of the Employee Retirement Income Security Act. The Department has received approval from OMB for this ICR under OMB Control No. 1210–0160. The current approval is scheduled to expire on June 30, 2022.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections 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.,* by permitting electronic submissions of responses.
- Evaluate the effectiveness of the additional demographic questions.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the information collection; they will also become a matter of public record.

Signed at Washington, DC, this 6th day of December, 2021.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2021–26881 Filed 12–10–21; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Short-Time Compensation (STC) Grants

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Short-Time Compensation (STC) Grants.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by February 11, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Brian Eiermann by telephone at (202) 693–2846, TTY 1–877–889–5627 (these are not toll-free numbers), or by email at *Eiermann.Brian.J@dol.gov.*

Submit written comments about or requests for a copy of this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4520, 200 Constitution Avenue NW, Washington, DC 20210, by email at *Eiermann.Brian.J@dol.gov,* or by Fax at (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Brian Eiermann by telephone at (202) 693–2846 (this is not a toll-free number) or by email at *Eiermann.Brian.J@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 can be properly assessed.

The enactment of Public Law 112–96 (The Middle Class Tax Relief and Job Creation Act of 2012, referred to hereafter as ''the MCTRJC Act'') contains Subtitle D, Short-Time Compensation Program, also known as the ''Layoff Prevention Act of 2012''. The sections of the law under this subtitle concern states that participate in a layoff aversion program known as STC or work sharing. Section 2164 of the MCTRJC Act covers grants the Federal Government provided to states for the purpose of implementation or improved administration of an STC program or for promotional and enrollment in the program.

In addition to the MCTRJC Act, the enactment Public Law 116–136 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, referred to hereafter as ''the CARES Act,'' contains section 2110 concerning the STC Program. Section 2110 of the CARES Act covers grants the Federal Government provides to states for the purpose of implementation or improved administration of an STC program or to promote the program to employers and enroll employers in the program.

ETA has principal oversight responsibility for monitoring the STC grants awarded to state workforce agencies (SWA). As part of the monitoring process, SWAs submit a quarterly progress report (QPR). The QPR serves as a monitoring instrument to track the SWAs' progress toward completing STC grant activities. ETA also needs to allow for this reporting for proper oversight of state STC programs. Section 2164 of the MCTRJC Act and Section 2110 of the CARES Act authorize this information collection.

This information collection under the MCTRJC Act is subject to the PRA. The

CARES Act provided an exemption to the PRA, so information collection regarding grants provided under the CARES Act is not subject to PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0499.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- 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).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Short-Time Compensation (STC) Grants.

Form: Short-Time Compensation Quarterly Progress Report.

OMB Control Number: 1205–0499.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 19.

Frequency: Quarterly.

Total Estimated Annual Responses: 140.

Estimated Average Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 140 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Angela Hanks,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2021–26879 Filed 12–10–21; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Wage and Hour Division

Notice of Approved Agency Information Collection; Information Collection: Employment Information Form

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Wage and Hour Division (WHD) is providing notice to the public that the WHD sponsored information collection request (ICR) titled, ''Employment Information Form,'' has been approved by the Office of Management and Budget (OMB). WHD is notifying the public that the information collection has been revised and extended effective immediately through November 30, 2024.

DATES: The OMB approval of the revision and extension of this information collection is effective immediately with an expiration date of November 30, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretations, Wage and Hour, 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) or by sending an email to *WHDPRAComments@dol.gov.* Copies of this notice may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, Braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: The Department of Labor submitted a proposed revision to the information collection titled Employment Information Form (OMB Control Number 1235–0021) in conjunction with a final rule. The final rule titled, ''Increasing the Minimum Wage for Federal Contractors,'' published in the **Federal Register** on November 24, 2021 (86 FR 67126). OMB issued a Notice of Action on November 30, 2021 approving the collection and extending the expiration of the collection to November 30, 2024 under OMB Control Number 1235–0021.

Section (k) of 5 CFR 1320.11, ''Clearance of Collections of Information in Proposed Rules'' states, ''After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the **Federal Register** to inform the public of OMB's decision.'' This notice fulfills the Department's obligation to notify the public of OMB's approval of the information collection request.

Dated: December 2, 2021.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2021–26883 Filed 12–10–21; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

Notice of Approved Agency Information Collection; Information Collection: Records To Be Kept by Employers—Fair Labor Standards Act

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Wage and Hour Division (WHD) is providing notice to the public that the WHD sponsored information collection request (ICR) titled, ''Records to be kept by Employers—Fair Labor Standards Act,'' has been approved by the Office of Management and Budget (OMB). WHD is notifying the public that the information collection has been revised and extended effective immediately through November 30, 2024.

DATES: The OMB approval of the revision and extension of this information collection is effective immediately with an expiration date of November 30, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretations, Wage and Hour, 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) or by sending an email to *WHDPRAComments@dol.gov.* Copies of this notice may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: The Department of Labor submitted a proposed revision to the information collection titled Records to be kept by Employers—Fair Labor Standards Act (OMB Control Number 1235–0018) in conjunction with a final rule. The final rule titled, ''Increasing the Minimum Wage for Federal Contractors,'' published in the **Federal Register** on November 24, 2021 (86 FR 67126). OMB issued a Notice of Action on November 30, 2021 approving the collection and extending the expiration of the collection to November 30, 2024 under OMB Control Number 1235–0018.

Section (k) of 5 CFR 1320.11, ''Clearance of Collections of Information in Proposed Rules'' states, ''After receipt of notification of OMB's approval, instruction to make a substantive or material change to, disapproval of a collection of information, or failure to act, the agency shall publish a notice in the **Federal Register** to inform the public of OMB's decision.'' This notice fulfills the Department's obligation to notify the public of OMB's approval of the information collection request.

Dated: December 2, 2021.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2021–26882 Filed 12–10–21; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 11, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION:

Title of Collection: Notification Requirements Regarding Sexual Harassment, Other Forms of Harassment, or Sexual Assault.

OMB Number: 3145–0249.

Type of Request: Renewal with change of an information collection.

Expiration Date of Approval: February 28, 2022.

Proposed Project: The primary purpose of this data collection is for institutional authorized organizational representatives to inform NSF of any finding/determination regarding the Principal Investigator (PI) or any co-PI that demonstrates a violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; and/or if the PI or any co-PI is placed on administrative leave or if any administrative action has been imposed on the PI or any co-PI by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

The awardee is required to notify NSF of: (1) Any finding/determination regarding the PI or any co-PI that demonstrates a violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; and/or (2) if the PI or any co-PI is placed on administrative leave or if any administrative action has been imposed on the PI or any co-PI by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault. Such notification must be submitted by the Authorized Organizational Representative (AOR) or designee to NSF's Office of Equity and Civil Rights at: *https://www.nsf.gov/OD/OECR/notification_form.jsp* within ten business days from the date of the finding/determination, or the date of the placement of a PI or co-PI by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner. Each notification must include the following information:

- NSF Award Number;
- Name of PI or co-PI being reported;
- Type of Notification: Select one of the following:

—Finding/Determination that the reported individual has been found to have violated awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; or

—Placement by the awardee of the reported individual on administrative leave or the imposition of any administrative action on the PI or any co-PI by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

- Description of the finding/determination and action(s) taken, if any; and
- Reason(s) for, and conditions of, placement of the PI or any co-PI on administrative leave or imposition of administrative action.

Use of the Information: NSF will use the information in consultation with the awardee to determine whether the NSF award activities can be carried out as proposed and in a manner that protects the safety and security of award personnel.

Burden on the Public: It has been estimated that respondents will expend an average of one hour to complete the form.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on 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.

Dated: December 8, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–26935 Filed 12–10–21; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022–30; Order No. 6053]

Inbound Competitive Multi-Service Agreements With Foreign Postal Operators

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service that it has entered into the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 21, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Commission Action
III. Ordering Paragraphs

I. Introduction

On December 3, 2021, the Postal Service filed a notice with the Commission pursuant to 39 CFR 3035.105 and Order No. 546,[1] giving notice that it has entered into an Inbound Competitive Multi-Service Agreement with a foreign postal operator (FPO). The Notice concerns the inbound portions of the Competitive multi-product agreement entered into by the Postal Service and an FPO, referred to as ''FPO–USPS Agreement FY22–1.'' Notice at 1. The Postal Service seeks to include FPO–USPS Agreement FY22–1 within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010–34) product. *Id.*

The Postal Service asserts that FPO–USPS Agreement FY22–1 ''is functionally equivalent to the baseline agreement filed in Docket No. MC2010–34 because the terms of this agreement are similar in scope and purpose to the terms of the CP2010–95 Agreement.'' *Id.* at 3. Concurrent with the Notice, the Postal Service filed supporting financial documentation and the following documents:

- Attachment 1—an application for non-public treatment;
- Attachment 2—the FPO–USPS Agreement FY22–1;
- Attachment 3—Governors' Decision No. 19–1;
- Attachment 4—a certified statement required by 39 CFR 3035.105(c)(2). *Id.* at 5.

The Postal Service states it intends for FPO–USPS Agreement FY22–1 to take effect on January 1, 2022. *Id.* at 1. The Postal Service notes that FPO–USPS Agreement FY22–1 provides rates for inbound tracked packets. *Id.* at 6.

The Postal Service states that FPO–USPS Agreement FY22–1 is in compliance with 39 U.S.C. 3633 and is functionally equivalent to the inbound Competitive portions of the CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010–34). *Id.* at 9. For these reasons, the Postal Service avers that FPO–USPS Agreement FY22–1 should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

II. Commission Action

The Commission establishes Docket No. CP2022–30 to consider the Notice. Interested persons may submit comments on whether the FPO–USPS Agreement FY22–1 is consistent with 39 U.S.C. 3633 and 39 CFR 3035.105 and whether it is functionally equivalent to the inbound Competitive portions of the Docket No. CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010–34). Comments are due by December 21, 2021.

The Notice and related filings are available on the Commission's website (*http://www.prc.gov*). The Commission encourages interested persons to review the Notice for further details.

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2022–30 for consideration of the matters raised by the Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY22–1, filed on December 3, 2021.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by December 21, 2021.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2021–26845 Filed 12–10–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93728; File No. SR–NASDAQ–2021–095]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 1, General Provisions

December 7, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3]

[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator—FY22–1, December 3, 2021 (Notice). Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Service Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that on December 1, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC's (''NOM'') Pricing Schedule at Options 7, Section 1, General Provisions.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on December 1, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NOM proposes to amend its Pricing Schedule at Options 7, Section 1, General Provisions. Specifically, NOM proposes to amend the way an Exchange Participant indicates its participation in the Affiliated Entity Program. Specifically, the Exchange proposes to amend the description of ''Affiliated Entity'' within Options 7, Section 1, General Provisions. Currently, the term ''Affiliated Entity'' is described as,

> a relationship between an Appointed MM and an Appointed OFP for purposes of aggregating eligible volume for pricing in Options 7, Sections 2(1) and 2(6) for which a volume threshold or volume percentage is required to qualify for higher rebates or lower fees. NOM Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing in Options 7, Sections 2(1) and 2(6). Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity Relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually. Participants under Common Ownership may not qualify as a counterparty comprising an Affiliated Entity. Each Participant may qualify for only one (1) Affiliated Entity relationship at any given time.

Today, Participants are required to annually renew their Affiliate Entity relationship at the end of one year if they desire to continue the relationship. The parties must both send an email to the Exchange to avoid termination of the relationship, provided the relationship was not terminated earlier in the year. The Exchange believes that this process is burdensome for Participants that desire to remain in the program. The consequence of not renewing is termination. The Exchange desires to remove the administrative burden associated with the requirement to annually renew and instead provide that the Affiliated Entity relationship will automatically renew each month, unless otherwise terminated. The proposed new rule text would provide,

> The term ''**Affiliated Entity**'' is a relationship between an Appointed MM and an Appointed OFP for purposes of aggregating eligible volume for pricing in Options 7, Sections 2(1) and 2(6) for which a volume threshold or volume percentage is required to qualify for higher rebates or lower fees. NOM Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing in Options 7, Sections 2(1) and 2(6). Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity Relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Participants under Common Ownership may not qualify as a counterparty comprising an Affiliated Entity. Each Participant may qualify for only one (1) Affiliated Entity relationship at any given time.

As is the case today, parties to the Affiliated Entity relationship may decide to terminate the relationship during any month by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Cboe Exchange, Inc. (''Cboe'') has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program.[4] The Exchange believes that this amendment will streamline the workflow for Participants by not requiring Participants to renew each year to continue the affiliated relationship.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to amend the way Exchange Participants indicate their participation in the Affiliated Entity Program is reasonable. Today, Participants are required to annually renew their Affiliated Entity relationship at the end of one year if they desire to continue the relationship. The parties must both send an email to the Exchange to avoid termination of the relationship, provided the relationship was not terminated earlier in the year. The Exchange believes that this process is burdensome for Participants that desire to remain in the program. The consequence of not renewing is termination of their participation in the

[4] *See* Cboe's Fees Schedule at footnote 23 ''A Market-Maker may designate an Order Flow Provider (''OFP'') as its ''Appointed OFP'' and an OFP may designate a Market-Maker to be its ''Appointed Market-Maker'' for purposes of qualifying for credits under AVP. In order to effectuate the appointment, the parties would need to submit the Appointed Affiliate Form to the Exchange by 3:00 p.m. CST on the first business day of the month in order to be eligible to qualify for credits under AVP for that month. The Exchange will recognize only one such designation for each party once every calendar month, which designation will automatically renew each month until or unless the Exchange receives an email from either party indicating that the appointment has been terminated. A Market-Maker that has both an Affiliate OFP and Appointed OFP will only qualify based upon the volume of its Appointed OFP. The volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker will only count towards qualifying the Appointed Market-Maker. Volume executed in open outcry is not eligible to receive a credit under AVP.''

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

program. The Exchange desires to remove the administrative burden associated with the requirement to annually renew and instead provide that the Affiliated Entity relationship will automatically renew each month, unless otherwise terminated. As is the case today, parties to the Affiliated Entity relationship may decide to terminate the relationship during any month by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Also, Cboe has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program.[7] The Exchange believes that this amendment will streamline the workflow for Participants by not requiring Participants to renew each year to continue the affiliated relationship.

The Exchange's proposal to amend the way Exchange Participants indicate their participation in the Affiliated Entity Program is equitable and not unfairly discriminatory. Today, any Participant may participate in the Affiliated Entity Program. The proposed changes would impact all Participants that voluntarily elect to participate in the Affiliated Entity Program in a uniform manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. Cboe has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program [8] as proposed herein for the Affiliated Entity Program.

Intra-Market Competition

The Exchange's proposal to amend the way Exchange Participants indicate their participation in the Affiliated Entity Program does not impose an undue burden on competition. Today, any Participant may participate in an Affiliated Entity relationship. The proposed changes would impact all Participants that voluntarily elect to participate in the Affiliated Entity Program in a uniform manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–095. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–095, and should be submitted on or before January 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26858 Filed 12–10–21; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Cboe's Fees Schedule at footnote 23 ''A Market-Maker may designate an Order Flow Provider (''OFP'') as its ''Appointed OFP'' and an OFP may designate a Market-Maker to be its ''Appointed Market-Maker'' for purposes of qualifying for credits under AVP. In order to effectuate the appointment, the parties would need to submit the Appointed Affiliate Form to the Exchange by 3:00 p.m. CST on the first business day of the month in order to be eligible to qualify for credits under AVP for that month. The Exchange will recognize only one such designation for each party once every calendar month, which designation will automatically renew each month until or unless the Exchange receives an email from either party indicating that the appointment has been terminated. A Market-Maker that has both an Affiliate OFP and Appointed OFP will only qualify based upon the volume of its Appointed OFP. The volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker will only count towards qualifying the Appointed Market-Maker. Volume executed in open outcry is not eligible to receive a credit under AVP.''

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93727; File No. SR–MEMX–2021–10]

Self-Regulatory Organizations; MEMX LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Establish a Retail Midpoint Liquidity Program

December 7, 2021.

I. Introduction

On August 18, 2021, MEMX LLC (''MEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Midpoint Liquidity Program (''Program''). The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3] On October 19, 2021, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act [5] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to establish a Retail Midpoint Liquidity Program to provide retail investors with enhanced price improvement opportunities at the midpoint of the national best bid and offer (''Midpoint Price'') against a limited group of liquidity providers on the Exchange. Specifically, the Exchange proposes to allow Retail Member Organizations (''RMOs'') to submit a new type of order on behalf of retail investors that is designed to execute at the Midpoint Price (a ''Retail Midpoint Order''). Contra-side liquidity would be provided almost exclusively by a new order type, called a Retail Midpoint Liquidity Order (''RML Order''), which any Exchange user would be permitted to submit.[6] The Exchange would permit users to elect whether to have their RML Orders count towards a new Retail Liquidity Identifier, which MEMX would disseminate through its proprietary market data feeds and the appropriate securities information processor (''SIP'') when such elected RML Order interest aggregates to form at least one round lot for a particular security.

Defined Terms and the Retail Liquidity Identifier

Under the proposal, ''Retail Midpoint Order'' would be defined as a Retail Order submitted by an RMO that is a Pegged Order [7] with a Midpoint Peg [8] instruction (''Midpoint Peg Order'') and that is only eligible to execute against RML Orders and other orders priced more aggressively than the Midpoint Price through the execution process described in proposed Exchange Rule 11.22(c). As proposed, a Retail Midpoint Order must have a time-in-force (''TIF'') instruction of IOC.[9] Further, an ''RML Order'' would be defined as a Midpoint Peg Order that is only eligible to execute against Retail Midpoint Orders through the execution process described in proposed Exchange Rule 11.22(c). As proposed, an RML Order must have a TIF instruction of Day,[10] RHO,[11] or GTT [12] and may not include a Minimum Execution Quantity [13] instruction. According to the Exchange, the purpose of limiting Retail Midpoint Orders and RML Orders to interacting with each other (subject to the exception of Retail Midpoint Orders being eligible to execute against other orders priced more aggressively than the Midpoint Price) is that the proposed Program is designed to provide a mechanism whereby liquidity-providing users can provide price-improving liquidity at the Midpoint Price specifically to retail investors, and liquidity-removing RMOs submitting orders on behalf of retail investors can interact with such price-improving liquidity at the Midpoint Price ''in a deterministic manner.'' [14]

The Exchange proposes to disseminate a Retail Liquidity Identifier through the Exchange's proprietary market data feeds, MEMOIR Depth [15] and MEMOIR Top,[16] and the appropriate SIP when designated [17] RML Order interest, aggregated to form at least one round lot for a particular security, is available, provided that such designated RML Order interest is resting at the Midpoint Price [18] and is priced at least $0.001 better than the national best bid (''NBB'') or national best offer (''NBO'').[19] The Retail Liquidity Identifier would reflect the symbol and the side (buy and/or sell) of the designated RML Order interest but would not include the price or size.[20] The Exchange proposes that a user may, but is not required to, designate an RML Order to be identified as RML Order interest for purposes of the Retail Liquidity Identifier pursuant to proposed Exchange Rule 11.22(b).[21]

Priority and Order Execution

Proposed Exchange Rule 11.22(c) would set forth the execution priority rules for the Program.[22] Proposed

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92844 (September 1, 2021), 86 FR 50411 (September 8, 2021).

[4] *See* Securities Exchange Act Release No. 93383 (October 19, 2021), 86 FR 58964 (October 25, 2021).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] As discussed below, Retail Midpoint Orders also would execute against displayable odd lot orders priced more aggressively than the Midpoint Price and non-displayed orders priced more aggressively than the Midpoint Price. Retail Midpoint Orders would not be eligible to execute against other types of midpoint interest, such as Midpoint Peg Orders (defined below).

[7] Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c) and generally defined as an order that is pegged to a reference price and automatically re-prices in response to changes in the national best bid and offer.

[8] A Midpoint Peg instruction is an instruction that may be placed on a Pegged Order that instructs the Exchange to peg the order to the Midpoint Price. *See* Exchange Rule 11.6(h)(2).

[9] ''IOC'' is an instruction the user may attach to an order stating the order is to be executed in whole or in part as soon as such order is received, and the portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the MEMX Book. *See* Exchange Rule 11.6(o)(1). The term ''MEMX Book'' refers to the MEMX system's electronic file of orders. *See* Exchange Rule 1.5(q).

[10] *See* Exchange Rule 11.6(o)(2).

[11] *See* Exchange Rule 11.6(o)(5).

[12] *See* Exchange Rule 11.6(o)(4).

[13] *See* Exchange Rule 11.6(f).

[14] *See* Notice, *supra* note 3, at 50413.

[15] *See* Exchange Rule 13.8(a).

[16] *See* Exchange Rule 13.8(b).

[17] The term ''designated'' indicates that users submitting RML Orders have the option to either include their RML Orders in the Retail Liquidity Identifier or not. *See also infra* note 21 and accompanying text.

[18] The Exchange notes that an RML Order could have a limit price that is less aggressive than the Midpoint Price in which case it would not be eligible to trade with an incoming Retail Midpoint Order and therefore would not be included for purposes of Retail Liquidity Identifier dissemination since it would not reflect interest available to trade with Retail Midpoint Orders. *See* Notice, *supra* note 3, at 50414.

[19] The Exchange explains that because RML Orders are proposed to be only Midpoint Peg Orders, they will always represent at least $0.001 price improvement over the NBB or NBO, with two exceptions: (1) In a locked or crossed market; and (2) a sub-dollar security when the security's spread is less than $0.002. *See id.* The Exchange would only disseminate the Retail Liquidity Identifier for sub-dollar securities if the spread in the security is greater than or equal to $0.002, meaning the Midpoint Price represents at least $0.001 price improvement over the NBB or NBO. *See id.*

[20] As such, the Exchange explains that it would remove the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP after executions against Retail Midpoint Orders have depleted the available designated RML Order interest such that the remaining designated RML Order interest does not aggregate to form at least one round lot, or in situations where there is no actionable RML Order interest (such as when the market is locked or crossed), in order to indicate to market participants that there is no longer designated RML Order interest of at least one round lot available. *See id.*

[21] Under Exchange Rule 11.8(c)(3), Pegged Orders, including Midpoint Peg Orders, are not eligible to include a Displayed instruction; however, as proposed, an RML Order would be eligible to include a Displayed instruction, which would be for the sole purpose of indicating to the Exchange that the user has designated the RML Order to be identified as RML Order interest for purposes of the Retail Liquidity Identifier pursuant to proposed Exchange Rule 11.22(b), and inclusion of the Displayed instruction would not indicate to the Exchange that the RML Order is to be displayed by the MEMX system on the MEMX Book. *See id.* at 50413 n.18. A user would be able to designate RML Order interest for this purpose on an order-by-order basis or on a port-by-port basis. *See id.* at 50413.

[22] In addition to the rule text explaining the Program's priority rules, proposed Exchange Rule

Continued

Exchange Rule 11.22(c)(1) states that Retail Midpoint Orders and RML Orders would only execute at the Midpoint Price. Proposed Exchange Rule 11.22(c)(3) states that Retail Midpoint Orders would execute against RML Orders in time priority in accordance with Exchange Rule 11.10, except that RML Orders designated to be included in the Retail Liquidity Identifier would have priority over RML Orders that are not so designated. Thus, as proposed, because Retail Midpoint Orders are only eligible to execute against RML Orders and orders priced more aggressively than the Midpoint Price, other types of orders resting at the Midpoint Price that may be present on MEMX (including those with time priority over an RML Order) would not be allowed to execute against a Retail Midpoint Order and retail investors would not get the benefit of being able to access that additional midpoint liquidity through the Retail Midpoint Order type.

Proposed Exchange Rule 11.22(c)(2) provides that if there is: (A) A Limit Order [23] of Odd Lot [24] size that is displayed by the MEMX system (''Displayed Odd Lot Order'') and that is priced more aggressively than the Midpoint Price and/or (B) an order that is not displayed by the MEMX system (''Non-Displayed Order'') and that is priced more aggressively than the Midpoint Price, resting on the MEMX Book, an incoming Retail Midpoint Order would first execute against any such orders pursuant to the Exchange's standard price/time priority in accordance with Exchange Rule 11.9 and Exchange Rule 11.10 before executing against resting RML Orders.[25] Proposed Exchange Rule 11.22(c)(2) further provides that any such executions would be *at the Midpoint Price* irrespective of the prices at which such Displayed Odd Lot Orders and/or Non-Displayed Orders were ranked by the MEMX system on the MEMX Book. Thus, as proposed, any additional price improvement over the Midpoint Price would not accrue to the retail investor's Retail Midpoint Order but rather would accrue to the Displayed Odd Lot Order or Non-Displayed Order because those orders would execute at the Midpoint Price, which is less aggressive than the price at which they were resting on the MEMX Book.

III. Proceedings To Determine Whether To Approve or Disapprove SR–MEMX–2021–10 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [26] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[27] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Sections 6(b)(5) [28] and 6(b)(8) [29] of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on proposed Exchange Rule 11.22(c)(2) and the treatment of orders priced more aggressively than the Midpoint Price when executing against Retail Midpoint Orders? In allowing Retail Midpoint Orders to first execute against orders on MEMX that are priced more aggressively than the Midpoint Price, the Exchange states that it seeks to ensure that the priority of more aggressively priced orders over less aggressively priced orders is maintained on the Exchange, consistent with Exchange Rule 11.9.[30] However, the Exchange proposes that Retail Midpoint Orders execute against any such Displayed Odd Lot Orders and/or Non-Displayed Orders *at the Midpoint Price* instead of the more aggressive prices at which such orders were ranked, which the Exchange explains is ''because RMOs that submit Retail Midpoint Orders to the Exchange are, by selecting an order type that is specifically limited to executing at the Midpoint Price, expecting to receive an execution at the Midpoint Price and not at any other price(s).'' [31] The Exchange further states that it ''is proposing to address the needs of RMOs that focus their Retail Order trading on receiving executions at the Midpoint Price'' and explains that ''based on informal discussions with market participants, the Exchange believes that there are benefits associated with executing Retail Orders submitted to the Exchange at one price level rather than multiple prices, such as simplified record-keeping for retail investors and execution reporting by RMOs.'' [32] Aside from the benefits that may accrue to the RMO (*i.e.,* the broker-dealer handling the retail investor's order) under the Exchange's proposal, the Exchange's proposal could deny the retail investor a further opportunity for price improvement as it would instead award that further price improvement to the resting Displayed Odd Lot Orders and/or Non-Displayed Orders. What are commenters' views on the Exchange's assertions and whether this aspect of the proposal could harm retail investors?

2. What are commenters' views on proposed Exchange Rule 11.22(c)(2) and (3), which would only allow Retail Midpoint Orders to execute against RML Orders (and orders priced more aggressively than the Midpoint Price) but would not allow Retail Midpoint Orders to execute against other interest resting at the Midpoint Price, even if, for

11.22(c) also provides two examples to further demonstrate how these priority rules would operate.

[23] *See* Exchange Rule 11.8(b).

[24] *See* Exchange Rule 11.6(q)(2).

[25] The Exchange states that Displayed Odd Lot Orders and Non-Displayed Orders are the only types of orders that could rest on the MEMX Book at a price that is more aggressive than the Midpoint Price, as any displayed buy (sell) order that is at least one round lot in size would be eligible to form the NBB (NBO). *See* Notice, *supra* note 3, at 50415 n.37; Exchange Rule 1.5(z).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] *Id.*

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] *See* Notice, *supra* note 3, at 50419.

[31] *See id.* at 50415.

[32] *See id.*

example, those orders have time priority over the RML Order(s)? [33] In other words, the proposed rule would bypass a non-RML Midpoint Peg Order with time priority to execute the Retail Midpoint Order against an RML Order (which also is a Midpoint Peg Order, but one that is ''less aggressive'' in that it is not willing to trade with any incoming order but instead is limited to only trading with retail interest submitted as Retail Midpoint Orders). In its proposal, the Exchange states that the ''Program is designed to incentivize RMOs to submit Retail Midpoint Orders to the Exchange'' and that the Program ''is designed to facilitate the provision of meaningful price improvement (*i.e.,* at the Midpoint Price) for orders of retail investors.'' [34] However, the proposal would prohibit Retail Midpoint Orders from interacting with non-RML Midpoint Peg Orders at the Midpoint Price, thus potentially limiting retail investors' opportunities to obtain meaningful price improvement, especially if RML Order interest were of insufficient size to fill the Retail Midpoint Order in full.[35] What are commenters' views of the Exchange's assertions? Do commenters believe that this aspect of the proposal could possibly harm retail investors? Do commenters believe that precluding executions of Retail Midpoint Orders against non-RML Midpoint Peg Orders unfairly discriminates against such non-RML orders?

3. The Exchange further states that it ''believes that it is appropriate and consistent with the Act to structure its [Program] such that Retail Midpoint Orders and RML Orders are only eligible to execute against each other at the Midpoint Price, so that Retail Midpoint Orders, which are entered on behalf of retail investors, receive price improvement that is meaningful by definition, as they are guaranteed, if executed, to execute at the Midpoint Price.'' [36] Do commenters agree with that assertion? Or would that same rationale apply if the Exchange also allowed Retail Midpoint Orders to execute against non-RML midpoint interest (because if the Exchange were to do so, Retail Midpoint Orders also would be ''guaranteed, if executed, to execute at the Midpoint Price'' when executing against such non-RML midpoint interest)?

4. The Exchange also states that it ''believes that introducing a program that provides and encourages additional liquidity and price improvement to Retail Orders, in the form of Retail Midpoint Orders designed to execute at the Midpoint Price, is appropriate because retail investors are typically less sophisticated than professional market participants and therefore would not have the type of technology to enable them to compete with such market participants.'' [37] Do commenters agree that Retail Midpoint Orders, if permitted to take liquidity against resting non-RML midpoint interest, would be competing with such market participants in a way that could negatively impact retail investors?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [38] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[39] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[40] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.[41]

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, any potential response to comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[42]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 3, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 18, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2021–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–MEMX–2021–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[33] As discussed above, certain non-RML Orders that are priced more aggressively than the Midpoint Price (and thus have price priority over RML Orders priced at the Midpoint Price) could interact with Retail Midpoint Orders subject to the conditions discussed above.

[34] *See* Notice, *supra* note 3, at 50418.

[35] The Exchange notes that it ''typically has resting non-displayed liquidity priced to execute at the Midpoint Price.'' *See id.* at 50419.

[36] *See id.* at 50418.

[37] *See id.* at 50418–19.

[38] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[39] *See id.*

[40] *See id.*

[41] *See Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 446–47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

[42] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number MEMX–2021–10 and should be submitted on or before January 3, 2022. Rebuttal comments should be submitted by January 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26857 Filed 12–10–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93736; File No. SR–EMERALD–2021–29]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt a Tiered-Pricing Structure for Certain Connectivity Fees

December 7, 2021.

On September 24, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Fee Schedule to adopt a tiered pricing structure for certain connectivity fees. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on October 4, 2021.[4] On November 22, 2021, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On December 1, 2021, the Exchange withdrew the proposed rule change (SR–EMERALD–2021–29).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26862 Filed 12–10–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–263, OMB Control No. 3235–0275]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 17Ad–13

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–13 (17 CFR 240.17Ad–13), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–13 requires certain registered transfer agents to file annually with the Commission and the transfer agent's appropriate regulatory authority a report prepared by an independent accountant on the basis of a study and evaluation of the transfer agent's system of internal accounting controls for the transfer of record ownership and the safeguarding of related securities and funds. If the independent accountant's report specifies any material inadequacy in a transfer agent's system, the rule requires the transfer agent to notify the Commission and its appropriate regulatory agency in writing, within sixty calendar days after the transfer agent receives the independent accountant's report, of any corrective action taken or proposed to be taken by the transfer agent. In addition, Rule 17Ad–13 requires that transfer agents maintain the independent accountant's report and any other documents required by the rule for at least three years, the first year in an easily accessible place. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. Small transfer agents and transfer agents that service only their own companies' securities are exempt from Rule 17Ad–13.

Approximately 100 professional independent transfer agents must file with the Commission one report prepared by an independent accountant pursuant to Rule 17Ad–13 each year. Commission staff estimates that, on average, the annual internal time burden for each transfer agent to submit the independent accountant's report to the Commission is minimal or zero. The time required for an independent accountant to conduct the study and evaluation of a transfer agent's system of internal accounting controls and complete the report varies depending on the size and nature of the transfer agent's operations. Commission staff estimates that, on average, each Rule 17Ad–13 report can be completed by the independent accountant in 120 hours. In light of Commission staff's review of previously filed Rule 17Ad–13 reports and Commission staff's conversations with transfer agents and accountants, Commission staff estimates that 120 hours are needed to perform the study and prepare the report on an annual basis. Commission staff estimates that the average hourly rate of an independent accountant is $260, resulting in a total annual external cost burden of $31,200 for each of the approximately 100 professional independent transfer agents. The aggregate total annual external cost for the 100 respondents is approximately $3,120,000.

[43] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 93166 (September 28, 2021), 86 FR 54760. Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-emerald-2021-29/sremerald202129.htm.*

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 93644, 86 FR 67750 (November 29, 2021).

[7] 17 CFR 200.30–3(a)(12).

The retention period for the recordkeeping requirement under Rule 17Ad–13 is three years following the date of a report prepared pursuant to the rule. The recordkeeping requirement under this rule is mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: December 7, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26855 Filed 12–10–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, December 16, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

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

Dated: December 9, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–26999 Filed 12–9–21; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93729; File No. SR–Phlx–2021–71]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Affiliated Entity Program and Relocate Certain Rules

December 7, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 1, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 1, General Provisions, and Section 2, Collection of Exchange Fees and Other Claims.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on December 1, 2021.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its Pricing Schedule at Options 7, Section 1, General Provisions. Specifically, Phlx proposes to amend the way it administers its Affiliated Entity program.

The Exchange also proposes to relocate rule text within Options 7, Section 1 and Section 2, Collection of Exchange Fees and Other Claims. As a result of these rule text relocations, the Exchange also proposes to update citations within Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY); Options 7, Section 6, Other Transaction Fees; and Options 7, Section 7, Routing Fees. Each change will be described below.

Affiliated Entity

The Exchange proposes to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program. Specifically, the Exchange proposes to amend the description of ''Affiliated Entity'' within Options 7, Section 1, General Provisions. Currently, the term ''Affiliated Entity'' is described as,

a relationship between an Appointed MM and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers or Lead Market Makers, and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually. Members and member organizations under Common Ownership may not qualify as a counterparty comprising an Affiliated Entity. Each member or member organization may qualify for only one (1) Affiliated Entity relationship at any given time.

Today, member organizations are required to annually renew their Affiliate Entity relationship at the end of one year if they desire to continue the relationship. The parties must both send an email to the Exchange to avoid termination of the relationship, provided the relationship was not terminated earlier in the year. The Exchange believes that this process is burdensome for member organizations that desire to remain in the program. The consequence of not renewing is termination. The Exchange desires to remove the administrative burden associated with the requirement to annually renew and instead provide that the Affiliated Entity relationship will automatically renew each month, unless otherwise terminated. The proposed new rule text would provide,

The term ''**Affiliated Entity**'' is a relationship between an Appointed MM and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers or Lead Market Makers, and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Members and member organizations under Common Ownership may not qualify as a counterparty comprising an Affiliated Entity. Each member or member organization may qualify for only one (1) Affiliated Entity relationship at any given time.

As is the case today, parties to the Affiliated Entity relationship may decide to terminate the relationship during any month by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Cboe Exchange, Inc. (''Cboe'') has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program.[4] The Exchange believes that this amendment will streamline the workflow for member organizations by not requiring member organizations to renew each year to continue the affiliated relationship.

Rule Text Relocations

The Exchange proposes to relocate rule text to reorganize the Options 7 rules. Specifically, the Exchange proposes to relocate rule text within current Options 7, Section 2, Collection of Exchange Fees and Other Claims, into Options 7, Section 1, General Provisions, without change. The Exchange proposes to add an ''(e)'' and the title ''Collection of Fees and Other Claims'' before the relocated rule text.

Also, the Exchange proposes to add a ''(c)'' before the descriptions of market participants and a ''(d)'' before the Affiliate Entity program.[5] The new lettering will make it easier to reference a specific section within Options 7, Section 1. The Exchange believes that the policy for the collection of fees should be within Options 7, Section 1 which describes other billing practices.

The Exchange proposes to delete Section A of Options 7, Section 1, which is currently reserved.

The Exchange proposes to relocate Section B, Customer Rebate Program, to Options 7, Section 2 with the title, ''Customer Rebate Program,'' without change. The Exchange believes that the Customer Rebates should be relocated to their own section for easy reference. As a result of that relocation, the Exchange proposes to update references to the Customer Rebate Program from ''Section B'' to ''Options 7, Section 2'' within Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY; Options 7, Section 4, Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY); Options 7, Section 6, Other Transaction Fees; and Options 7, Section 7, Routing Fees.

The amendments to relocate rule text are non-substantive amendments that are intended solely to reorganize the current rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Affiliated Entity

The Exchange's proposal to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program is reasonable. Today, member organizations are required to annually renew their Affiliated Entity relationship at the end of one year if they desire to continue the relationship. The parties must both send an email to the Exchange to avoid termination of the relationship, provided the relationship was not terminated earlier in the year. The Exchange believes that this process

[4] *See* Cboe's Fees Schedule at footnote 23 ''A Market-Maker may designate an Order Flow Provider (''OFP'') as its ''Appointed OFP'' and an OFP may designate a Market-Maker to be its ''Appointed Market-Maker'' for purposes of qualifying for credits under AVP. In order to effectuate the appointment, the parties would need to submit the Appointed Affiliate Form to the Exchange by 3:00 p.m. CST on the first business day of the month in order to be eligible to qualify for credits under AVP for that month. The Exchange will recognize only one such designation for each party once every calendar month, which designation will automatically renew each month until or unless the Exchange receives an email from either party indicating that the appointment has been terminated. A Market-Maker that has both an Affiliate OFP and Appointed OFP will only qualify based upon the volume of its Appointed OFP. The volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker will only count towards qualifying the Appointed Market-Maker. Volume executed in open outcry is not eligible to receive a credit under AVP.''

[5] The Exchange also proposes to re-letter and re-number the subparagraphs in new ''(d)'' to align with other lettering and numbering.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

is burdensome for member organizations that desire to remain in the program. The consequence of not renewing is termination of their participation in the program. The Exchange desires to remove the administrative burden associated with the requirement to annually renew and instead provide that the Affiliated Entity relationship will automatically renew each month, unless otherwise terminated. As is the case today, parties to the Affiliated Entity relationship may decide to terminate the relationship during any month by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Also, Cboe has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program.[8] The Exchange believes that this amendment will streamline the workflow for member organizations by not requiring member organizations to renew each year to continue the affiliated relationship.

The Exchange's proposal to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program is equitable and not unfairly discriminatory. Today, any member organization may participate in the Affiliated Entity Program. The proposed changes would impact all member organizations that voluntarily elect to participate in the Affiliated Entity Program in a uniform manner.

Rule Text Relocations

The Exchange's proposal to relocate rule text to reorganize the Options 7 rules is reasonable. The relocation of rule text within current Options 7, Section 2, Collection of Exchange Fees and Other Claims, into Options 7, Section 1, General Provisions, without change, and the re-lettering of rule text does not substantively amend the current rules. Also, the proposal to delete Section A of Options 7, Section 1 is non-substantive as the section is currently reserved. Finally, the proposal to relocate Section B, Customer Rebate Program, to Options 7, Section 2, without change, does not substantively amend the current rules. These relocations and updates to citations will make the current rules easier to reference.

The Exchange's proposal to relocate rule text to reorganize the Options 7 rules is equitable and not unfairly discriminatory as the amendments are non-substantive and are intended solely to reorganize the current rule text for easy reference.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. Cboe has a similar automatic renewal process for its Appointed OFP and Appointed Market-Maker Program[9] as proposed herein for the Affiliated Entity Program. Also, the rule relocation amendments are non-substantive.

Intra-Market Competition

The Exchange's proposal to amend the way Exchange member organizations indicate their participation in the Affiliated Entity Program does not impose an undue burden on competition. Today, any member organization may participate in an Affiliated Entity relationship. The proposed changes would impact all member organizations that voluntarily elect to participate in the Affiliated Entity Program in a uniform manner.

The Exchange's proposal to relocate rule text to reorganize the Options 7 rules does not impose an undue burden on competition as the amendments are non-substantive and are intended solely to reorganize the current rule text for easy reference.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2021–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

[8] *See* Cboe's Fees Schedule at footnote 23 ''A Market-Maker may designate an Order Flow Provider (''OFP'') as its ''Appointed OFP'' and an OFP may designate a Market-Maker to be its ''Appointed Market-Maker'' for purposes of qualifying for credits under AVP. In order to effectuate the appointment, the parties would need to submit the Appointed Affiliate Form to the Exchange by 3:00 p.m. CST on the first business day of the month in order to be eligible to qualify for credits under AVP for that month. The Exchange will recognize only one such designation for each party once every calendar month, which designation will automatically renew each month until or unless the Exchange receives an email from either party indicating that the appointment has been terminated. A Market-Maker that has both an Affiliate OFP and Appointed OFP will only qualify based upon the volume of its Appointed OFP. The volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker will only count towards qualifying the Appointed Market-Maker. Volume executed in open outcry is not eligible to receive a credit under AVP.''

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2021–71, and should be submitted on or before January 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26859 Filed 12–10–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93734; File Nos. SR–MIAX–2021–43, SR–EMERALD–2021–31]

Self-Regulatory Organizations; Miami International Securities Exchange LLC, MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Changes To Amend the Fee Schedules To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX and MIAX Emerald Express Interface Ports

December 7, 2021.

On September 28, 2021, Miami International Securities Exchange LLC, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald'') (collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Numbers SR–MIAX–2021–43 and SR–EMERALD–2021–31) to adopt a tiered-pricing structure for additional limited service express interface ports.

The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule changes were published for comment in the **Federal Register** on October 5, 2021.[4] On November 22, 2021, the Commission temporarily suspended the proposed rule changes and instituted proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule changes.[6] On December 1, 2021, the Exchanges withdrew the proposed rule changes (SR–MIAX–2021–43 and SR–EMERALD–2021–31).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26863 Filed 12–10–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93731; File No. SR–NASDAQ–2021–066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)

December 7, 2021.

On August 23, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Valkyrie XBTO Bitcoin Futures Fund (''Trust'') under Nasdaq Rule 5711(g). On August 25, 2021, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 9, 2021.[3]

On September 29, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under Nasdaq Rule 5711(g), which governs the listing and trading of Commodity Futures Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the performance of bitcoin as represented by the CME CF Bitcoin Reference Rate (''CME CF BRR''), less the Trust's liabilities and expenses.[8] The CME CF BRR aggregates the trade flow of major bitcoin spot platforms during a specific calculation window into a one-a-day reference rate of the U.S. dollar price of bitcoin.[9] The Trust pursues its investment objective primarily by investing in bitcoin futures (''Bitcoin Futures'') that are cash-settled and traded on commodity exchanges registered with the Commodity Futures Trading Commission (''CFTC'').[10] At

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release Nos. 93185 (September 29, 2021), 86 FR 55093 (SR–MIAX–2021–43); 93188 (September 29, 2021), 86 FR 55052 (SR–EMERALD–2021–31). Comments received on the proposed rule changes are available on the Commission's website at: *https://www.sec.gov/comments/sr-miax-2021-43/srmiax202143.htm* (SR–MIAX–2021–43); *https://www.sec.gov/comments/sr-emerald-2021-31/sremerald202131.htm* (SR–EMERALD–2021–31).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 93640, 86 FR 67745 (November 29, 2021).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92865 (Sept. 2, 2021), 86 FR 50570 (Sept. 9, 2021) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93172, 86 FR 55071 (Oct. 5, 2021). The Commission designated December 8, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 50574. Valkyrie Funds LLC (''Sponsor'') serves as the Trust's sponsor and commodity pool operator; Vident Investment Advisory, LLC (''Sub-Advisor'') serves as the Trust's sub-advisor and commodity trading advisor; and XBTO Trading, LLC is the research provider for the Sponsor and the Sub-Advisor. Delaware Trust Company serves as the trustee for the Trust. The Sponsor is currently considering third-party service providers for the roles of administrator, transfer agent, custodian, and marketing agent. *See id.* at 50571.

[9] *See id.* at 50573 n.8. According to the Exchange, calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. *See id.*

[10] *See id.* at 50574. The Exchange also represents that it will pursue its investment objective solely by

expiration, the cash settlement amount for the Bitcoin Futures held by the Trust will be determined by comparing the price at which the Trust purchased the futures contract on the relevant futures exchange with the reference rate specified by that exchange on the expiration date.[11] The Trust does not invest in bitcoin or other digital assets directly. In addition to the Trust's investments in Bitcoin Futures, the Trust expects to have significant holdings of cash and high-quality, short-term debt instruments that have terms-to-maturity of less than 397 days, such as U.S. government securities and repurchase agreements (''Money Market Instruments'').[12]

The net asset value (''NAV'') of the Trust will be determined in accordance with Generally Accepted Accounting Principles as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV per Share will be determined by dividing the NAV of the Trust by the number of Shares outstanding. The NAV of the Trust is typically determined as of 4:00 p.m. E.T., on each day the Shares trade on the Exchange (''Business Day''). The Trust's daily activities are generally not reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day. Bitcoin Futures traded on a U.S. exchange are generally valued using the last traded price before the NAV calculation time on the date with respect to which the NAV is being determined. Money Market Instruments will generally be valued at their market price using market quotations or information provided by a pricing service.[13]

On each Business Day, before commencement of trading in Shares during regular trading hours, the Trust will disclose on its website the portfolio that will form the basis for the Trust's calculation of NAV at the end of the Business Day.[14] The Trust's website will provide an intra-day indicative value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.[15] Intraday price information for Bitcoin Futures is available directly from the applicable listing venue and through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants (as defined herein) and other investors. Intraday price quotations on Money Market Instruments of the type held by the Trust are available from major broker-dealer firms and from third-parties, and pricing information related to Money Market Instruments will also be available through issuer websites and publicly available quotation services such as Bloomberg, Markit, and Thomson Reuters.[16]

The Trust would issue and redeem Shares on a continuous basis at NAV per Share in large, specified blocks of Shares (''Creation Units'') in transactions with broker-dealers and large institutional investors that have entered into participation agreements (''Authorized Participants''). The Exchange currently anticipates that a Creation Unit will consist of 50,000 Shares, although this number may change from time to time. In addition, the Exchange currently expects that the Trust's Creation Units will generally be issued and redeemed for cash.[17]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2021–066 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[18] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[19] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[20]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[21] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices?

2. The Exchange asserts that ''bitcoin and its surrounding ecosystem have evolved sufficiently to support the approval of a Bitcoin Futures ETF because the concerns the Commission has identified previously have been addressed.''[22] The Exchange also asserts that ''the Bitcoin Futures market has sufficiently developed since the prior disapproval orders such that the market for Bitcoin Futures now resembles the market for other commodities at the time the related commodity futures-based ETP was approved for listing.''[23] What are commenters' views regarding such assertions? Are the developments that the Exchange identifies sufficient to support a determination that the proposal to list and trade the Shares is designed to protect investors and the public interest and is consistent with the other applicable requirements of Section 6(b)(5) of the Act?

3. According to the Exchange, ''[n]early every measurable metric related to CME Bitcoin Futures has trended consistently up since launch

holding Bitcoin Futures that are cash-settled and traded on the Chicago Mercantile Exchange, Inc. (''CME''). *See id.* at 50571.

[11] For example, the CME has specified that the reference rate for its Bitcoin Futures will be a volume-weighted composite of Bitcoin prices on multiple bitcoin platforms. *See id.* at 50574.

[12] *See id.*

[13] *See id.* at 50574–75.

[14] *See id.* at 50582.

[15] *See id.* at 50580.

[16] *See id.* at 50583.

[17] *See id.* at 50579–80. Upon the request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to an exchange of a futures contract for related position or to a block trade sale of futures contracts to the Authorized Participant. *See id.* at 50580.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] *Id.*

[20] 15 U.S.C. 78f(b)(5).

[21] *See* Notice, *supra* note 3.

[22] *See id.* at 50571.

[23] *See id.* at 50575.

and/or accelerated upward in the past year.'' [24] The Exchange asserts that ''both the bitcoin and bitcoin futures markets have developed to the point that the CME Bitcoin Futures market is a 'regulated market of significant size.' '' [25] Based on data provided and the academic research cited by the Exchange, do commenters agree that the CME Bitcoin Futures market now represents a regulated market of significant size? [26] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares?

4. The Exchange states it believes that ''trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market'' because of the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market.[27] What are commenters' views on the Exchange's assertion and the data provided by the Exchange to support such assertion?

5. The Exchange asserts that the CME CF BRR is not readily susceptible to manipulation due to the design of its methodology, which the Exchange believes adequately protects the Trust from potential price manipulation.[28] What are commenters' views on these assertions?

6. The Exchange asserts the CME's compliance with the CFTC's Core Principles for Designated Contract Markets as set forth in the Commodity Exchange Act means that the Trust's core asset (*i.e.,* CME Bitcoin Futures) is ''a well-regulated instrument that is not readily susceptible to manipulation.'' [29] The Exchange further asserts that CME Bitcoin Futures are not readily subject to manipulation or distortion because they are cash-settled and subject to real-time trade monitoring and comprehensive and accurate trade reconstruction.[30] What are commenters' views regarding the Exchange's assertions? Are the Exchange's assertions sufficient to support the determination that the proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices and is consistent with the other applicable requirements of Section 6(b)(5) of the Act?

7. What are commenters' views of the claim that the similarities of the operational characteristics and regulatory requirements applicable to bitcoin futures-based exchange-traded funds (''ETFs'') that both register the sale of their shares under the Securities Act of 1933 (''1933 Act'') and are regulated under the Investment Company Act of 1940 (''1940 Act'') and bitcoin futures-based exchange-traded products (''ETPs'') that register the sale of their shares under the 1933 Act but are not regulated under the 1940 Act are such that these types of products should not be treated differently by the Commission? [31]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[32]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 3, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 18, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2021–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–066 and should be submitted by January 3, 2022. Rebuttal comments should be submitted by January 18, 2022.

[24] *See id.* at 50573.

[25] *See id.* at 50571.

[26] *See id.* at 50576–78.

[27] *See id.* at 50578.

[28] *See id.* at 50578–79.

[29] *See id.* at 50579.

[30] *See id.*

[31] The Commission previously made a similar request for comment in connection with statements made by a sponsor of a proposed bitcoin futures-based ETP similar to the Trust. *See* Securities Exchange Act Release No. 93534 (Nov. 8, 2021), 86 FR 63082, 63084 (Nov. 15, 2021) (SR–NYSEArca-2021–53) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02) (Trust Issued Receipts) (citing to Letter from W. Thomas Conner, Vedder Price, on behalf of the sponsor, dated September 1, 2021, available at *https://www.sec.gov/comments/sr-nysearca-2021-53/srnysearca202153-9197848-249688.pdf*.)).

[32] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26860 Filed 12–10–21; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 522]

Delegation of Authority; Designation of U.S. Delegations to International Conferences

By virtue of the authority vested in the Secretary of State by the laws of the United States of America, including 22 U.S.C. 2651a(a)(4), and as Minister of Foreign Affairs of the United States of America, I hereby delegate to the Assistant Secretary of State for International Organization Affairs (IO) and the IO Director of International Conferences (IO/C), the authority to designate delegates of the United States of America to international conferences, including any meeting convened by an international organization.

The Secretary of State, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Political Affairs may also exercise the authority delegated herein. The delegations of authority from the Secretary of State to the IO Assistant Secretary of State, dated March 6, 1953, and from IO to the Director of the Office of International Conferences, dated May 29, 1975, are hereby rescinded. This delegation does not rescind or otherwise affect any other delegation currently in effect.

This memorandum shall be published in the **Federal Register**.

Dated: November 23, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–26929 Filed 12–10–21; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice: 11607]

Determination Under Section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 Relating to Assistance to Zimbabwe

Pursuant to the authority vested in me by section 7012 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. K, Pub. L. 116–260) (FY 2021 SFOAA); Executive Order 12163, as amended by Executive Order 13346; and Delegation of Authority 513, I hereby determine that targeted assistance to Zimbabwe in the areas of health, good governance and respect for human rights, leadership, agriculture/food security, poverty reduction, livelihoods, family planning and reproductive health, macroeconomic growth including anti-corruption efforts, helping victims of trafficking and combatting trafficking, and advancing biodiversity and wildlife conservation, as well as the continuation of assistance that would have a significant adverse effect on vulnerable populations if suspended, is in the national interest of the United States. I thereby waive with respect to Zimbabwe the application of section 7012 of the FY 2021 SFOAA with respect to such assistance.

This determination shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be transmitted to Congress.

Dated: November 9, 2021.

Brian P. McKeon,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2021–26931 Filed 12–10–21; 8:45 am]

BILLING CODE 4710–26–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2021–0021]

Request for Comments and Notice of a Public Hearing Regarding the 2022 Special 301 Review

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Each year, the Office of the United States Trade Representative (USTR) conducts a review to identify countries that deny adequate and effective protection of intellectual property (IP) rights or deny fair and equitable market access to U.S. persons who rely on IP protection. Based on this review, the U.S. Trade Representative determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List.

DATES:

January 31, 2022 at 11:59 p.m. EST: Deadline for submission of written comments from the public.

February 14, 2022 at 11:59 p.m. EST: Deadline for submission of written comments from foreign governments.

February 23, 2022: Deadline for the Special 301 Subcommittee of the Trade Policy Staff Committee (Subcommittee) to pose questions on written comments.

March 8, 2022 at 11:59 p.m. EST: Deadline for submission of commenters' responses to questions from the Subcommittee.

On or about April 29, 2022: USTR will publish the 2022 Special 301 Report within 30 days of the publication of the National Trade Estimate Report.

ADDRESSES: USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*). Follow the submission instructions in section IV below. The docket number is USTR–2021–0021. For alternatives to on-line submissions, please contact USTR at *Special301@ustr.eop.gov* before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Jacob Ewerdt, Director for Innovation and Intellectual Property, at *Special301@ustr.eop.gov* or (202) 395–4510. You can find information about the Special 301 Review at *https://www.ustr.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the Special 301 provisions, requires the U.S. Trade Representative to identify countries that deny adequate and effective IP protections or fair and equitable market access to U.S. persons who rely on IP protection. The Trade Act requires the U.S. Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415).

In addition, USTR has created a Priority Watch List and Watch List to assist in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the

[33] 17 CFR 200.30–3(a)(57).

focus of increased bilateral attention concerning the problem areas.

USTR chairs the Subcommittee, which reviews information from many sources, and consults with and makes recommendations to the U.S. Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. As discussed below, in 2022, in lieu of an in-person hearing, the Subcommittee will submit written questions to commenters as part of the review process and will allow commenters to provide written responses. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries the acts, policies, or practices of which deny adequate and effective protection for IP rights or deny fair and equitable market access to U.S. persons who rely on IP protection. The Special 301 provisions also require the U.S. Trade Representative to identify any act, policy, or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 32.6 of the United States-Mexico-Canada Agreement (USMCA) (as defined in section 3 of the USMCA Implementation Act). USTR invites the public to submit views relevant to this aspect of the review.

The Special 301 provisions require the U.S. Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the National Trade Estimate Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report about April 29, 2022.

II. Public Comments

To facilitate this year's review, written comments should be as detailed as possible and provide all necessary information to identify and assess the effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential, or other orders, and administrative, court, or other determinations that should factor into the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry, and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

III. Public Participation

In 2022, due to COVID–19, USTR will foster public participation via written submissions rather than an in-person hearing. The Subcommittee will review written comments and may ask clarifying questions to commenters. The Subcommittee will post the questions on the public docket, other than questions that include properly designated business confidential information (BCI). The Subcommittee will send questions that include properly designated BCI to the relevant commenters by email, and will not post these questions on the public docket. Replies to questions that contain BCI must follow the procedures in section IV below.

In order to be eligible to receive written questions, the written submissions must be in English and must include the name, address, telephone number, email address, and firm or affiliation of the submitter.

IV. Submission Instructions

All submissions must be in English and sent electronically via *Regulations.gov* using docket number USTR–2021–0021. To submit comments, locate the docket (folder) by entering the number USTR–2021–0021 in the 'enter keyword or ID' window at the *Regulations.gov* home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the link entitled 'comment'.

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol: Commenter Name or Organization_2022 Special 301_Review_Comment. Please include the following information in the 'type comment' field: '2022 Special 301 Review.' Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the 'type comment' field. For further information on using *Regulations.gov*, please select 'how to use *Regulations.gov'* on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments that contains BCI, the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the filer should type 'business confidential' in the 'type comment' field. Filers of comments containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. The 'BCI' and 'P' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no BCI should name their file using the name of the person or entity submitting the comments.

As noted, USTR strongly urges commenters to submit comments through *Regulations.gov*. You must make any alternative arrangements before transmitting a document and in advance of the relevant deadline by contacting USTR at *Special301@ustr.eop.gov*.

USTR will place comments in the docket and they will be open to public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering Docket Number USTR–2021–0021 in the 'search' field on the home page.

Daniel Lee,

Assistant U.S. Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.

[FR Doc. 2021–26899 Filed 12–10–21; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0271]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LA VIE DANSANTE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 12, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0271 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0271 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0271, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel LA VIE DANSANTE is:

—*Intended Commercial Use of Vessel:* ''Recreation.''
—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Daytona Beach, FL)
—*Vessel Length and Type:* 44.8′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2021–0271 *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0271 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–26834 Filed 12–10–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunities: New Markets Tax Credit (NMTC) Program; CY 2021 Allocation Round; Correction

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice; correction.

SUMMARY: The Community Development Financial Institutions Fund (CDFI Fund) published a document in the **Federal Register** of November 8, 2021, concerning the Notice of Allocation Availability (NOAA) inviting Applications for the Calendar Year (CY) 2021 Allocation Round of the New Markets Tax Credit (NMTC) Program. On page 61839, in Table 1—CY 2021 Allocation Round NMTC Program Critical Deadlines for Applicants, under the Deadline/date header, it incorrectly states that the deadline to submit an amendment request to remove a Controlling Entity from Allocation Agreement(s) is March 21, 2021 when in fact the deadline to submit such an amendment is March 21, 2022. Processing this Action will correct the misinformation that was published.

FOR FURTHER INFORMATION CONTACT: Christopher Allison, Program Manager, NMTC Program, CDFI Fund; (202) 653–0300 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 8, 2021, in FR Doc 2021–24310, on page 61839, in Table 1—CY 2021 Allocation Round NMTC Program Critical Deadlines for Applicants, under the Deadline/date header, correct the ninth entry to read: March 21, 2022.

Executive Summary: This notice announces the correction that the deadline to submit an amendment request to remove a Controlling Entity from Allocation Agreement(s) is March 21, 2022.

Capitalized terms in this correction to the NOAA have the respective meanings assigned to them in the NOAA, NMTC Program Allocation Application, Internal Revenue Code (IRC) § 45D or the IRS NMTC regulations. Application materials may be found on the CDFI Fund's website at *www.cdfifund.gov/nmtc.*

All other information and requirements set forth in the NOAA published on November 8, 2021, shall remain effective, as published.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2021–27039 Filed 12–10–21; 8:45 am]

BILLING CODE 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, 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 information collection requirements related to amortization of intangible property.

DATES: Written comments should be received on or before February 11, 2022 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 the regulation should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–4542, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Amortization of Intangible Property.

OMB Number: 1545–1671. Regulation Project Number: REG–209709–94 (TD 8865).

Abstract: These regulations apply to property acquired after January 25, 2000. Regulations to implement section 197(e)(4)(D) are applicable August 11, 1993, for property acquired after August 10, 1993 (or July 26, 1991, for property acquired after July 25, 1991, if a valid retroactive election has been made under § 1.197–1).

Current Actions: There are no change being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,500.

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: December 8, 2021.

Sara Covington,

IRS Tax Analyst.

[FR Doc. 2021–26915 Filed 12–10–21; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting

TIME AND DATE: December 16, 2021, from 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and screensharing. Any interested person may call 877–853–5247 (US toll free), 888–788–0099 (US toll free), +1 929–205–6099 (US toll), or +1 669–900–6833 (US toll),

Conference ID 910 1040 9956, to participate in the meeting. The website to participate via Zoom meeting and screenshare is *https://kellen.zoom.us/j/91010409956.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the ''Board'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of the meeting will include:

Agenda

I. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair

For Discussion and Possible Action

The proposed Agenda will be reviewed, and the Board will consider adoption.

Ground Rules

➢ Board actions taken only in designated areas on agenda.

IV. Approval of Minutes of the November 4, 2021 UCR Board Meeting—UCR Board Chair

For Discussion and Possible Action

Draft Minutes of the November 4, 2021 UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of the Federal Motor Carrier Safety Administration (FMCSA)—FMCSA Representative

The FMCSA will provide a report on any relevant activity.

VI. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. *Review Proposals Received for Independent Audit of the UCR Depository*—UCR Executive Director and UCR Depository Manager.

For Discussion and Possible Board Action

The UCR Executive Director and the UCR Depository Manager will discuss the proposals received from the respondents to the request-for-proposal (RFP) that was distributed to four selected firms in November 2021. The purpose of the RFP was to begin a process to identify and engage a new independent auditing firm to conduct an assurance engagement of the UCR Depository's financial statements for the year ending December 31, 2021. All four firms responded and provided proposals that have been tabulated, ranked, and will be presented to the Board. The Audit Subcommittee has recommended one of the proposals and that recommendation and the other proposals will be presented to the Board for its consideration and approval as the independent auditors for the Depository's financial statements ending December 31, 2021.

B. Discussion of the UCR Internal Controls Procedures Report Prepared by the Independent Audit Firm—UCR Executive Director.

For Discussion and Possible Board Action

The UCR Executive Director will lead a discussion of the report on the internal controls review that was performed by Williams, Benator & Libby (WBL). The response to the report from Kellen will also be reviewed and discussed. The Board may consider amendments to the written internal controls procedures based on WBL's report.

C. Motor Carriers Selecting Option B for UCR Renewals—UCR Audit Subcommittee Chair, UCR Executive Director, and DSL Transportation Services, Inc. (DSL).

The UCR Audit Subcommittee Chair, UCR Executive Director, and DSL will discuss issues related to motor carriers who select Option B to utilize UCR registration. The discussion will include consideration of the ''pros'' and ''cons'' regarding the potential requirement on motor carriers to upload a list of intrastate exempt vehicles to the National Registration System when registering in the portal.

D. Review 49 CFR 392.2 Violations—UCR Audit Subcommittee Chair and DSL.

The UCR Audit Subcommittee Chair and DSL will review the 49 CFR 392.2 violations in the State of Kansas (''Kansas''). The discussion will highlight the financial value to Kansas by vetting these companies for UCR compliance, commercial registration, IFTA, intrastate, and interstate operating authority. 49 CFR 392.2 requires commercial motor vehicles to operate in accordance with the laws, ordinances, and regulations of the jurisdiction in which they are operating within.

E. UCR Compliance Snapshot—UCR Audit Subcommittee Chair.

The UCR Audit Subcommittee Chair will review audit compliance rates for the states for registration years 2020, 2021, and 2022 and included compliance percentages for Focused Anomaly Reviews (FARs), retreat audits, and registration compliance percentages as mandated by the UCR Board.

Finance Subcommittee—UCR Finance Subcommittee Chair

A. Review of 2022 Administrative Budget—UCR Finance Subcommittee Chair and UCR Depository Manager.

For Discussion and Possible Board Action

The UCR Finance Subcommittee Chair and UCR Depository Manager will present and discuss a proposed budget for the 2022 UCR administrative expenses. The Board may take action to approve and adopt the 2022 budget. The UCR Finance Subcommittee has recommended the Board adopt the proposed budget for the 2022 administrative year as presented.

B. Investing Excess Fees for the 2021 Registration Year in Certificates of Deposit (CDs)—Finance Subcommittee Chair and UCR Depository Manager.

For Discussion and Possible Board Action

The Finance Subcommittee Chair and UCR Depository Manager will lead a discussion regarding an opportunity to invest 2021 excess fees in two CDs with one half in a CD maturing in January 2023 and one half in a CD maturing in April 2023 at the Bank of North Dakota. The CDs will earn a better rate-of-return than the savings accounts at the Bank of North Dakota where these funds are currently deposited. The 2021 excess fees will not be utilized until January 2023 at the earliest, so earning a higher rate-of-return will increase the excess fees, providing for additional funding in 2023. The Board may take action to invest the 2021 excess fees in CDs at the Bank of North Dakota. The Finance Subcommittee recommends that the Board authorize the investment of 2021 excess fees in two separate CDs as presented.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

A. Update on Future Training Initiatives—UCR Education and Training Subcommittee Chair.

The UCR Education and Training Subcommittee Chair will provide an update on the planned future training initiatives for the UCR Plan.

VII. Contractor Reports—UCR Executive Director

- *UCR Executive Director's Report*

The UCR Executive Director will provide a report covering recent activity for the UCR Plan.

- *DSL Transportation Services, Inc.*

DSL Transportation Services, Inc. will report on the latest data from the Focused Anomaly Reviews (FARs) program, discuss motor carrier inspection results, and other matters.

- *Seikosoft*

Seikosoft will provide an update on recent/new activity related to the National Registration System.

- *UCR Administrator Report (Kellen)*—UCR Operations Director and UCR Depository Manager

The UCR staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

VIII. Other Business—UCR Board Chair

The UCR Board Chair will call for any other items Board members would like to discuss.

IX. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

This agenda will be available no later than 5:00 p.m. Eastern time, December 9, 2021 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

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Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0003]

RIN 1904–AF13

Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') is revising the Department's ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment.'' The revisions are consistent with longstanding DOE practice and would remove unnecessary obstacles to DOE's ability to meet its statutory obligations under the Energy Policy and Conservation Act (''EPCA'').

DATES: This rule is effective January 12, 2022.

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: *www.regulations.gov/docket/EERE-2021-BT-STD-0003.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

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I. Summary of the Final Rule

In July of 1996, the United States Department of Energy (''DOE'' or ''the Department'') issued a final rule that codified DOE's ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' at 10 CFR part 430, subpart C, appendix A (''appendix A''). 61 FR 36974 (July 15, 1996) (''July 1996 Final Rule''). The July 1996 Final Rule acknowledged that the guidance contained in appendix A would not be applicable to every rulemaking and that the circumstances of a particular rulemaking should dictate application of these generally applicable practices. 61 FR 36979.

On February 14, 2020, DOE published a final rule (''February 2020 Final Rule'') in the **Federal Register** that made significant revisions to appendix A. 85 FR 8626. DOE also published a companion final rule on August 19, 2020 (''August 2020 Final Rule''), that clarified how DOE would conduct a comparative analysis across all trial standard levels when determining whether a particular trial standard level was economically justified. *See* 85 FR 50937. Contrary to the July 1996 Final Rule, the revisions made in the February 2020 Final Rule sought to create a standardized rulemaking process that was binding on the Department. 85 FR 8626, 8634. In creating this one-size-fits-all approach, the February 2020 Final Rule and the August 2020 Final Rule also added additional steps to the rulemaking process that are not required by any applicable statute.

Subsequent events have caused DOE to reconsider the merits of a one-size-fits-all rulemaking approach to establishing and amending energy conservations standards and test procedures. Two of these events are particularly salient. First, on October 30, 2020, a coalition of non-governmental organizations filed suit under EPCA alleging that DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment.[1] On November 9, 2020, a coalition of States filed a virtually identical lawsuit.[2] In response to these lawsuits, DOE has reconsidered whether the benefits of a one-size-fits-all rulemaking approach outweigh the increased difficulty such an approach poses in meeting DOE's statutory deadlines and obligations under EPCA. As mentioned previously, the July 1996 Final Rule allowed for ''case-specific deviations and modifications of the generally applicable rule.'' [3] This allowed DOE to tailor rulemaking procedures to fit the specific circumstances of a particular rulemaking. For example, under the July 1996 Final Rule, minor modifications to a test procedure would not automatically result in a 180-day delay before DOE could issue a notice of proposed energy conservation standards. Eliminating these unnecessary delays would better enable DOE to clear this backlog of missed rulemaking deadlines in a timely manner and meet future obligations and deadlines under EPCA while not affecting the ability of any interested person, including small entities, to participate in DOE's rulemaking process. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the

[1] *Natural Resources Defense Council* v. *DOE,* Case No. 20–cv–9127 (S.D.N.Y. 2020).

[2] *State of New York* v. *DOE,* Case No. 20–cv–9362 (S.D.N.Y. 2020).

[3] 61 FR 36974, 36979.

greater the resulting energy savings and environmental benefits.

Second, on January 20, 2021, the White House issued Executive Order 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). Section 1 of that Order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to climate change. *Id.* at 86 FR 7037, 7041. Section 2 of the Order instructs all agencies to review ''existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, [these policies].'' *Id.* Agencies are then directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions and to immediately commence work to confront the climate crisis. *Id.* Under that same section, for certain explicitly enumerated agency actions, including the February 2020 and the August 2020 Final Rules, the Order directs agencies to consider publishing for notice and comment a proposed rule suspending, revising, or rescinding the agency action within a specific time frame. Under this mandate, DOE is directed to propose any major revisions to these two rules by March 2021, with any remaining revisions to be proposed by June 2021. *Id.* at 86 FR 7038.

In light of these events, DOE has identified several aspects of the February 2020 and the August 2020 Final Rules that present obstacles to DOE's ability to expeditiously clear the backlog of missed rulemaking deadlines while meeting future obligations under EPCA. In accordance with E.O. 13990, DOE proposed major revisions to appendix A in a notice of proposed rulemaking (NOPR) that was published on April 12, 2021 (''April 2021 NOPR''). 86 FR 18901. DOE proposed additional revisions to appendix A in a second NOPR that was published on July 7, 2021 (''July 2021 NOPR''). 86 FR 35668. DOE is addressing the proposed revisions from the April 2021 NOPR in this document. DOE will address the additional revisions proposed in the July 2021 NOPR in a separate final rule.

In this document, DOE is: (1) Restoring DOE's discretion to depart from the general guidance in appendix A; (2) removing the recently-added threshold for determining when the significant energy savings criterion is met; (3) removing the recently-added requirement to conduct a comparative analysis as part of DOE's analysis of economic justification under the factors listed in 42 U.S.C. 6295(o)(2)(B)(i); (4) reverting to DOE's 1996 guidance regarding completion of test procedure rulemakings prior to issuance of a NOPR for an energy conservation standards rulemaking; (5) clarifying that DOE may make modifications to industry test procedure standards to comply with the requirements of EPCA, as well as for certification, compliance, and enforcement purposes; (6) reverting to DOE's prior practice on direct final rules; and (7) clarifying that DOE will conduct negotiated rulemakings in accordance with the Negotiated Rulemaking Act (''NRA''), Public Law 104–320 (5 U.S.C. 561, *et seq.*). These revisions are summarized in the following table.

LIST OF REVISIONS IN THIS DOCUMENT

Section	Proposed revisions in April 2021 NOPR	Final revisions
1. Objectives	Revise language to be consistent with the newly proposed Section 3.	Revise language to be consistent with new Section 3; revise paragraph (g) to specifically reference consensus recommendations developed through negotiated rulemakings.
2. Scope	No revisions proposed in this document	No revisions in this document.
3. Mandatory Application of the Process Rule	Replace with new Section 3, ''Application''	Replace with new Section 3, ''Application.''
4. Setting Priorities for Rulemaking Activity	No revisions proposed in this document	No revisions in this document.
5. Coverage Determination Rulemakings	Eliminate the 180-day period in paragraph (c) between finalization of DOE test procedures and issuance of a NOPR proposing new or amended energy conservation standards.	Eliminate the 180-day period in paragraph (c) between finalization of DOE test procedures and issuance of a NOPR proposing new or amended energy conservation standards.
6. Process for Developing Energy Conservation Standards.	Eliminate paragraph (b), ''Significant Savings of Energy''.	Eliminate paragraph (b), ''Significant Savings of Energy.''
7. Policies on Selection of Standards	Eliminate text in paragraph (e)(2)(i) requiring DOE to conduct a comparative analysis when determining whether a proposed standard level is economically justified.	Eliminate text in paragraph (e)(2)(i) requiring DOE to conduct a comparative analysis when determining whether a proposed standard level is economically justified.
8. Test Procedures	Clarify in paragraph (c) that DOE may revise consensus industry test procedure standards for compliance, certification, and enforcement purposes; eliminate the 180-day period in paragraph (d) between finalization of DOE test procedures and issuance of a NOPR proposing new or amended energy conservation standards.	Clarify in paragraph (c) that DOE may revise consensus industry test procedure standards for compliance, certification, and enforcement purposes; revise application of the 180-day period in paragraph (d).
9. ASHRAE Equipment	No revisions proposed in this document	No revisions in this document.
10. Direct Final Rules	Revise section to clarify that DOE will implement its direct final rule authority on a case-by-case basis.	Revise section to clarify that DOE will implement its direct final rule authority on a case-by-case basis.
11. Negotiated Rulemaking Process	Eliminate section	Eliminate section.
12. Principles for Distinguishing Between Effective and Compliance Dates.	No revisions proposed in this document	No revisions in this document.
13. Principles for the Conduct of the Engineering Analysis.	No revisions proposed in this document	No revisions in this document.

LIST OF REVISIONS IN THIS DOCUMENT—Continued

Section	Proposed revisions in April 2021 NOPR	Final revisions
14. Principles for the Analysis of Impacts on Manufacturers.	Eliminate incorrect cross reference	Eliminate incorrect cross reference.
15. Principles for the Analysis of Impacts on Consumers.	No revisions proposed in this document	No revisions in this document.
16. Consideration of Non-Regulatory Approaches.	No revisions proposed in this document	No revisions in this document.
17. Cross-Cutting Analytical Assumptions	No revisions proposed in this document	No revisions in this document.

* As part of the revisions, sections and subsections have been renumbered as required.

II. Authority and Background

A. Authority

Title III, Parts B [4] and C [5] of the Energy Policy and Conservation Act, as amended, (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6317, as codified), established the Energy Conservation Program for Consumer Products and Certain Industrial Equipment.[6] Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) certification and enforcement procedures; (3) establishment of Federal energy conservation standards; and (4) labeling. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product and covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6293; 42 U.S.C. 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure when certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s); 42 U.S.C. 6314(a); and 42 U.S.C. 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with energy conservation standards adopted pursuant to EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a))

In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6316(a)) In determining whether a standard is economically justified, EPCA requires DOE, to the greatest extent practicable, to consider the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers; (2) the savings in operating costs, throughout the estimated average life of the products (*i.e.,* life-cycle costs), compared with any increase in the price of, or in the initial charges for, or operating and maintaining expenses of, the products which are likely to result from the imposition of the standard; (3) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or the performance of the products likely to result from the imposition of the standard; (5) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard; (6) the need for national energy and water conservation; and (7) other factors DOE finds relevant. (42 U.S.C. 6295(o)(2)(B)(i)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6313(a)(6); and 42 U.S.C. 6316(a)) and comply with any other applicable statutory provisions.

B. Background

DOE conducted an effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. As part of this effort, DOE reached out to many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, State agencies, utilities, and other interested parties for input on the procedures, interpretations, and policies used by DOE in considering whether to issue new or amended energy conservation standards. This process resulted in publication of the July 1996 Final Rule which codified these procedures, interpretations, and policies in appendix A. The goal of the July 1996 Final Rule was to elaborate on the procedures, interpretations, and policies that would guide the Department in establishing new or revised energy conservation standards for consumer products. The rule was issued without notice and comment under the Administrative Procedure Act's (''APA'') exception for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' (5 U.S.C. 553(b)(A))

On December 18, 2017, DOE issued a request for information (''RFI'') on potential revisions to appendix A. 82 FR 59992. DOE subsequently published a NOPR regarding appendix A in the **Federal Register** on February 13, 2019. 84 FR 3910. On July 26, 2019, DOE subsequently issued a notice of data availability (''NODA'') in the **Federal Register**. 84 FR 36037 (''July 2019 NODA''). After considering the comments it received DOE then published a final rule in the **Federal Register** on February 14, 2020, which significantly revised appendix A. 85 FR 8626.

While DOE issued the July 1996 Final Rule without notice and comment as an interpretative rule, general statement of policy, or rule of agency organization, procedure, or practice, the February 2020 Final Rule was issued with notice and comment. For several reasons, as stated throughout the April 2021 NOPR and this document, DOE believes appendix A is best described and utilized not as a legislative rule but instead as generally applicable guidance that may guide, but not bind, the Department's rulemaking process. The revisions finalized in this document are intended to clarify this point. In accordance with Executive Order 13990, DOE used a notice and comment process to revise appendix A. 86 FR 7037. DOE held a public webinar for the April 2021 NOPR on April 23, 2021.

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

[5] Part C was added by Public Law 95–619, Title IV, section 441(a). For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

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

In response to the April 2021 NOPR and public webinar, DOE received comments from the following parties:

TABLE OF COMMENTERS

Commenter(s)	Affiliation	Acronym, identifier
A.O. Smith	Manufacturer	A.O. Smith.
Air-Conditioning, Heating, and Refrigeration Institute	Manufacturer Trade Group	AHRI.
Air-Conditioning, Heating, and Refrigeration Institute (AHRI), AMCA International (AMCA), American Lighting Association (ALA), Association of Home Appliance Manufacturers (AHAM), Consumer Technology Association (CTA), Hearth, Patio & Barbecue Association (HPBA), Heating, Air-conditioning & Refrigeration Distributors International (HARDI), Information Technology Industry Council (ITI), International Sign Association (ISA), Manufactured Housing Institute (MHI), National Association of Manufacturers (NAM), National Electrical Manufacturers Association (NEMA), North American Association of Food Equipment Manufacturers (NAFEM), Power Tool institute, Inc. (PTI), and Plumbing Manufacturers International (PMI).	Manufacturer Trade Groups	Joint Industry Commenters.
American Gas Association, American Public Gas Association, Spire, Inc., and Spire Missouri, Inc.	Utility Trade Group	AGA.
American Lighting Association	Manufacturer Trade Group	ALA.
Americans for Prosperity	Advocacy Group	AFP.
Anonymous	Individual.	
Anonymous	Individual.	
Appliance Standards Awareness Project (Joint Comments filed with the American Council for an Energy-Efficient Economy, Consumer Federation of America, and National Consumer Law Center).	Advocacy Group	Joint Advocacy Commenters.
Attorneys General of California, Colorado, Connecticut, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York.	State, Local Governments	State Commenters.
Bradford White Corporation	Manufacturer	BWC.
California Energy Commission	State	CEC.
California Investor-Owned Utilities	Utilities	Cal-IOUs.
John Cannon	Individual.	
Carrier Corporation	Manufacturer	Carrier.
Crown Boiler Company	Manufacturer	Crown Boiler.
Edison Electric Institute	Utility Trade Group	EEI.
GE Appliances	Manufacturer	GEA.
Goodman Manufacturing Company, L.P	Manufacturer	Goodman.
Grundfos Americas Corporation	Manufacturer	Grundfos.
Ahmed Ahmed Hamdi	Individual.	
Hoshizaki America, Inc	Manufacturer	Hoshizaki.
Hussmann Corporation	Manufacturer	Hussmann.
Hydraulic Institute	Manufacturer Trade Group	HI.
Hydronic Industry Alliance—Commercial	Manufacturer Trade Group	HIA.
Institute for Policy Integrity—New York University School of Law	Academic Institution	IPR.
Lennox International	Manufacturer	Lennox.
Lutron	Manufacturer	Lutron.
Manufactured Housing Institute	Manufacturer Trade Group	MHI.
New Yorker Boiler Company, Inc	Manufacturer	New Yorker Boiler.
North American Association of Food Equipment Manufacturers	Manufacturer Trade Group	NAFEM.
National Propane Gas Association	Utility Trade Group	NPGA.
Natural Resources Defense Council, Earthjustice & Sierra Club	Advocacy Groups	Joint Environmentalist Commenters.
Nortek Global HVAC, LLC	Manufacturer	Nortek.
Northwest Power and Conservation Council	Advocacy Group	NPCC.
Northwest Energy Efficiency Alliance	Advocacy Group	NEEA.
Signify	Manufacturer	Signify.
Small Business Administration (SBA) Office of Advocacy	Federal Government Agency	SBA Office of Advocacy.
Southern Company	Utility	Southern.
Sullivan-Palatek, Inc	Manufacturer	Sullivan-Palatek.
Sara Taylor	Individual.	
Trane Technologies	Manufacturer	Trane.
Unico, Inc	Manufacturer	Unico.
U.S. Boiler Company	Manufacturer	U.S. Boiler.
Weil-McLain Company	Manufacturer	Weil-McLain.
Westinghouse Lighting Corporation	Manufacturer	Westinghouse.
Whirlpool Corporation	Manufacturer	Whirlpool.
Zero Zone, Inc	Manufacturer	Zero Zone.

III. Discussion of Specific Revisions to Appendix A

A. Restoring the Department's Discretion To Depart From the General Guidance in Appendix A

One of the most significant changes made to appendix A in the February 2020 Final Rule was to turn what had been guidance on usual practices for issuing new or amended energy conservation standards and test procedures into binding requirements. In contrast, the July 1996 Final Rule contained procedures, interpretations, and policies that DOE believed would be appropriate for general use in conducting energy conservation standard and test procedure rulemakings. However, in the July 1996 Final Rule, DOE also acknowledged the possibility that the usual practices would not be appropriate for every rulemaking and that the circumstances of a particular rulemaking should dictate application of these generally applicable practices, subject to public notice explaining any such deviations. 61 FR 36974, 36979.

In making appendix A binding, DOE made a policy determination at the time it issued the February 2020 Final Rule that ''promot[ing] a rulemaking environment that is both predictable and consistent'' outweighed the need for ''flexibility to fit the appropriate process to the appliance standard or test procedure at issue.'' February 2020 Final Rule, 85 FR 8626, 8633–8634. Additionally, in response to comments that mandatory application of appendix A could conflict with DOE's statutory obligations under EPCA (*e.g.,* rulemaking deadlines), DOE stated its policy view that the February 2020 Final Rule had been drafted to closely follow and implement EPCA. *Id.* at 85 FR 8634.

As noted in its April 2021 proposal, DOE is reconsidering its policy judgment in weighing the predictability of a one-size-fits-all approach against the negative effects that a mandatory application of appendix A would have on DOE's ability to meet the statutory deadlines established under EPCA and other applicable requirements. Under EPCA, DOE is required to review energy conservation standards for covered products and equipment at least once every six years to determine whether a more-stringent standard would result in significant conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6295(m)(1); 42 U.S.C. 6313(a)(6)(C); 42 U.S.C. 6316(a)) Similarly, DOE is also required to review test procedures for covered products and equipment at least once every seven years to determine whether improvements can be made. (42 U.S.C. 6293(b)(1); 42 U.S.C. 6314(a)(1)(A)) DOE currently has energy conservation standards and test procedures in place for more than 60 categories of covered products and equipment and is typically working on anywhere from 50 to 100 rulemakings (for both energy conservation standards and test procedures) at any one time. Consequently, DOE has often been unable to meet its rulemaking deadlines, and with the February 2020 Final Rule mandating procedural steps that make the rulemaking process lengthier than EPCA requires, implementation of this binding process would make it even more difficult to clear the existing backlog of missed rulemaking deadlines in a timely manner and meet future rulemaking deadlines.

Among the steps that EPCA does not require—but the February 2020 Final Rule does—is for DOE to issue rulemaking documents in advance of a NOPR. The February 2020 Final Rule mandates use of an early assessment RFI and either an advanced notice of proposed rulemaking (''ANOPR'') or a framework document with a preliminary analysis. While DOE recognizes the importance of gathering early stakeholder input and has proposed to maintain opportunities for pre-NOPR input in the July 2021 NOPR,[7] such input may not be necessary or useful in all cases. For instance, EPCA requires DOE to revisit a determination that standards do not need to be amended within three years. (42 U.S.C. 6295(m)(3)(B)) In such cases, particularly with respect to covered products and equipment that have gone through multiple rounds of rulemakings and for which there has been negligible change to the market and relevant technology, a pre-NOPR publication may provide limited value. Thus, DOE may be able to directly issue a notice of proposed determination that standards do not need to be amended. Stakeholders would still have the opportunity to comment on the proposed determination. And, in the event that DOE receives new information in response to the notice of proposed determination, DOE can issue supplemental rulemaking documents before proceeding to a final rule or determination.

The February 2020 Final Rule also required that DOE finalize test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. DOE stated that this requirement would allow stakeholders to provide more effective comments on the proposed energy conservation standards. 85 FR 8626, 8676. DOE acknowledges the importance of established methodologies for measuring energy use and energy efficiency when evaluating potential amendments to the energy conservation standards. Whether a potential energy conservation standard is technologically feasible and economically justified will be dependent, in part, on how the energy use of a product is measured. As discussed in section III.E of this document, DOE is requiring that new test procedures and amended test procedures that impact measured energy use or efficiency be finalized at least 180 days prior to the close of the comment period for: (i) A NOPR proposing new or amended energy conservation standards; or (ii) a notice of proposed determination that standards do not need to be amended. However, this 180-day period may not always be necessary. For example, DOE will typically use an industry test procedure as the basis for a new DOE test procedure. If DOE adopts the industry test procedure without modification, stakeholders should already be familiar with the test procedure. In such cases, requiring the new test procedure to be finalized 180 days prior to the close of the comment period for a NOPR proposing new energy conservation standards would offer little benefit to stakeholders while delaying DOE's promulgation of new energy conservation standards.

These examples illustrate what was clearly understood in the July 1996 Final Rule—that the procedures, interpretations, and policies laid out in appendix A that are generally applicable to DOE's rulemaking program should be determined on a case-by-case basis based on the individual circumstances of a given rulemaking. 61 FR 36974, 36979. Accordingly, in the April 2021 NOPR, the Department proposed reverting back to the original, non-binding status of appendix A. DOE requested comments, information, and data on whether appendix A should be non-binding or, alternatively, whether the rule should remain binding but with revised provisions.

In addition, consistent with its proposal to revert appendix A back to non-binding guidance, DOE's April 2021 NOPR also proposed clarifying that appendix A does not create legally enforceable rights. DOE does not intend for departures from the generally

[7] 86 FR 35668, 35669.

applicable guidance contained in appendix A to serve as the basis for potential procedural legal challenges. DOE's proposed clarification, like the general approach contained in the July 1996 Final Rule, would not impact the ability of a party to raise a challenge regarding the substantive merits of a given rulemaking or the procedural steps delineated under EPCA or the APA. (*See* 42 U.S.C. 6306 (applying judicial review to EPCA's consumer product provisions) and 42 U.S.C. 6316(a)–(b) (extending the application of 42 U.S.C. 6306 to commercial and industrial equipment)) DOE sought comment on this proposed clarification as well. 86 FR 18901, 18905.

Comments in Favor of DOE's Proposal To Restore the Non-Binding Nature of Appendix A

A number of commenters favored DOE's proposed approach. For example, the Joint Environmentalist Commenters reasoned that it is impossible for DOE to create a binding, one-size-fits-all procedure that would adequately address all the unique situations and requirements of DOE's myriad rulemakings. In their view, neither the Administrative Procedure Act (APA) nor EPCA compel such a rigid approach. They argued that the rulemaking process created by the February 2020 Final Rule is more onerous and more time consuming than the one enacted by Congress or adopted in the July 1996 Final Rule. These commenters argued that DOE cannot afford to waste time in addressing its statutory mandate and rulemaking backlog, and they supported DOE's attempt to restore flexibility to appendix A by returning it to non-binding guidance, thereby allowing DOE to respond appropriately to the unique circumstances of a particular rulemaking. (Joint Environmentalist Commenters, No. 31 at p. 2) [8]

Similarly, the CA IOUs urged DOE to return appendix A to its previous status as non-binding guidance, which they argued would restore predictability and certainty to the rulemaking process. These commenters argued that each DOE rulemaking is unique, making the inflexible blanket approach followed in the February 2020 Final Rule one that could result in missed opportunities for increased energy and water efficiency and delay DOE's timely completion of its statutory obligations (including elimination of the current backlog of rulemakings). Furthermore, the CA IOUs argued that a binding appendix A opened DOE up to additional avenues of legal challenge, first on the basis of appendix A itself and then on the potentially conflicting requirements of appendix A and EPCA. They suggested that a binding appendix A increases uncertainty and reduces the ability for all parties to plan for the future, so they encouraged DOE to expand its reasoning for this rulemaking action to clarify DOE's position for future Administrations. However, in the interest of transparency, the CA IOUs also recommended that DOE should alert stakeholders and document when the agency finds it necessary to deviate from the guidance embodied in appendix A; however, the commenters stated that even this provision should be non-binding. (CA IOUs, No. 34 at pp. 1, 2, 6)

The CEC also agreed with DOE's proposal to return appendix A to a non-binding status as a means to enable DOE to retain the flexibility to adapt to the unique circumstances of each rulemaking. It argued generally that unless DOE adopted its proposed approach, following the February 2020 Final Rule would lead to worse air pollution, higher greenhouse gas emissions, unnecessary consumption of water, less-efficient products, and higher energy bills. It further argued that DOE's proposal would ensure necessary flexibility while providing the regulated community with sufficient certainty, encouraging innovation, saving consumers money, improving efficiency, making progress on the backlog of missed deadline rulemakings, and limiting unnecessary greenhouse gas emissions. (CEC, No. 35 at pp. 1–2, 11)

Furthermore, the CEC asserted that the self-imposed administrative barriers in the February 2020 Final Rule would lead to continued delays, market uncertainty, lost energy savings, and harm to consumers. Although the CEC encouraged DOE to be as transparent, consistent, and predictable as possible in its rulemakings, it cautioned that strict adherence to all of the February 2020 Final Rule's required elements will lead to further delay regarding already overdue energy conservation standards and test procedure rulemakings. It reasoned that a mandatory appendix A would provide additional opportunities for procedural challenges, which would create additional costs and unnecessary market uncertainties that would limit innovation and undermine achievable energy savings. In its view, EPCA's mandatory procedures regarding the setting of standards and test procedures control, and to the extent that any appendix A provisions conflict with EPCA, those regulatory requirements would be unlawful. For all these reasons, the CEC stated that appendix A should be returned to guidance status. (CEC, No. 35 at p. 3)

The Joint Advocacy Commenters also favored returning appendix A to general guidance and restoring DOE's discretion to depart from that guidance in appropriate cases. These commenters recognized the importance of having a predictable process for industry stakeholders and encouraged DOE to strive to adhere to the procedures set forth in appendix A, while stressing the need for DOE to have the flexibility to adjust the process to cover the range of issues which may arise in individual rulemakings. According to the Joint Advocacy Commenters, departing from appendix A's general practice may sometimes be necessary to avoid uncertainty for manufacturers and/or to avoid unnecessary delays. As an example, they noted how appendix A details the analytical practices DOE uses in rulemaking and argued that DOE should not need to go through rulemaking to change appendix A each time it wishes to modify its analytical processes to reflect best practices. They also expressed concern that the February 2020 Final Rule's binding provisions could conflict with statutory requirements and increase litigation solely on the issue of whether DOE has followed the prescribed procedures. For these reasons, the commenters argued that applying these guidelines to a specific rulemaking should be determined on a case-by-case basis and that appendix A should be returned to its original, non-binding status. (Joint Advocacy Commenters, No. 38 at pp. 1–2; Joint Advocacy Commenters (Appendix I), No. 38 at pp. 1, 2)

The State Commenters argued that application of appendix A should be determined on a case-by-case basis so that DOE is accorded the latitude and discretion to pursue the most appropriate approach to gathering, analyzing, and synthesizing stakeholder input for different standards. In their view, this procedural flexibility will help ensure that DOE is able to fulfill its statutory mandates as efficiently as possible and with minimal delay and litigation risk. (State Commenters, No. 29 at p. 8) The commenters also noted that making appendix A binding on all rulemakings—including where doing so conflicts with EPCA—exposes DOE to increased litigation that would further delay promulgation of final standards

[8] The parenthetical reference provides a reference for information located in the docket of this rulemaking. (Docket No. EERE–2021–BT–STD–0003, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

on statutorily mandated timelines. (State Commenters, No. 29 at p. 8)

NPCC and NEEA supported DOE's April 2021 proposal, noting that the current version of appendix A contains unnecessary obstacles to DOE's ability to meet its obligations under EPCA. (NPCC, No. 12 at pp. 1–2; NEEA, No. 43 at p. 2) NEEA also asserted that many of the changes in the 2020 Final Rule were unclear and confusing and that they handicapped DOE's ability to effectively and efficiently adopt standards and test procedures so as to achieve maximum economic and environmental benefits for the Nation—thereby making it more difficult for DOE to meet rulemaking deadlines, and resulting in less national energy savings. (NEEA, No. 43 at pp. 1–2) NPCC supported DOE's effort to revert back to non-binding guidance and to restore the flexibility that DOE once had under the 1996 version of appendix A. (NPCC, No. 12 at p. 3) Similarly, NEEA supported DOE's ability to address each rulemaking individually, but in furtherance of transparency, it urged DOE to clearly state in a particular rulemaking when it intended to depart from the procedures outlined in appendix A, along with the reasons for that departure. (NEEA, No. 43 at p. 2)

Comments Opposing DOE's Proposal

DOE also received a number of comments opposing its proposed removal of the mandatory application of appendix A. In AHRI's and BWC's views, appendix A should remain mandatory so as to provide certainty, transparency, and consistency in the rulemaking process DOE uses to implement its energy conservation standards program. (AHRI, No. 25 at p. 1–2; BWC, No. 24 at p. 1) AHRI also asserted that the Department's proposal fails to address or acknowledge DOE's stated reason for making the February 2020 Final Rule binding—namely that of promoting a predictable and consistent rulemaking environment where all stakeholders know what to expect during the rulemaking process—and DOE's proposal does not provide any explanation as to why the record before the agency no longer warrants ensuring that it provide a predictable and consistent rulemaking process. (AHRI, No. 25 at p. 7)

AFP also argued that appendix A should remain binding. It dismissed DOE's stated reasons for making appendix A non-binding—namely to aid in meeting deadlines and to allow it to meet unspecified ''statutory obligations''—noting that with over two decades of rulemakings, DOE has rarely met its statutory deadlines even when appendix A was non-binding. In AFP's view, DOE offered no justification in its proposal as to why this situation would change now. (AFP, No. 36 at p. 2) AFP asserted that the three examples offered by DOE in favor of making appendix A non-binding were flawed. It argued that with respect to DOE's ability to meet its statutory deadlines and ''other applicable requirements,'' DOE offered no explanation as to what comprised the latter. (AFP, No. 36 at pp. 2–3) It also argued that although DOE stated that changes or additions to EPCA's procedural requirements may affect DOE's ability to meet the relevant rulemaking deadlines, DOE failed to show how a non-binding appendix A will either help in meeting these statutory requirements or what will be different from DOE's historic practices. AFP offered similar criticisms with respect to DOE's statements regarding how the mandatory application of appendix A's requirements for early assessment RFIs and ANOPRs may affect DOE's ability to meet statutory deadlines and how having a binding appendix A would also make it more difficult to meet those statutory obligations. (AFP, No. 36 at pp. 2–3)

AFP also referenced DOE's statements to Congress regarding the Department's ability to satisfy the requisite statutory deadlines, in which DOE explained that the Appliance Standards Program has historically had difficulties in meeting its statutorily-required rulemaking obligations, including when appendix A was non-binding. (AFP, No. 36 at p. 3) The commenter asserted that the proposal did not explain how making appendix A non-binding will yield results different from the past, and that DOE should hold itself accountable for complying with its own procedures to ensure that the public will have confidence in the transparency and fairness of DOE's rulemaking process. (AFP, No. 36 at pp. 3, 5)

Commenters Favoring a Mandatory Appendix A Coupled With Well-Defined Exceptions

Additionally, there were also commenters who favored the use of limited, well-defined exceptions to appendix A while maintaining its overall mandatory approach. A number of manufacturers favored an approach that would retain the mandatory nature of appendix A (along with the certainty and predictability it offered), while building in additional flexibility for DOE, and objected to returning appendix A to its prior status as guidance. (Carrier, No. 26 at pp. 1–2; Nortek, No. 19 at p. 2; GEA, No. 20 at pp. 2–3; Lennox, No. 18 at p. 2; A.O. Smith, No. 27 at p. 2; Goodman, No. 22 at p. 2; Trane, No. 23 at p. 2) Nortek and GEA added that if Appendix A becomes non-binding, DOE should add both a mandatory public notice and comment provision that must be followed whenever the agency intends to deviate from appendix A and a rule-specific explanation for the deviation, followed by an opportunity for public comment before the agency proceeds with such deviation. (Nortek, No. 19 at p. 2; GEA, No. 20 at pp. 2–3; *see also* Goodman, No. 22 at p. 2 (asserting that DOE should explain its deviation)) Carrier, Lennox, A.O. Smith, and Trane offered that if DOE required more flexibility (such as making more expeditious, non-material, technical adjustments to test procedures), DOE should tailor those provisions of appendix A where that added flexibility is needed, rather than making Appendix A non-binding. (Carrier, No. 26 at p. 4; Lennox, No. 18 at p. 2; A.O. Smith, No. 27 at p. 3; Trane, No. 23 at p. 20). A.O. Smith suggested that DOE should propose to add a clear ''exception clause'' that would permit DOE to deviate from appendix A when certain criteria are met, namely: (1) Consensus agreements; (2) negotiated rulemakings; and (3) test procedure rulemakings that are addressing clarifications necessary to provide clarity to the market, reduce uncertainty, and provide a level playing field. (A.O. Smith, No. 27 at p. 2) In A.O. Smith's view, this limited exception would recognize those circumstances where deviations from appendix A are necessary and the expediting of the rulemaking process is reasonable. (A.O. Smith, No. 27 at pp. 2–3) Carrier suggested that DOE should retain its current early assessment requirement (*i.e.,* that an early assessment be conducted prior to the issuance of a standards NOPR) but that the current rule be modified to permit DOE the ability to use the most efficient early assessment method available. (Carrier, No. 26 at p. 1) The commenter offered a similar approach with respect to the current 180-day buffer period between the finalizing of a test procedure rule and the proposal for new or amended energy conservation standards. (Carrier, No. 26 at p. 2)

AGA objected to DOE's proposal to make appendix A non-binding and noted that because the 1996 version of appendix A had not been binding on DOE, it held little value. The commenter stated that in 2016, DOE frequently ignored appendix A, and its non-binding nature effectively conflicted with the need for an orderly and predictable regulatory process. (AGA,

No. 33 at pp. 3–4) Reversing the February 2020 Final Rule's mandatory nature would, in its view, be a serious mistake in light of AGA's past experience with having a non-binding version of appendix A in place. (AGA, No. 33 at p. 4) AGA argued that concerns over the rigidity of the February 2020 Final Rule—which AGA acknowledged to be the case with respect to some requirements—can be addressed through the revision of those requirements or by providing exceptions in appropriate circumstances, all without resorting to making appendix A non-binding. (AGA, No. 33 at pp. 4–5)

NPGA stated that while DOE's April 2021 NOPR has identified a number of rulemaking scenarios where different procedures may be beneficial, the agency's ability to make unilateral decisions about when and how to implement different rulemaking procedures lacks transparency. (NPGA, No. 15 at p. 2) It stressed the importance of getting stakeholder input regarding the potential feasibility and energy savings of rulemaking actions as soon in the process as possible. For that reason, NPGA supported the continued use of the ''early look'' provisions to solicit public comments on new regulatory actions. However, it agreed with DOE that different rulemaking approaches may be better suited in some cases for soliciting stakeholder input, so in the alternative, NPGA suggested that DOE should propose a new structure or minimum requirements that must be satisfied to justify an agency decision to deviate from appendix A and seek stakeholder information in response. (NPGA, No. 15 at pp. 2, 3) NPGA also argued that businesses need regulatory predictability and that DOE's proposal to largely operate on a case-by-case basis would make it difficult for manufacturers to have confidence in such rulemakings. It urged DOE to prepare and finalize regulations in an orderly fashion with a fair opportunity for all stakeholders to share information with the agency. (NPGA, No. 15 at p. 3)

Crown Boiler (along with fellow boiler manufacturers U.S. Boiler and New Yorker Boiler who both filed nearly identical responses) opposed DOE's proposed change to make appendix A non-binding. Although Crown Boiler acknowledged that in some cases it may make sense for DOE to have flexibility in adapting the rulemaking process to different situations, the commenter asserted that when DOE did have such discretion in the past, the Department abused it. Crown Boiler argued that where deviation from appendix A is necessary, DOE should be required to justify such deviation in writing after soliciting stakeholder input. If DOE is deviating frequently from appendix A, Crown Boiler stated that further amendments to appendix A may be required, but the solution should not be to scrap the binding nature of the process. (Crown Boiler, No. 10 at pp. 2–3; U.S. Boiler, No. 11 at p. 3; and New Yorker Boiler, No. 13 at pp. 2–3)

ALA urged DOE to retain the binding aspects of appendix A but recognized that a one-size-fits-all approach may not always be practical. It argued that retaining the binding aspects of the February 2020 Final Rule will allow DOE to meet its statutory obligations and eliminate time-wasting negotiations on process and procedures. (ALA, No. 28 at p. 2) ALA suggested that if appendix A becomes non-binding, DOE should ensure consistency such as through applying at least a 180-day period between finalizing a test procedure and proposing standards when major changes affecting energy consumption measurements are at issue, although the commenter concluded that a shorter time frame may be warranted for changes that do not impact measured energy performance. In its view, this change will ensure the best outcome in setting appropriate standards and reduce undue burden—particularly on small business entities who have limited resources with which to fully participate in DOE's rulemakings. (ALA, No. 28 at 2)

Lutron stated that it understands DOE's desire to increase flexibility and improve efficiency by restoring DOE's discretion to depart from appendix A's general guidance. It did not oppose such changes as a general matter, but the company argued that certain aspects should remain mandatory, specifically: (1) Test procedures must be finalized before energy conservation standards are proposed; (2) New test procedures or test procedure amendments that impact measured energy must have an adequate lead time between finalization of that test procedure and a new or amended standards proposal; and (3) There should be some form of stakeholder engagement before issuance of a notice of proposed rulemaking for energy conservation standards. (Lutron, No. 16 at p. 2) Lutron suggested that DOE should revert to the language in section 14(a) of the July 1996 Final Rule, which required DOE to make a finding that it is necessary and appropriate to deviate from the procedure specified in appendix A, to explain why, and to provide interested parties an opportunity to comment. The commenter also argued that DOE should clarify that any such deviations will be rule-specific and done on a case-by-case basis, rather than being broadly applicable. (Lutron, No. 16 at p. 2)

Both Grundfos and HI disagreed with DOE's proposal to return appendix A to guidance and noted that manufacturers are held to the strict requirements of the regulations, so DOE should likewise be expected to define a clear and consistent method for how it intends to manage its process to create/update those regulations, thereby providing stakeholders with needed predictability and consistency—as well as a means of enforcing those provisions through legally enforceable rights. They did not favor a case-by-case approach and stressed that such an approach would be at odds with the need for consistency, predictability, and transparency in DOE's regulatory process. However, these commenters also offered a middle ground, suggesting that appendix A should be binding, but with clear, thoughtful, and well-constructed flexibility to ensure DOE can meet the applicable requirements of EPCA. (Grundfos, No. 37 at pp. 1, 2; HI, No. 42 at pp. 1, 2)

The SBA Office of Advocacy stated that appendix A should remain binding while allowing for exceptions in certain instances. (SBA Office of Advocacy, No. 14 at p. 4) It stated that, among other things, without clear-cut processes for how the agency will promulgate standards, small businesses are not able to participate meaningfully in commenting and are not able to provide the types of substantive technical comments necessary to determine whether a particular test procedure is feasible. (SBA Office of Advocacy, No. 14 at p. 4)

NAFEM opposed restoring DOE's discretion to depart from appendix A's general provisions and asserted that if DOE is concerned about unnecessary delays, the Department could amend the rule by including the option of using a NODA for early assessment instead of relegating the whole appendix A to being optional guidance. (NAFEM, No. 30 at p. 4) NAFEM added that the April 2021 NOPR makes clear that DOE is seeking additional insulation from having to follow any rule or having any provisions that would impinge on its unbridled discretion by removing any legal impediment to its actions. (NAFEM, No. 30 at p. 4) In NAFEM's view, removing accountability and allowing for unlimited discretion will not provide economic stability or efficiency in the EPCA rulemaking process. (NAFEM, No. 30 at p. 4)

The Joint Industry Commenters also strongly opposed DOE's proposal to eliminate the mandatory nature of the

February 2020 Final Rule. (Joint Industry Commenters, No. 40 at p. 4) They suggested instead that DOE should ensure the rule is tailored to its needs and provides the needed flexibility such that the agency can follow it regularly. (Joint Industry Commenters, No. 40 at p. 5). If DOE reverts back to a non-binding version of appendix A, the Joint Industry Commenters suggested DOE consider adding the following: (1) Provide parties with notice and explanation of why a deviation from appendix A is necessary and appropriate; (2) clarify that deviations can only be established on a case-by-case basis; (3) provide stakeholders with the opportunity to comment on the need for the deviation; and (4) maintain the mandatory nature of the rule for certain provisions, including: (a) A requirement to finalize test procedures before issuing proposed energy conservation standards with a 180-day lead-in period for new test procedures or amended test procedures that impact measured energy use or efficiency, and (b) an opportunity for early stakeholder input prior to issuance of proposed energy conservation standards. (Joint Industry Commenters, No. 40 at pp. 6–7)

DOE's Response to Comments

DOE first notes that the majority of commenters, both in support of and against restoring the Department's discretion to depart from the general guidance in Appendix A, have noted the merits of providing DOE with some measure of flexibility in its rulemaking processes. (*See, e.g.,* Carrier, No. 26 at pp. 1–2 (favoring a more flexible application of the procedures in appendix A); Nortek, No. 19 at p. 2 (suggesting DOE provide rule-specific explanations when deviations are needed); A.O. Smith, No. 27 at p. 3 (preferring a binding process with reasonable exceptions over the current rigid approach); AGA, No. 33 at pp. 4–5 (noting that the rigidity imposed by the current requirements can be mitigated by providing for exceptions in certain circumstances); State Commenters, No. 29 at p. 8 (noting that procedural flexibility will help ensure that DOE is able to fulfill its statutory mandates as efficiently as possible with minimal delay and litigation risk); Joint Environmentalist Commenters, No. 31 at p. 2 (discussing the importance of allowing DOE to respond appropriately to the unique circumstances of a particular rulemaking)) Where commenters differ is on how to implement this flexibility. Some commenters, such as the Joint Environmentalist Commenters, support making appendix A non-binding to allow DOE the necessary flexibility to respond to the unique circumstances of a particular rulemaking, while other commenters, such as the Joint Industry Commenters, support retaining the current, binding nature of appendix A with modifications to ensure procedures are tailored to DOE's needs and provide the needed flexibility such that DOE can follow it regularly. (Joint Environmentalist Commenters, No. 31 at p. 2; Joint Industry Commenters, No. 40 at p. 5)

After carefully considering these comments, DOE is finalizing the proposal from the April 2021 to revert appendix A back to its original status as non-binding guidance. That being said, DOE recognizes the merits in both approaches and believes the revisions to appendix A finalized in this document represent the best combination of these two approaches. Accordingly, DOE is also modifying appendix A to reduce the need for departures from the generally-applicable guidance by accounting for specific circumstances surrounding a rulemaking. For example, in section III.E of this document, DOE is implementing guidance on when a 180-day period between finalization of a test procedure and the end of the comment period for an associated standards proposal is warranted. These changes will result in fewer departures from the procedures laid out in appendix A. However, as noted previously, DOE currently has energy conservation standards and test procedures in place for more than 60 categories of covered products and equipment and is typically working on anywhere from 50 to 100 rulemakings. Further these covered products and equipment encompass a wide variety of industries. For certain covered products and equipment, such as commercial package air conditioning and heat pumps, there are established trade organizations that represent a majority of manufacturers and that are able to compile comprehensive datasets. External power supplies, on the other hand, are used in a wide range of products and do not fall neatly into a single trade organization. As a result, DOE may need to tailor its rulemaking approach to account for the lack of consolidated information for a given covered product. This is just one example of how DOE has had to adapt its rulemaking process due to varying circumstances across covered products/equipment. Consequently, it is simply not feasible to anticipate every instance of when flexibility or an exception to the generally applicable procedures of appendix A would be warranted for the more than 60 categories of covered products and equipment that DOE regulates. As such, in addition to the specific instances where DOE is incorporating flexibility into appendix A, DOE believes it is imperative that the Department have the discretion to depart from the generally-applicable guidance in appendix A.

Several commenters expressed concern that reverting to the prior, longstanding use of appendix A as non-binding guidance would reduce certainty, transparency, and consistency in the rulemaking process DOE uses to implement its Appliance Standards Program. (*See, e.g.,* AHRI, No. 25 at p. 1–2; BWC, No. 24 at p. 1) NAFEM went so far as to state that a non-binding appendix A would allow for unbridled discretion in the rulemaking process by removing any legal impediment to DOE's actions. (NAFEM, No. 30 at p. 4) In response, DOE notes that reverting appendix A to non-binding guidance has no effect on the procedures that are already required under EPCA. DOE will continue to follow those statutory requirements and strive to continue to meet the related deadlines that EPCA prescribes. For example, EPCA requires that a test procedure or standards proposal be published for public comment, that comment periods be of specified minimum durations, and that notice of determinations be subject to notice and comment before DOE publishes a final determination not to amend a given set of standards for covered products and equipment. (*See* 42 U.S.C. 6293(b)(2) (prescribing minimum comment period for test procedure proposed rulemakings); 42 U.S.C. 6295(m)(2) (prescribing minimum comment period for proposed determinations); *and* 42 U.S.C. 6295(p)(2) (prescribing minimum comment period for standards proposed rulemakings)) Further, DOE will continue to ensure new or amended energy conservation standards and test procedures meet applicable statutory criteria in EPCA (*e.g.,* standards result in the maximum improvement in energy efficiency that is technologically feasible and economically justified). Taken together, all of these requirements establish a consistent, predictable rulemaking process. NAFEM's concerns about unbridled discretion and a lack of any legal impediment to DOE's actions are unfounded. As discussed above, EPCA restrains DOE's discretion in several areas and specifies a more detailed rulemaking process than that laid out in the Administrative Procedure Act.

As for comments regarding the transparency of DOE's rulemaking

process, DOE notes that appendix A is an agency construction—a provision that was developed not only to address how DOE will conduct energy conservation standards and test procedure rulemakings but also to provide transparency to DOE's rulemaking process. As stated throughout this rulemaking, DOE is making appendix A non-binding in recognition of the fact that DOE should be able to tailor its rulemaking process to best fit the unique circumstances of a particular rulemaking, not to reduce transparency in its rulemaking process. That being said, DOE recognizes that deviations from appendix A without notice or explanation are not conducive to a transparent rulemaking process. Accordingly, DOE is modifying its proposed approach from the April 2021 NOPR to more closely match the original appendix A by providing the public with notice and an explanation of any deviations to the generally applicable guidance of appendix A. These deviations will be narrowly tailored to the individual rulemaking at issue and will not be applied on an across-the-board basis.

In response to those commenters who criticized DOE's proposal and noted the Department's past inability to meet statutory deadlines even under a non-binding appendix A, DOE acknowledges the difficulties it has had in meeting these requirements in the past. DOE will continue to strive to meet these deadlines, and the removal of the mandatory provisions imposed by the 2020 February Final Rule (which tended to lengthen the rulemaking process) will provide DOE with a greater chance of success in doing so. Reserving this discretionary flexibility will aid in DOE's ability to focus its various resources in meeting the deadlines imposed under EPCA (or any other potential deadlines, such as those imposed pursuant to court order). Furthermore, DOE's past difficulty in meeting these deadlines when appendix A's provisions were not mandatory only further highlights the need for the agency to have more flexibility in carrying out a given rulemaking, not less, as the February 2020 Final Rule dictates.

Finally, DOE agrees with those commenters who suggested that the removal of the binding nature of appendix A would reduce the overall scope of DOE's litigation risk and avoid scenarios where appendix A requirements may conflict with statutory requirements in EPCA. Reducing litigation risk, among other things, provides added certainty to DOE's rulemaking process. DOE also notes that removing the potential for procedural challenges stemming from a set of self-imposed requirements does not affect the ability of interested parties to bring substantive legal challenges under the relevant statutory provisions, such as the APA and EPCA. This change should contribute to DOE's ability to satisfy its statutory obligations in a timely manner.

For the aforementioned reasons, DOE is finalizing the proposal from the April 2021 NOPR to restore DOE's discretion to depart from the generally-applicable guidance of appendix A, subject to the modification discussed above requiring notice and explanation for each deviation.

B. Significant Energy Savings Threshold

As DOE noted in the preamble to the April 2021 NOPR, the Secretary of Energy may not prescribe an amended or new energy conservation standard if the Secretary determines that such standard will not result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6313(a)(6)(A)(ii)(II); and 42 U.S.C. 6316(a)) Congress did not define the statutory term ''significant conservation of energy,'' and, for several decades prior to the February 2020 Final Rule, DOE also did not provide specific guidance or a numerical threshold for determining what constitutes significant conservation of energy. Instead, DOE determined on a case-by-case basis whether a particular rulemaking would result in a significant conservation of energy.

In a departure from this practice, the February 2020 Final Rule added a numerical threshold for significant conservation of energy that currently applies to all energy conservation standards rulemakings for both covered products and equipment. That threshold requires an energy conservation standard to result in either: (1) A 0.30 quad reduction in site energy use over a 30-year analysis period or (2) a 10-percent reduction in site energy use over that same period. DOE explained in the February 2020 Final Rule its expectation that the threshold would ensure that economically-justified standards would be developed, while also making the rulemaking process more predictable. 85 FR 8626, 8670.

As DOE explained in its April 2021 proposal, the Department is reconsidering its policy views on whether this numerical threshold allows DOE to fully consider whether an energy conservation standard would result in significant conservation of energy. 86 FR 18901, 18905. In particular, DOE is reevaluating whether the significance of energy savings offered by a new or amended energy conservation standard can be determined without knowledge of the specific circumstances surrounding a given rulemaking.

As noted in the April 2021 NOPR, a uniform numerical threshold for site energy savings does not account for differences in primary energy and full-fuel-cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. *Id.* Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels). For example, 1 quad of site electricity energy consumption in 2022 corresponds to approximately 3.05 quads of FFC energy consumption (for a generic end-use load shape). By contrast, 1 quad of site natural gas or oil energy consumption in 2022 corresponds to 1.11 and 1.17 quads of FFC energy consumption, respectively.[9] Thus, FFC effects present a more complete picture of the impacts of potential energy conservation standards, including greenhouse gas emissions, and would allow DOE to more fully consider the impacts of potential energy conservation standards during its rulemaking processes. This is especially important in light of the fact that the United States has now rejoined the Paris Agreement and will exert leadership in confronting the climate crisis.[10]

Additionally, DOE pointed out in the April 2021 NOPR that some covered products and equipment have most of their energy consumption occur during periods of peak energy demand—a condition that a uniform numerical threshold does not capture. 86 FR 18901, 18905. The impacts of these products on the energy infrastructure can be more significant than those from products with relatively constant site energy use demand. For example, whereas consumer refrigerators operate 24 hours per day, 365 days per year, central air conditioners typically operate during only part of the year, including periods of peak demand (*i.e.,* during the hottest summer days), a factor that is likely to impact grid reliability. Thus, reducing energy use

[9] *See* Coughlin, K. Projections of Full-Fuel-Cycle Energy and Emissions Metrics. (2013). LBNL–6025E; Energy information Administration *Annual Energy Outlook 2021* (available at: *https://www.eia.gov/outlooks/aeo*).

[10] *See* Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad,'' 86 FR 7619 (Feb. 1, 2021).

during periods of peak demand has a more significant impact as it helps reduce stress on energy infrastructure. But the current threshold for determining whether energy savings are significant does not allow DOE to assign greater significance to energy savings that have a greater impact on reducing the stress on U.S. energy infrastructure. FFC and grid impacts are but two examples of any number of factors that cannot be fully accounted for when using DOE's current uniform threshold for significant conservation of energy.

Accordingly, DOE sought comment on whether to eliminate the current threshold for determining significant conservation of energy and to revert to its prior practice of making such determinations on a case-by-case basis or on any suggested alternatives. Commenter responses on this issue are summarized in the ensuing paragraphs, followed by the Department's response.

Comments Supporting Removal of the Significant Energy Savings Threshold

A number of commenters supported DOE's proposal to remove the February 2020 Final Rule's significant energy savings threshold. For example, in expressing support for DOE's proposal, NPCC noted its initial objection to the threshold when it was first proposed by DOE. (NPCC, No. 12 at p. 3) NEEA held a similar view, asserting that the threshold was overly prescriptive and would prevent DOE from adopting standards that save energy and are economically justified. The commenter provided hypothetical examples of what it viewed as anomalous results that might occur if the significant energy saving threshold were to be used in its current form. (NEEA, No. 43 at p. 2 (noting that DOE would be able to implement a standards rulemaking resulting in 0.1 quads of energy savings if it represented 11% of site energy use but would be unable to implement two separate rulemakings resulting in 0.2 quads and 8% of site energy use reduction each))

Some commenters also argued that the particular facts and circumstances need to be fully considered by DOE before it can make a determination regarding the significance of the energy savings involved. (State Commenters, No. 29 at p. 8; CEC, No. 35 at p. 5) Several Commenters also argued that the current significant energy savings threshold is both an unreasonable interpretation of EPCA and in conflict with existing case law. (State Commenters, No. 29 at p. 9 (asserting that the threshold violated EPCA, case law, and congressional intent, and would result in lost public benefits); Joint Environmentalist Commenters, No. 31 at pp. 3–4) (asserting that the threshold violated EPCA and judicial precedent); CEC, No. 35 at pp. 4–5 (citing *NRDC* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985) and asserting that energy savings are significant if they are not ''genuinely trivial'')) The CEC further argued that using a mandatory significant energy savings threshold as an initial consideration would allow DOE to side-step its obligations to evaluate the costs and benefits of any energy conservation opportunity that is not genuinely trivial, which is particularly important for technologies that may currently have a small market share but which could consume significant amounts of energy in the future (*e.g.,* electric vehicle supply equipment). It also warned that a static significant energy savings threshold could be abused in situations where products could be split into numerous categories in order to ensure that no product meets the threshold, such that no standards may be established or amended. (CEC, No. 35 at pp. 4–5)

The Joint Environmentalist Commenters characterized the adoption of the significant energy savings threshold as a ''harmful change'' that is inflexible. They argued that many of DOE's previously adopted energy conservation standards would not have met the 2020 February Final Rule's threshold, despite providing billions of dollars in utility bill savings, avoided health harms, and reduced greenhouse gas emissions. These commenters also argued that Congress intended for DOE to apply a gradualist approach by requiring the reexamination of standards at least every six years, and they reasoned that DOE cannot use a significant energy savings threshold to short-circuit this statutory requirement to reconsider standards at regular intervals. (Joint Environmentalist Commenters, No. 31 at pp. 3–5)

The Joint Advocacy Commenters argued generally that adoption of the proposals contained in the April 2021 NOPR would have the potential to achieve very large consumer and climate benefits, while still providing ample opportunity for stakeholder input throughout DOE's rulemaking process. (Joint Advocacy Commenters, No. 38 at p. 1) Regarding the threshold specifically, these commenters favored its removal because, in their view, such an arbitrary threshold is inconsistent with the relevant case law and congressional intent and has the potential to sacrifice large savings for both consumers and businesses since site energy savings of 0.30 quads (as provided in the threshold) are equivalent to electricity bill savings of about $11 billion. The Joint Advocacy Commenters further argued that the numerical threshold would prevent DOE from pursuing a standard, even if such standard would impose no costs, because the agency would never get to consider that level of savings as part of the required analysis of economic justification. These commenters also faulted the numerical threshold for not allowing DOE to account for factors such as the increased significance of energy savings that can reduce greenhouse gas emissions or the specific circumstances associated with a given product. They agreed with the April 2021 NOPR's arguments that the significant energy savings threshold does not allow DOE to account for other relevant considerations such as a potential standard's impact on peak demand and reduction of stress on the electric grid, and they added that the threshold could also prevent the successful conclusion of consensus agreements. For these reasons, the Joint Advocacy Commenters recommended that DOE should return to considering whether significant energy savings are present on a case-by-case basis, as it has historically done. (Joint Advocacy Commenters, No. 38 at pp. 2–3; Joint Advocacy Commenters (Appendix I), No. 38 at pp. 1, 2, 9–11)

IPI also supported DOE's proposed removal of the significant energy savings threshold and suggested that DOE should also consider other factors besides climate effects when determining whether energy savings are significant. (IPI, No. 17 at p. 1) In addition to supporting DOE's stated reasons for removing the threshold, IPI argued that had the threshold been in place when DOE set standards for commercial warm air furnaces in 2016, the Nation would have had to forego 12.4 million metric tons of CO_2 emissions savings, as well as significant reductions in criteria pollutants and consumer savings of $1 billion. (IPI, No. 17 at p. 2) The commenter asserted that foregoing such savings in the future by continuing to use the threshold would significantly undermine commitments to U.S. leadership on climate change and would bypass the ''cost-free chance[s] to save energy'' that courts have said that Congress did not intend for DOE to pass up. (IPI, No. 17 at pp. 2–3) In IPI's view, relying solely on numerical thresholds is arbitrary (IPI, No. 17 at p. 3), and it agreed with the April 2021 NOPR's observation that peak demand has a greater impact on U.S. energy infrastructure compared to

non-peak demand. IPI stated that the timing of energy demand matters not only in this context but also with respect to climate, health, and consumer impacts, explaining that electricity generators that satisfy peak demand can also be among the most-polluting generators and that some consumers may experience increased electricity pricing during peak demand periods. (IPI, No. 17 at pp. 3–4) As a result, in IPI's view, energy savings for appliances that operate during peak demand periods can have greater benefits for the climate, human health, and consumers than the raw numbers show. For this reason, IPI argued that these impacts should be considered when determining whether a given savings level is significant. (IPI, No. 17 at p. 4)

IPI added that climate and health impacts should be incorporated into DOE's reasoning for the removal of the current energy savings threshold. (IPI, No. 17 at p. 4) In addition to DOE's reasoning that the current threshold's link to site energy use does not permit DOE to account for differences in primary energy and FFC effects for different covered products, IPI contended that a given amount of site energy usage will also be associated with different amounts of FFC emissions depending on the fuel type used and that those different emissions will likewise be associated with different climate and health impacts. The commenter argued that these reasons favor DOE's consideration of climate and health impacts when assessing the significance of energy savings for a given standard and in repealing the February 2020 Final Rule's numerical thresholds.[11] (IPI, No. 17 at p. 4)

The CA IOUs also supported removal of the significant energy savings threshold, arguing that it directly conflicts with DOE's ability to set energy conservation standards that achieve the maximum energy savings that are technologically feasible and economically justified. They characterized it as an ''arbitrary minimum savings threshold'' and also faulted it for its potential to prevent DOE from setting efficiency standards for emerging technologies that may have relatively low market penetration currently but that present large savings opportunities for the future. The CA IOUs argued that appropriate Federal energy conservation standards could help reduce the social cost of such technologies and accelerate their acceptance, and accordingly, these commenters recommended that DOE should again interpret significant energy savings to mean not ''genuinely trivial'' (referencing the *Herrington* case). (CA IOUs, No. 34 at pp. 2–3)

Finally, the proposed elimination of the significant energy savings threshold was also supported by some manufacturers. A.O. Smith stated that it did not believe that appendix A needed to include a significant energy savings threshold, as the factors that EPCA requires DOE to evaluate include both savings and cost. (A.O. Smith, No. 27 at p. 4) Trane noted that, even with the current approach's ''10% improvement backstop,'' this level of improvement could represent a significant leap for many covered products that is simply impossible to achieve, let alone be technically feasible. (Trane, No. 23 at p. 3). Instead, Trane favored permitting DOE to use its own discretion, after carefully weighing stakeholder input, as to whether potential cumulative energy savings are significant enough to proceed with a standards rulemaking. (Trane, No. 23 at p. 3)

Comments Opposing Removal of the Significant Energy Savings Threshold

A number of commenters opposed DOE's proposal to remove the current threshold for significant energy savings. For example, in AHRI's view, DOE's establishment of the current significant energy savings threshold, rather than relying on a case-by-case determination, fell within DOE's authority under EPCA. (AHRI, No. 25 at p. 7) Many commenters asserted that the use of such a threshold would provide consistency, predictability, certainty, stability, or some combination of these elements, to regulated entities and stakeholders, and they argued that it would ensure that DOE pursues economically-justified standards. (AHRI, No. 25 at p. 7; Joint Industry Commenters, No. 40 at p. 12; Goodman, No. 22 at p. 3; Lutron, No. 16 at p. 2; Zero Zone, No. 21 at p. 2; Grundfos, No. 37 at p. 2; HI, No. 42 at p. 2; AGA, No. 33 at p. 5; MHI, No. 32 at p. 2). The SBA Office of Advocacy made special note that the threshold provides certainty to small businesses. (SBA Office of Advocacy, No. 14 at p. 5) A number of commenters also asserted that focusing on potential standards capable of satisfying the threshold would help DOE prioritize its resources and meet its statutory deadlines. (AHRI, No. 25 at pp. 7–8; Carrier, No. 26 at p. 2; Crown Boiler, No. 10 at p. 2; Nortek, No. 19 at p. 3; BWC, No. 24 at pp. 2–3; GEA, No. 20 at p. 3; Joint Industry Commenters, No. 40 at p. 12; ALA, No. 28 at 2; MHI, No. 32 at p. 2; AFP, No. 36 at pp. 1–2, 4; SBA Office of Advocacy, No. 14 at p. 5) (*See also* U.S. Boiler, No. 11 at pp. 2–5 *and* New Yorker Boiler, No. 13 at pp. 2–4)[12] GEA added that if a rule is not going to make a meaningful difference in energy consumption, DOE should make no new standard and return to the rule in three years, pursuant to EPCA. (GEA, No. 20 at p. 3) NAFEM cautioned that removing the threshold and leaving an undefined process will make standards rulemakings more contentious and less efficient. (NAFEM, No. 30 at p. 5)

Some commenters also contended that by removing the threshold, DOE would improperly be relying on factors outside of its statutory authority when considering whether to adopt a given standard (*e.g.,* rejoining of the U.S. to the Paris Agreement, reducing stress on energy infrastructure, and considering greenhouse gas emissions). (AHRI, No. 25 at p. 8; AFP, No. 36 at pp. 4–5) These commenters argued that DOE's consideration of ''significant conservation of energy'' is limited to whether there is a significant conservation of electricity or fossil fuels and does not extend to whether that conservation of energy would have a significant impact on other DOE priorities such as reducing peak demand, limiting stress on electricity infrastructure, or taking action on climate change. (AHRI, No. 25 at p. 8; AFP, No. 36 at pp. 4–5). AGA faulted DOE for proposing to remove the significant energy savings threshold before having even had a chance to use it. (AGA, No. 33 at p. 5 (noting the same and requesting DOE first analyze previous appliance efficiency rulemakings to provide context and a transparent rationale for the threshold value (or lack thereof) that DOE would apply to future rulemakings.)) ALA disfavored case-by-case determinations, and the organization asserted that the economic cost of the regulatory process and related testing should be weighed against the potential energy savings over a determined period of time. (ALA, No. 28 at p. 2) ALA noted its prior support for DOE's efforts to prioritize test procedures and standards development to identify categories offering consumers the most energy savings, and it argued that following this approach would allow DOE to target its limited resources on those products consuming the most

[11] IPI also offered as additional support its comments to DOE's prior proposals regarding appendix A in which it opposed the use of a threshold for significant energy savings. (IPI, No. 17 (Attachment 4) (Comments dated March 16, 2020) at pp. 3–4)); IPI, No. 17 (Attachment 5) (Comments dated May 6, 2019) at pp. 2–3)

[12] The comments from Crown Boiler will serve as the basis for discussion of the positions taken by these commenters, as the comments provided were essentially identical.

energy, thereby creating a baseline approach. (ALA, No. 28 at pp. 2–3) AFP noted that the agency has devoted substantial time and effort to rules producing little energy savings, while missing its deadlines 90 percent of the time. (AFP, No. 36 at pp. 1–2, 4 (citing DOE's own finding that 40 percent of the 60 rules it had examined produced 6 percent of the overall energy efficiency savings))

While many commenters supported the continued use of the significant energy savings threshold, some also recognized the need for DOE to have some flexibility in how the threshold would be applied. For example, while Carrier thought the threshold would apply in most instances, it acknowledged that there may be some instances where additional or alternative benefits may exist and suggested that DOE revise appendix A to provide the agency with the ability to address those unique cases (where appropriate) with notice and explanation. (Carrier, No. 26 at p. 2) The Joint Industry Commenters and Nortek reasoned that, even if appendix A became non-binding, DOE should retain the significant energy savings threshold, because DOE could undertake a deviation after giving the public notice and an opportunity for comment should other factors lead DOE to conclude that doing so would satisfy EPCA. (Joint Industry Commenters, No. 40 at p. 12; Nortek, No. 19 at p. 3) Goodman also offered alternatives to the complete removal of the threshold, suggesting that DOE either: (1) Retain the current threshold as a rebuttable presumption that, if met, would be deemed ''significant'' while savings levels falling under the threshold would be presumed ''insignificant'' unless DOE demonstrates otherwise or (2) define ''significant energy savings'' to be a value connected to the average annual per-household energy use requirement specified in 42 U.S.C. 6292(b)(1)(B). (Goodman, No. 22 at p. 4) Lutron suggested that if the current threshold causes problems in achieving the Administration's energy conservation and climate goals, lowering the threshold would be preferable to its removal. (Lutron, No. 16 at pp. 2–3) NAFEM stated that if DOE removes the threshold, appendix A should be revised to provide a list of all of the factors DOE may consider when making a determination that energy savings are significant. (NAFEM, No. 30 at p. 5) ALA asserted that there should be some baseline approach to setting standards to avoid wasting time and money, but it added that using exact thresholds are unlikely to apply to all product types. (ALA, No. 28 at p. 2)

Lennox suggested that DOE should issue a supplemental proposal with an analytical basis for its approach to determining significant energy savings, if the agency wants to consider eliminating its use of ''quantitative significance thresholds,'' including why a smaller threshold may not be appropriate. (Lennox, No. 18 at p. 9). Lennox went on to state that if DOE eliminates the use of thresholds, it should restore and strengthen the prior version of appendix A, where presumptions had existed against regulations such as those that would: (1) Result in a negative return on investment for the industry; (2) would significantly reduce the value of the industry; or (3) be the direct cause of plant closures, significant losses in domestic manufacturer employment, or significant losses of capital investment by domestic manufacturers. (Lennox, No. 18 at pp. 9–10) (*See also* 10 CFR part 430, subpart C, appendix A, section 5(e)(3) (2018))

Crown Boiler—in conjunction with both U.S. Boiler and New York Boiler, who both filed essentially identical comments (*see* U.S. Boiler, No. 11 at pp. 2–5 and New Yorker Boiler, No. 13 at pp. 2–4) [13]—made a number of arguments, in addition to those noted earlier, in support of the significant energy savings threshold. It argued that the threshold is an acknowledgement by DOE that there is a point at which projected energy (and carbon) savings become too small to be statistically significant and its proposed removal would, in its view, make appendix A less science-based, an action which would be in conflict with Executive Order 13990. (Crown Boiler, No. 10 at p. 2) Crown Boiler also stressed that energy efficiency standards have real world impacts, including added cost for equipment and potential job losses, and the commenter argued that DOE should be required to show a degree of energy savings above a *de minimis* level before setting an energy conservation standard. (Crown Boiler, No. 10 at p. 3) It further added that there is a direct relationship between fuel consumption and carbon emissions, and consequently, insignificant energy savings would be expected to also translate into insignificant carbon reductions. Crown Boiler reasoned that given these limitations, standards with a low-yield potential for energy savings would not justify the imposition of heavy regulatory burdens and DOE should avoid setting standards simply for purposes of ''international virtue signaling'' and to demonstrate leadership in confronting the climate crisis. (Crown Boiler, No. 10 at p. 3)

Crown Boiler also noted that an insignificant reduction in energy savings is highly unlikely to be realized entirely during a peak demand period, and the commenter added that DOE itself considered the impact that the significant energy savings threshold would have on potential reductions in peak demand, but that it determined that it retained the ability to consider the impacts of new standards on grid reliability if these concerns impacted specific rulemakings. (Crown Boiler, No. 10 at p. 3; *see also* 85 FR 8626, 8672 (Feb. 14, 2020)) Crown Boiler also challenged DOE's view that eliminating the threshold would allow DOE to consider potential source energy savings by pointing out that DOE had noted that it believed it was statutorily obligated to utilize site energy use when analyzing energy savings, and it asserted that the April 2021 NOPR did not address DOE's ability to consider source energy savings in this manner while still complying with EPCA. (Crown Boiler, No. 10 at pp. 3–4)

Additionally, Crown Boiler asserted that DOE's only possible error in setting its significant energy savings threshold was reducing it from the originally proposed value of 0.5 quad to the 0.3 quad threshold ultimately adopted. (Crown Boiler, No. 10 at p. 4) It pointed to two energy conservation standard rules—the 2016 rule for residential boilers and the 2020 rule for commercial boilers—as highlighting the potential for negative impacts in the absence of a threshold. The commenter asserted that each of these rules was expected to result in only a 0.6 percent improvement in efficiency, for a total of 0.16 quads and 0.27 quads over 30 years, respectively. Crown Boiler argued that in exchange for these small gains, both gas and oil boilers would face a significant reduction in their ability to work properly when installed with sub-optimal vent systems. Moreover, Crown Boiler argued that such boilers face an increased risk of reliability problems that could reduce efficiency in the field over time, and that manufacturers experienced a drain on engineering resources that would have otherwise been allocated to more productive uses (such as research into new technologies capable of operating on a higher concentration of renewable fuels). Crown Boiler viewed these outcomes as real losses that were traded for theoretical energy savings so low that it

[13] The comments from Crown Boiler will serve as the basis for discussion of the positions taken by these commenters.

raises questions as to whether DOE can credibly claim these predicted saving as accurate. (Crown Boiler, No. 10 at p. 4)

DOE's Response to Comments

In response to these comments, DOE first notes that several commenters discussed DOE's authority to establish a threshold for determining whether energy savings are significant. As discussed in the April 2021 NOPR, DOE proposed to remove the current numerical threshold for determining whether energy savings are significant because it did not allow DOE to consider the specific circumstances surrounding a given rulemaking, not because DOE lacked the statutory authority to establish a threshold. 86 FR 18901, 18905. As evidenced by the court's decision in *Herrington,* it is clear that DOE may choose to establish a numerical threshold as long as the threshold is consistent with the policies behind the program. *See Herrington,* 768 F.2d at 1376 (''we do not hold that the Act forbids DOE to set levels of significance for each product type as a percentage of the energy consumed by that product type, provided that the levels selected reasonably accommodate the policies of the Act.''). However, while establishing a threshold is permissible under EPCA, DOE does not believe it is the best course of action. As discussed previously, a set numerical threshold does not allow DOE to consider the specific circumstances (*e.g.,* electric infrastructure impacts, FFC effects, and greenhouse gas emissions) surrounding a given rulemaking when determining whether energy savings are significant.

As for the argument that DOE's determinations of significance for energy savings should be limited to whether there is a significant conservation of electricity or fossil fuels and that it should not extend to the impacts of those energy savings, commenters seem to suggest that the significance of energy savings can be determined without consideration of the broader impacts of those savings. DOE does not agree with this position, nor does EPCA compel such an approach. As noted in *Herrington,* determining whether energy savings are significant should be informed by the underlying policies of the Appliance Standards Program. *Id.* DOE's Appliance Standards Program was created in the 1970's in response to an energy supply crisis. *See* EPCA (noting in the Act's description the law's intention ''[t]o increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes.'')

Congress expanded further on the intended policies underlying the Appliance Standards Program in subsequent amendments to EPCA. For example, the Energy Policy Act of 2005, Public Law 109–58 (Aug. 8, 2005), which, among other things, amended EPCA to establish energy conservations standards for additional consumer products, was enacted to ''ensure jobs for our future with secure, affordable, and reliable energy.'' The Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007), which similarly amended EPCA to establish new energy conservation standards for consumer products and commercial equipment, was enacted to ''move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas capture and storage options, and to improve the energy performance of the Federal Government, and for other purposes.'' Energy conservation achieved through the Appliance Standards Program helps achieve many of these policy objectives. For example, energy conservation standards can increase grid reliability by decreasing peak demand. Energy conservation standards also protect consumers by reducing greenhouse gas and other pollutant emissions. As a result, and in accordance with the court in *Herrington,* DOE believes any determination of whether energy savings are significant should involve some consideration of the potential impact of those energy savings on the policy objectives underlying the Appliance Standards Program. Thus, rather than being constrained in the manner suggested by these commenters—*i.e.,* that DOE is limited to determining significance solely in terms of the amount of projected electricity or fossil fuel energy savings—DOE is guided by the underlying policy objectives of EPCA, as amended, governing the Appliance Standards Program when determining whether potential energy savings are significant.

DOE also received several other comments disagreeing with DOE's decision to consider the potential impacts of energy savings when determining whether those energy savings are significant. Crown Boiler commented that DOE itself had noted it was statutorily obligated to utilize site energy use when analyzing energy savings. (Crown Boiler, No. 10 at pp. 3–4) Crown Boiler also commented that DOE had determined in the February 2020 Final Rule that it could address the impacts of new standards on grid reliability in individual rulemakings.

In response, DOE first notes that Crown Boiler's claim that DOE stated it was obligated to use site energy savings mischaracterizes DOE's position in the February 2020 Final Rule. In that rule, DOE stated that use of site energy savings was consistent with EPCA's definition for ''energy use'' and the process followed by DOE when determining whether to apply energy conservation standards to other covered products. 85 FR 8626, 8668. But, even if Crown Boiler's claim had been accurate, DOE did not propose to remove the threshold because the use of site energy savings itself is problematic. Instead, DOE proposed to remove the uniform numerical threshold because relying solely on the threshold itself does not account for the specific circumstances surrounding a given rulemaking. Nowhere is this deficiency more evident than in the consideration of FFC effects for electricity and natural gas where 1 quad of site electricity energy consumption corresponds to approximately 3.05 quads of FFC energy consumption, while 1 quad of site natural gas energy consumption corresponds to 1.11 quads of FFC energy consumption. DOE will continue to calculate potential site energy savings for energy conservation standards. But DOE will determine the significance of those site energy savings based on their impact, which may include impacts on FFC savings, grid reliability, and greenhouse gas emissions. Crown Boiler's second argument similarly misses the mark. DOE agrees that the impact of new standards on grid reliability can be addressed during individual rulemakings. But, that can only occur if the February 2020 Final Rule threshold has been met.

In response to comments that eliminating a uniform numerical threshold will reduce certainty and predictability in DOE's rulemaking process (*see, e.g.,* AHRI, No. 25 at p. 7; Joint Industry Commenters, No. 40 at p. 12; Goodman, No. 22 at p. 3) or lead to an undefined process that will make standards rulemakings more contentious and less efficient (NAFEM, No. 30 at p. 5), DOE notes that elimination of the numerical threshold will not change its rulemaking process. DOE will continue to collect information and conduct analyses to determine if new or amended standards would result in significant conservation of energy and are technologically feasible and economically justified. If these statutory criteria are met, DOE will propose new

or amended standards. Stakeholders will then have the opportunity to comment on the proposed new or amended standards, including whether the potential energy savings are significant. If new or amended standards are subsequently issued in a final rule, manufacturers will typically have between 3 and 5 years to come into compliance with the new or amended standards. (*See* 42 U.S.C. 6295(m)(4)) This is a consistent process based on well-established methodologies that have been extensively used over the long lifetime of DOE's Appliance Standards Program. As for claims that elimination of the uniform numerical threshold will lead to less predictable rulemakings, DOE does not issue new or amended energy conservation standards based solely on whether the potential energy savings are significant. Any new or amended standard must also be technologically feasible and economically justified. Further, DOE only makes these determinations after conducting a full analysis of all available information, including information obtained during the rulemaking process. And, while DOE acknowledges that a uniform numerical threshold makes for less complicated significance determinations, it does so by ignoring the very real differences, *e.g.,* FFC effects and electrical grid impacts, between energy savings across different rulemakings. DOE believes that any benefits of this approach are more than outweighed by its failure to account for the specific facts and circumstances surrounding an individual rulemaking.

As for commenters such as ALA and AFP that asserted the uniform numerical threshold would help DOE prioritize its resources and meet its statutory deadlines, DOE notes that having a threshold can only constrain DOE's ability to prioritize its resources. As discussed previously, a uniform numerical threshold does not account for the differences across covered products and equipment rulemakings, *e.g.,* FFC effects. For example, under the threshold established in the February 2020 Final Rule, DOE would not be able to prioritize a rule that saves 0.25 quad of site energy and 0.6 quad of FFC energy over a rule that saves 0.30 quad of site energy and 0.4 quad of FFC energy. DOE assumes commenters also meant that the threshold would result in more rulemakings resulting in determinations that standards do not need to be amended, which would free up DOE resources. But, in many cases the process for issuing a new or amended standard, in terms of the number of **Federal Register** publications and opportunities for public comment, is very similar to the process for issuing a final determination not to amend a standard. Both typically involve the issuance of pre-NOPR documents where DOE collects information and data in order to determine whether a new or amended standard would satisfy the relevant criteria in EPCA. DOE then uses these data and information to prepare a proposal on whether a new or amended standard is warranted. After reviewing public comments on the proposal, DOE issues a final document that either establishes a new or amended standard or determines that a new or amended standard is not warranted. Finally, a determination not to amend standards must be revisited within 3 years, while a decision to issue new or amended standards must be revisited within 6 years. (42 U.S.C. 6295(m)) DOE believes the other revisions to appendix A finalized in this document and the additional revisions that were proposed in the July 2021 NOPR will have a much greater impact on DOE's ability to meet its statutory deadlines.

As for the commenters who proposed a modified threshold, *e.g.,* a rebuttable presumption of significance or a lower threshold value, DOE notes these approaches pose the same problem as the threshold set in the February 2020 Final Rule. Namely, they assume on some level that the significance of energy savings can be determined without considering the specific circumstances surrounding a given rulemaking. Additionally, DOE notes that it has never stated the threshold for determining the significance of energy savings established in the February 2020 Final Rule is too high. Rather, the issue is that any set threshold ignores the very real differences in energy savings across different rulemakings.

Several commenters discussed the potential economic impacts on industry and consumers of DOE's proposal to remove the threshold for determining whether energy savings are significant. DOE notes that a determination that energy savings are significant is but one step in the process of issuing new or amended standards. EPCA still requires, among other things, that a new or amended standard be economically justified, which includes the consideration of economic impacts on manufacturers and consumers. (See 42 U.S.C. 6295(o)(2)(B)(i)(I)) DOE will continue to follow these provisions and to perform the required analyses to demonstrate and ensure that the relevant statutory criteria are satisfied before setting (or amending) energy conservation standards or deciding not to amend them.

With regards to Lennox's comment that, assuming the threshold is eliminated, DOE should restore and strengthen prior provisions from the July 1996 Final Rule, DOE will address these comments and the additional revisions proposed in the July 2021 NOPR in a separate final rule.

Finally, DOE does not agree with AGA's statement faulting the Department for proposing to remove the significant energy savings threshold before having even had a chance to use it. The effects of the threshold established in the February 2020 Final Rule on the Department's rulemaking processes were readily apparent on issuance of the rule. As discussed throughout this document, the February 2020 Final Rule, including the significant energy savings threshold, does not allow DOE to account for the particular circumstance of individual rulemakings, *e.g.,* FFC and electrical grid impacts.

Accordingly, for the aforementioned reasons, DOE has concluded that determinations of significance for energy savings should be made on a case-by-case basis. As a result, DOE is removing the significant energy savings threshold.

C. Determinations of Economic Justification

Under EPCA, any new or amended standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6316(a)). To ensure that DOE meets this statutory mandate, DOE employs a walk-down process to select energy conservation standard levels. As a first step in the process, DOE screens out technologies for improving energy efficiency that are not feasible. DOE then uses the remaining technologies to create a range of trial standard levels (''TSLs''). These TSLs typically include: (1) The most-stringent TSL that is technologically feasible (*i.e.,* the ''max-tech'' standard); (2) the TSL with the lowest life-cycle cost; (3) a TSL with a payback period of not more than three years; and (4) any TSLs that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other TSLs. Beginning with the max-tech TSL, DOE then determines whether a specific TSL is economically justified. In making that determination, DOE determines, after reviewing public comments and data, whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the

seven factors described in 42 U.S.C. 6295(o)(2)(B)(i). (*See also* 42 U.S.C. 6313(a)(6)(B)(ii) (applying the seven factors to ASHRAE equipment); 42 U.S.C. 6316(a) (applying the seven factors to non-ASHRAE equipment)). If DOE determines that the max-tech TSL is economically justified, the analysis ends, and DOE adopts the max-tech TSL as the new or amended standard. However, if DOE determines that the max-tech TSL is not economically justified, DOE walks down to consider the next-most-stringent TSL. This walk-down process continues until DOE determines that a TSL is economically justified or that none of the TSLs are economically justified.

In the August 2020 Final Rule, DOE modified this process to require that determinations of economic justification include a comparison of the benefits and burdens of the selected TSL against the benefits and burdens of the baseline case and all other TSLs. 85 FR 50937, 50944. DOE stated its belief that such an approach would allow for more reliable determinations that a specific TSL is economically justified. *Id.* at 85 FR 50939. While the requirement to conduct a comparative analysis affected DOE's process for determining whether a TSL is economically justified, it did not dictate any particular outcome or require DOE to modify its general approach of walking down from the max-tech TSL.

DOE's decision to add a comparative analysis to the process for determining whether a TSL is economically justified generated concern among several stakeholders that DOE would use the comparative analysis to select a TSL that maximizes net benefits, as opposed to the TSL that maximizes energy savings and is technologically feasible and economically justified. *Id.* DOE's statement in the August 2020 Final Rule that ''the purpose of EPCA's seven factors is not to select the standard that achieves the maximum improvement in energy efficiency, *no matter how minute an estimated cost savings*'' added further confusion to how DOE would use the comparative analysis in determining whether a TSL is economically justified. 85 FR 50937, 50939 (emphasis added).

In light of the confusion and uncertainty around whether a comparative analysis would result in DOE choosing the TSL that maximizes net benefits as opposed to the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified, DOE proposed to eliminate the requirement to conduct a comparative analysis when determining whether a specific TSL is economically justified in the April 2021 NOPR. 86 FR 18901, 18906. DOE received numerous comments on this proposal with some commenters in favor of eliminating the comparative analysis and others arguing that it should be retained.

Comments Supporting DOE's Proposal To Eliminate the Requirement To Conduct a Comparative Analysis in Determining Economic Justification

In support of DOE's proposal to remove the requirement to conduct a comparative analysis, several commenters expressed concern that the comparative analysis could lead to DOE selecting a TSL that does not represent the maximum improvement in energy efficiency that is technologically feasible and economically justified. (See *e.g.,* Joint Advocacy Commenters, No. 38 at p. 3; Grundfos, No. 37 at p. 3; CEC, No. 35 at p. 6; State Commenters, No. 29 at p. 9) Some commenters were particularly concerned that the comparative analysis would result in DOE choosing a TSL that maximizes net benefits instead of energy savings. (Joint Environmentalist Commenters, No. 31 at p. 5; CA IOUs, No. 34 at pp. 2–3) IPI commented that the approach would not be transparent and allow DOE to define what is ''economically justified'' on any subset of adverse impacts to which DOE may happen to arbitrarily assign controlling weight—a result that it asserted would be inconsistent with statutory requirements and rational decision making. (IPI, No. 17 (Attachment 4 (Comments dated March 16, 2020) at pp. 2–3; IPI, No. 17 (Attachment 5 (Comments dated May 6, 2019) at pp. 3–4)

Comments Opposing DOE's Proposal To Eliminate the Requirement To Conduct a Comparative Analysis in Determining Economic Justification

Other commenters opposed DOE's proposal to remove the requirement to conduct a comparative analysis. For example, several commenters stated the comparative analysis will ensure DOE, when faced with TSLs with comparable savings, chooses the trial standard level with a less severe negative impact. (*See, e.g.,* MHI, No. 32 at p. 2; Lutron, No. 16 at p. 3; Joint Industry Commenters, No. 40 at pp. 12–13) NAFEM commented that removal of the comparative analysis requirement could result in energy conservation standards that save more energy at the expense of product differentiation, refinement, and end-use flexibility. (NAFEM, No. 30 at p. 5) SBA Office of Advocacy commented that EPCA does not expressly prohibit an analysis of net benefits and DOE does not provide justification as to why a net benefits approach is inaccurate or otherwise prohibited, and instead merely states that the elimination of the comparative analysis is to reduce uncertainty. (SBA Office of Advocacy, No. 14 at p. 6) SBA Office of Advocacy also stated that engaging in a comparative analysis would ensure that DOE is considering the full scope of impacts of a particular standard and would help DOE in moving towards better compliance with the Regulatory Flexibility Act. (SBA Office of Advocacy, No. 14 at p. 7) Zero Zone stated that DOE should retain the comparative analysis for standard level selection, because the Department has not provided any evidence of an actual problem using that approach. (Zero Zone, No. 21 at p. 2) Finally, BWC stated that the comparative analysis would help DOE and stakeholders better assess the TSLs against the applicable statutory criteria. (BWC, No. 24 at p. 3)

DOE's Response to Comments

DOE first notes that both commenters in favor of the proposal to eliminate the comparative analysis and those against its removal stated that the comparative analysis could lead to the Department forgoing energy savings in favor of increased economic benefits. (*See, e.g.,* Joint Advocacy Commenters, No. 38 at p. 3; MHI, No. 32 at p. 2) Based on these comments, it is clear that the comparative analysis generated significant confusion and uncertainty about whether the process would result in DOE selecting the TSL that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified or a TSL that saves less energy but imposes lower costs on manufacturers and consumers.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the seven statutory factors, which allow DOE to consider the full breadth of impacts including benefits and costs, along with other factors the Secretary considers relevant. In practice, DOE determines an appropriate energy conservation

standard level for adoption by conducting a ''walk-down'' analysis of the trial standard levels (TSLs) considered in the proposal, after reviewing any public comments. DOE starts by analyzing the maximum technologically feasible (max-tech) level to see whether the statutory criteria for significant energy savings, technological feasibility, and economic justification have been met. If the max-tech TSL fails to meet any of these statutory criteria, DOE determines that it cannot adopt that level, and it then moves to the next highest TSL and conducts the same analysis. The agency continues in this manner until it reaches a TSL that meets all of the statutory criteria. Once DOE arrives at such level (if any), DOE is required under EPCA to choose that TSL because it represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. (*See* 42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6316(a))

With respect to the SBA Office of Advocacy's comments, DOE would like to clarify two issues. First, DOE did not state in the April 2021 NOPR that conducting an analysis of net benefits is inaccurate or otherwise prohibited by EPCA. The concern with the comparative analysis, as discussed previously, is that the process would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which is contrary to the statute. As for ensuring DOE considers the full scope of impacts of a particular TSL, the comparative analysis did not change the scope of impacts considered by DOE for a particular TSL. The analysis required DOE to compare the benefits and burdens of a TSL against the benefits and burdens of the baseline case and all other TSLs. 85 FR 50937. But, as stated in the August 2020 Final Rule, the vast majority of DOE's analytical work involves evaluating the seven factors for each TSL (*e.g.,* life-cycle costs, manufacturer impacts, total energy savings). 85 FR 50937, 50941. For example, DOE performs a manufacturing impact analysis to identify and quantify the impacts of any new or amended energy conservation standards on manufacturers. As part of this analysis, DOE uses the Government Regulatory Impact Model (''GRIM'') to calculate cash flows using standard accounting principles and changes in industry net present value (INPV) between the no-new-standards case and each proposed TSL. The difference in INPV between the no-new-standards case and each TSL represents the financial impact of the new or amended energy conservation standard on manufacturers. The addition of a comparative analysis has no effect on DOE's analysis of manufacturing impacts.

The comments received in response to the April 2021 NOPR have solidified DOE's concerns regarding the use of the comparative analysis. DOE has no desire to create a situation where stakeholders will question, and potentially challenge, whether the Department is choosing a TSL that maximizes net benefits instead of the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. Further, the process and criteria laid out in 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6313(a)(6)(B)(ii) for determining economic justification are already sufficiently robust, and any potential, incremental improvement that may result from the use of a comparative analysis is outweighed by the uncertainty it casts over DOE's fulfillment of its statutory obligations under EPCA. As a result, DOE is eliminating the requirement in appendix A to conduct a comparative analysis when determining whether a TSL is economically justified. Consistent with EPCA and past practice, DOE will determine whether a TSL is economically justified after determining, based on the factors listed in 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6313(a)(6)(B)(ii), whether the benefits of the standard exceed its burdens.

D. Adoption of Industry Test Standards

The February 2020 Final Rule amended appendix A to require adoption, without modification, of consensus industry test standards as test procedures for covered products and equipment, unless such standards do not meet the EPCA statutory criteria for test procedures. 85 FR 8626, 8678–8682, 8708. In essence, DOE sought to explain and codify its established practice, which is to analyze the appropriate industry consensus test standard, with the input of stakeholders and the interested public, to: (1) Determine that the EPCA criteria are met and use the consensus test standard as the Federal test procedure; (2) modify the standard so that it complies with the statutory criteria, or (3) reject the standard and develop an entirely new test procedure.

On further review, DOE has come to see that its attempt at clarification may have had the opposite effect, creating the false impression that DOE had put in place a new presumption for an ''as-is'' adoption of consensus industry test standards without meaningful review. That was not DOE's intention, and accordingly, the Department proposed to clarify in the April 2021 NOPR that while DOE will first consider applicable consensus industry test standards, such test standards must first undergo a thorough agency review to ensure that they meet the requirements of the statute and are compatible with DOE's compliance, certification, and enforcement (''CC&E'') regulations. 86 FR 18901, 18907.

Comments Supporting DOE's Clarification of Its Process for Adopting Consensus Industry Standards

The majority of commenters generally supported or had no objections to DOE's proposal to clarify that the Department will amend consensus industry test standards as necessary to ensure compliance with both the statutory requirements in EPCA and DOE's CC&E regulations. (*See, e.g.,* State Commenters, No. 29 at p. 10; Lutron, No. 16 at p. 3; NEEA, No. 43 at p. 3; Joint Environmentalist Commenters, No. 31 at p. 6; Joint Industry Commenters, No. 40 at p. 10) In citing their support for DOE's proposal, several commenters stated that consensus industry test standards are not generally designed for regulatory purposes and, as such, modifications to ensure compliance with EPCA and DOE's CC&E regulations are often necessary. (*See, e.g.,* CA IOUs, No. 34 at p. 5; Joint Advocacy Commenters, No. 38 at pp. 3–4) The CA IOUs and Joint Environmentalist Commenters also favored DOE's proposal because it would relieve stakeholders of the burden of having to participate in both industry and DOE test procedure development processes. (CA IOUs, No. 34 at p. 5; Joint Environmentalist Commenters, No. 31 at p. 6)

Aside from expressing their support for DOE's proposal, Lutron and the Joint Industry Commenters also asked DOE to clarify in the regulatory text of appendix A that industry test standards are consensus test procedures, which usually involve more than just industry stakeholders. (Lutron, No. 16 at p. 3; Joint Industry Commenters, No. 40 at p. 10)

Comments Opposing DOE's Clarification of Its Process for Adopting Consensus Industry Standards

Other commenters supported DOE's adoption of consensus industry test standards with little or no modification. (*See, e.g.,* Signify, No. 41 at p. 1; Lennox, No. 18 at p. 5; New Yorker Boiler, No. 13 at p. 5) These commenters expressed a variety of reasons for

advocating for the adoption of consensus industry test standards. For example, Crown Boiler and BWC stated that most consensus industry test standards are developed by all interested stakeholders, including manufacturers, industry advocates, regulators (including DOE), and certification agency laboratories. (Crown Boiler, No. 10 at p. 5; BWC, No. 24 at p. 3) Crown Boiler also noted that the committee members tend to have decades of experience and that DOE should rely on these committees to develop the test procedures. (Crown Boiler, No. 10 at p. 5) Some commenters stated that adopting consensus industry test standards would reduce burden on both DOE and stakeholders. (*See* BWC, No. 24 at p. 3 (stating that deviating from consensus industry test procedures will add unnecessary workload for DOE staff); Signify, No. 41 at p. 1 (stating that changes to consensus industry test procedures create unnecessary burden for industry and test laboratories)) Several commenters also stated that adoption of consensus industry test procedures would expedite DOE's test procedure rulemaking process and allow stakeholders to address standards rulemakings sooner. (*See, e.g.,* U.S. Boiler, No. 11 at pp. 5–6; GEA, No. 20 at p. 3) Finally, GEA stated that adopting consensus industry test procedures would reduce the likelihood of litigation over test procedures. (GEA, No. 20 at p. 3)

In order to avoid the need to make modifications to consensus industry test procedures, several commenters encouraged DOE to participate in the industry test standards development process as a way to ensure that consensus industry test standards are compatible with EPCA and DOE's CC&E regulations. (*See, e.g.,* Signify, No. 41 at p. 1; ALA, No. 28 at p. 3) Additionally, with regards to compatibility with DOE's CC&E regulations, Lennox stated that DOE should consider ''the potential need to modify the applicable CC&E requirements, not the industry test procedure.'' (Lennox, No. 18 at p. 5).

DOE's Response to Comments

As an initial matter regarding the request that DOE clarify that industry test standards are ''consensus'' test standards, DOE uses the term ''consensus'' broadly to indicate a process in which multiple stakeholders develop and finalize the industry test standard. The use of the term ''consensus'' is not intended as an assessment of the representativeness of those stakeholders involved in the process. In certain cases, industry test standards were not developed by a group that is fully representative of DOE's rulemaking stakeholders, including energy-efficiency advocacy organizations, utilities, States, consumer groups, etc. DOE notes that under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, DOE must inform the public of the use and background of such standards. DOE must also evaluate these standards as to whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of the commercial or industry standards on competition.

In response to the remaining comments, DOE first notes that commenters have raised several valid points about the benefits of adopting consensus industry test standards with little to no modification (*e.g.,* reducing test procedure development cost). That said, these benefits cannot be realized at the expense of DOE's statutory obligations. In accordance with EPCA, DOE must ensure that a consensus industry test standard is reasonably designed to produce test results that measure energy efficiency or use during a representative average use cycle or period of use without being unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) As a result, DOE has often found it necessary to make modifications to an applicable consensus industry test standard to ensure compliance with these statutory requirements. For example, the DOE test procedure for dehumidifiers requires reduced indoor ambient temperature conditions as compared to those specified in the referenced industry test standard as DOE determined that the reduced conditions are more representative of the product's average use cycle as required by EPCA. 80 FR 45801, 45807 (July 31, 2015). As another example, the DOE test procedure for portable air conditioners includes several modifications to the industry test method that DOE determined would provide results that are representative of typical use. Specifically, in comparison to the industry test procedure, the DOE test procedure requires a different set of indoor and outdoor test conditions; an additional test condition for units with a dual-duct configuration; and additional provisions to account for heat transferred to the indoor conditioned space from the ducts and any infiltration air from unconditioned spaces, which are not accounted for in the industry test method. 81 FR 35241, 35250, 35248, 35253 (June 1, 2016).

Additionally, DOE notes that consensus industry test standards are often designed to support industry certification programs with the goal of verifying ratings within a tolerance specified by industry. DOE's CC&E regulations, on the other hand, are designed to ensure, in accordance with EPCA, that all products and equipment distributed in commerce in the United States comply with applicable Federal energy and water conservation standards. Furthermore, DOE's CC&E regulations seek to establish a level playing field amongst industry participants and to also help ensure that the utility bill savings that consumers expect from energy and water conservation standards are being realized. For example, in the past, DOE has had to specify airflow tolerances for certain industry standard test conditions that are referenced for the testing of certain categories of small, large, and very large air-cooled commercial package air conditioners and heating equipment after having determined that such tolerances are necessary to address potential variation in the measured efficiency and cooling capacity of the equipment. 80 FR 79655, 79659–79660 (Dec. 23, 2015). DOE also notes that industry representatives and other stakeholders are welcome to participate in the development and modification of the Department's CC&E regulations.[14] In fact, some of DOE's existing CC&E regulations were developed by a negotiated rulemaking that resulted in a consensus agreement amongst the Department, industry, and many diverse stakeholders over, among other things, the allowance of simulations to develop ratings under specific circumstances for commercial heating, ventilation, and air-conditioning equipment; commercial water heaters; and commercial refrigeration equipment. 80 FR 144 (Jan. 5, 2015).

DOE may also modify consensus industry test standards for other

[14] For example, DOE recently asked for comment on a proposal to amend the certification and reporting provisions for several covered products and equipment. 86 FR 43120 (August 6, 2021).

reasons. For example, DOE is not required to adopt or align its test procedures with sections of the consensus industry test standard that are not necessary for the method of test for metric(s) included in the DOE test procedure. For instance, sections of the industry test procedure regarding selection of models for testing under an industry certification program, verification of represented values and the associated tolerances, and operational requirements need not be referenced or aligned with under the DOE test procedure. This is consistent with the Department's longstanding practice to only include sections that are relevant to the method of test for metric(s) included in the DOE test procedure, or that provide clarifications that help promote understanding amongst regulated entities. Another instance where DOE may need to deviate from a consensus industry test standard is to address issues identified through DOE's test procedure waiver process. For example, a manufacturer may seek a test procedure waiver for a covered product that incorporates a new, innovative technology that was not contemplated by the consensus industry test standard or where some other deficiency in the test procedure forestalls successful testing. In such cases, DOE is required to update the Federal test procedure to eliminate the need for such a waiver. 10 CFR 430.27(l); 10 CFR 431.401(l).

Finally, although DOE has explained why the Department is often required to modify consensus industry test standards, DOE agrees with commenters that consensus industry test standards should serve as the basis for Federal test procedures whenever possible.[15] As a result, DOE wishes to underscore the importance of the consensus industry test procedure development process, including the need to ensure that a broad cross-section of stakeholder interests are represented in the development of such consensus industry standards. DOE believes that consensus test standards that represent a consensus across all stakeholders, not just industry, will be more likely to meet the statutory requirements in EPCA and DOE's CC&E regulations. To that end, DOE is committed to supporting the consensus industry standards development process by participating on relevant industry standards committees. However, DOE reiterates that the industry test standard development process cannot supplant the Department's test procedure rulemaking process, because DOE must still ensure that potential Federal test procedures meet applicable statutory requirements in EPCA and are compatible with DOE's CC&E regulations.

Accordingly, for the aforementioned reasons, DOE is clarifying in appendix A that consensus industry test standards must undergo a thorough review to ensure that they meet the requirements of EPCA and are compatible with DOE's CC&E regulations before being adopted as a Federal test procedure.

E. Finalization of Test Procedures Prior to Issuance of a Standards Proposal

In the February 2020 Final Rule, DOE adopted at section 8(d) of appendix A, a requirement that Federal test procedures establishing methodologies used to evaluate new or amended energy conservation standards be finalized at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. 85 FR 8626, 8678, 8708. DOE explained that this approach would allow stakeholders time to gain familiarity with the new or amended test procedure prior to commenting on any proposed standards.

Upon further review, DOE has determined that, similar to other provisions in the February 2020 Final Rule, a one-size-fits-all requirement to finalize new or amended test procedures 180 days before proposing standards does not allow DOE to account for the particular circumstances of a rulemaking and may result in unnecessary delays. For instance, as noted in the April 2021 NOPR, some test procedure amendments may involve only minor modifications that do not change the measured energy efficiency of a covered product or equipment. 86 FR 18901, 18907–18908. As a result, DOE proposed to remove this 180-day spacing requirement and revert to the approach previously followed in the July 1996 Final Rule that test procedure rulemakings be finalized prior to publication of an energy conservation standards proposal, which permitted DOE to appropriately adjust the length of time between the test procedure final rule and an energy conservation standards proposal. *Id.* DOE also sought comment on any alternatives to its proposal, including whether DOE should retain a set period between finalization of a test procedure and issuance of a standards NOPR. *Id.*

Comments Supporting DOE's Proposal To Eliminate the Requirement That Test Procedures Be Finalized at Least 180 Days Prior to Issuance of a Standards NOPR

Several commenters expressed their support for DOE's proposal in the April 2021 NOPR. These commenters stated that the 180-day requirement may not be necessary for all rulemakings and that DOE should have the flexibility to determine the appropriate period between finalization of new or amended test procedures and issuance of proposed standards. (*See, e.g.,* Joint Advocacy Commenters, No. 38 at pp. 4–5; NEEA, No. 43 at pp. 3–4; CA IOUs, No. 34 at pp. 1, 3–4) Some of the commenters cited negotiated rulemakings, where test procedures and energy conservation standards are often considered and issued in parallel, as an area where the 180-day requirement delays implementation of consensus standards without providing a corresponding benefit. (*See, e.g.,* Joint Advocacy Commenters, No. 38 at pp. 4–5; NEEA, No. 43 at pp. 3–4) Commenters also argued that minor modifications to a test procedure may not warrant a lengthy delay before issuance of a standards proposal. (*See, e.g.,* NEEA, No. 43 at pp. 3–4; Joint Environmentalist Commenters, No. 31 at p. 2) Finally, Joint Advocacy Commenters expressed concern that the 180-day requirement could lead to DOE foregoing certain test procedure corrections in order to avoid delaying rulemakings. (Joint Advocacy Commenters, No. 38 at pp. 4–5)

Comments Supporting the Requirement That Test Procedures Be Finalized at Least 180 Days Prior to Issuance of a Standards NOPR

Several commenters asserted that the 180-day period is necessary to allow stakeholders the opportunity to conduct testing and gain familiarity with the new or amended test procedure so as to better inform their understanding of the impacts of a proposed energy conservation standard. (*See, e.g.,* AHRI, No. 25 at p. 9; ALA, No. 28 at p. 3; AGA, No. 33 at p. 5; BWC, No. 24 at p. 2) These commenters also expressed a variety of other reasons for opposing removal of the 180-day period between finalization of a test procedure and issuance of a standards proposal. For instance, Zero Zone opposed eliminating the 180-day spacing between test procedure and energy conservation standards rules, stating that DOE has not documented any

[15] The National Technology Transfer and Advancement Act of 1995 (''NTTA''), Public Law 104–113, and the Office of Management and Budget (''OMB'') Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, both direct Federal agencies to adopt voluntary consensus standards unless they are inconsistent with applicable law or otherwise impracticable.

delays that would be caused if the 180-day waiting period were to be applied. The SBA Office of Advocacy noted that small businesses have limited resources and staff, and in many instances, they do not have the ability to test their products on-site. According to the SBA Office of Advocacy, small businesses must instead either hire an outside laboratory to test the products and report back or pull employees from other tasks to conduct such testing in-house. (SBA Office of Advocacy, No. 14 at p. 5) BWC argued that the benefits of having a finalized test procedure far outweigh any delay in complying with statutory deadlines, particularly in light of EPCA's anti-backsliding provisions. (BWC, No. 24 at p. 2)

Comments Supporting Alternatives to DOE's Proposal

Numerous commenters recognized that a 180-day period between finalization of a test procedure and issuance of a standards NOPR is not always necessary. However, these commenters did not agree with DOE's proposal to eliminate the 180-day period and determine the appropriate period on a case-by-case basis. Instead, these commenters suggested a variety of approaches for determining an appropriate length of time between finalization of a test procedure and issuance of a standards proposal. For instance, several commenters suggested revising the relevant section of appendix A to allow DOE to shorten the 180-day period through some formal mechanism, which would include an opportunity for stakeholder input. (*See, e.g.,* Carrier, No. 26 at p. 3; Crown Boiler, No. 10 at pp. 4–5) Other commenters suggested that DOE should list the limited circumstances under which it would deviate from the 180-day period. (A.O. Smith, No. 27 at p. 4; Lennox, No. 18 at p. 4) Similarly, if DOE eliminates the requirement for a standardized 180-day period, ALA requested that DOE provide clear and specific guidance on when the 180-day period would be warranted. (ALA, No. 28 at p. 4) Several other commenters urged DOE to retain the 180-day period when the test procedure is new or makes significant changes that will impact measured energy use or efficiency. (*See, e.g.,* Lutron, No. 16 at pp. 2, 3–4, Joint Industry Commenters, No. 40 at p. 9; EEI, No. 9 at pp. 64–65) Nortek acknowledged that there are situations where 180 days is not necessary (*e.g.,* minor technical corrections to a longstanding test procedure), and in those cases, the company stated that it would be supportive of a 90-day minimum. (Nortek, No. 19 at p. 3) Grundfos recommended that DOE: (1) Include a proposed timeline in each test procedure NOPR/final rule for input from stakeholders, and (2) conduct a mandatory webinar for related input to be heard. The company reasoned that such approach would provide DOE with the flexibility it desires, while preventing DOE from defining arbitrary timelines without negotiation. (Grundfos, No. 37 at pp. 1–2) While Goodman expressed support for retaining the 180-day requirement, Goodman also stated that, if DOE chooses to modify the 180-day period, the Department should define the 180-day period as preferred but not mandatory in appendix A and articulate with specificity and on the record its reasons for choosing a lesser time period. (Goodman, No. 22 at p. 3)

DOE also received an alternative joint proposal from AHAM, ALA, Hearth Patio and Barbecue Association (HPBA), NEMA, Plumbing Manufacturers International (PMI), ASAP, and ACEEE. These stakeholders suggested that DOE provide a 180-day time period between the finalization of a new or amended test procedure and the end of the comment period on the proposed standard. They also specified that DOE could deviate from the 180-day requirement for negotiated rulemakings and test procedure changes that are limited to calculation changes (*e.g.,* use factor or adder) (AHAM *et al.* Submission, No. 74 at pp. 2–3)

DOE Response to Comments

Commenters uniformly expressed support for finalizing test procedures prior to proposing new or amended standards. (*See, e.g.,* Carrier, No. 26, at p. 3; Lutron, No. 16 at pp. 2, 3–4; CA IOUs, No. 34 at pp. 1, 3–4; NEEA, No. 43 at pp. 3–4; Joint Industry Commenters, No. 40 at p. 8; Whirlpool, No. 9 at p. 36) For example, the CA IOUs encouraged DOE to complete test procedure final rules before publication of a NOPR for new or amended energy conservation standards whenever possible (due to generally better outcomes in both proceedings). (CA IOUs, No. 34 at pp. 1, 3–4) Where commenters differed was on the minimum length of time between finalization of a test procedure and issuance of a standards proposal—and under what circumstances, if any, that period of time should be shortened (or lengthened).

With respect to the comments in favor of DOE retaining the 180-day requirement for all test procedure rulemakings, DOE agrees with the majority of commenters who recognized that a 180-day period is not necessary for all test procedure rulemakings (*e.g.,* minor technical corrections and negotiated rulemakings). As stated throughout this rulemaking, DOE is amending appendix A to avoid situations where an inflexible process lengthens a rulemaking without providing a corresponding benefit. Thus, DOE is not establishing a minimum period of time between finalization of a test procedure and issuance of a standards proposal that would be applied across all of the Department's rulemakings.

Nevertheless, while the majority of commenters recognized that the 180-day period was not necessary for every rulemaking, a large number of commenters wanted more guidance on circumstances under which DOE would provide stakeholders with sufficient time to become familiar with a new or amended test procedure prior to having to comment on a standards proposal. These commenters typically cited new test procedures or test procedure amendments that impact measured energy use as instances necessitating that DOE provide some period of time for stakeholders to gain familiarity with the test procedure prior to commenting on any proposed standards. (*See, e.g.,* Joint Industry Commenters, No. 40 at p. 9; Trane, No. 23 at p. 2)

In response to these comments, DOE first notes that it already acknowledged in the April 2021 NOPR that there may be circumstances where a longer rulemaking timeline is necessary to allow stakeholders time to become familiar with a new or amended test procedure. *See* 86 FR 18901, 18908. Further, DOE's proposal to revert to the guidance provided in the 1996 version of Appendix A that test procedures be finalized prior to issuance of a standards proposal does not prevent DOE from finalizing test procedures well in advance (*i.e.,* 180 days or more) of proposing new or amended energy conservation standards.

However, recognizing the importance of this issue to stakeholders, DOE believes a modified version of its proposal from the April 2021 NOPR can meet the Department's goal of avoiding the inefficiencies and unnecessary delays of a one-size-fits-all rulemaking approach while assuring stakeholders they will have sufficient time to gain familiarity with a new or amended test procedure prior to commenting on a standards proposal. As such, DOE is adopting the proposal from the April 2021 NOPR that test procedures be finalized prior to issuing a standards proposal. However, in response to comments, DOE is also adopting a

requirement that new test procedures or significant test procedure amendments that impact measured energy use or efficiency be finalized at least 180 days before the end of the comment period of a proposal for new or amended standards. DOE will state in the test procedure final rule whether this 180-day provision applies and why—*i.e.,* because the test procedure is either new or the amendments impact measured energy use or efficiency. While DOE is adopting the 180-day period as requested by several commenters, DOE is tying the 180 days to the end of the comment period instead of the issuance of the standards proposal. DOE believes this is a better approach for two reasons. First, it recognizes that the comment period, which is at least 60 days, also provides stakeholders with an opportunity to gain familiarity with the new or amended test procedure. And second, it provides DOE with more flexibility in issuing standards proposals, which can benefit both DOE and stakeholders. For instance, if DOE needs to meet a statutory deadline for issuing a standards NOPR, the Department could choose to issue a standards NOPR with a longer comment period in order to more quickly issue that NOPR after finalizing a new or amended test procedure. In addition to helping DOE meet a statutory deadline, the longer comment period would also give stakeholders more time to comment on aspects of the standards proposal that are not directly related to the test procedure. Finally, as suggested in the AHAM *et al.* proposal, DOE is adopting exceptions to the 180-day requirement for negotiated rulemakings and test procedure amendments that only result in a calculational change. In the first instance, stakeholders can determine the appropriate period between finalization of the test procedure and issuance of a standards NOPR as part of their negotiations. With regards to the second instance, calculational changes do not require stakeholders to conduct new tests to determine the effect of the test procedure change on measured energy use or efficiency.

For the aforementioned reasons, DOE is finalizing the proposal from the April 2021 NOPR that test procedures be finalized prior to issuance of a standards proposal, subject to the modifications discussed above establishing a minimum period of 180 days between the finalization of a test procedure and the end of the standards NOPR comment period for, with certain exceptions: (1) New test procedures; and (2) amended test procedures that impact measured energy use or efficiency.

F. Direct Final Rules

As discussed in the April 2021 NOPR (*see* 86 FR 18901, 18908–18909), the Energy Independence Security Act of 2007, Public Law 110–140 (Dec. 19, 2007), amended EPCA, in relevant part, to grant DOE authority to issue a ''direct final rule'' (''DFR'') to establish energy conservation standards in appropriate cases. Under this authority, DOE may issue a DFR adopting energy conservation standards for a covered product or equipment upon receipt of a joint proposal from a group of ''interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates),'' provided DOE determines the energy conservation standards recommended in the joint proposal conform with the requirements of 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. (42 U.S.C. 6295(p)(4)(A)) While these two provisions contain many of the requirements DOE typically must satisfy in issuing an energy conservation standard, such as the prohibition against setting less-stringent standards (*i.e.,* the ''anti-backsliding'' requirement), they do not adopt all the requirements of a typical energy conservation standard rulemaking. For example, 42 U.S.C. 6295(o) does not specify a mandatory time period between promulgation of an energy conservation standard and the compliance date for that standard (*i.e.,* compliance period). DOE has looked to the joint proposals to fill in these necessary details. This process had been well-received by manufacturers, trade organizations, and energy efficiency advocates, as it allowed more room for negotiation, which in turn made it easier for stakeholders to reach a consensus agreement. February 2020 Final Rule, 85 FR 8626, 8682–8683.

In a departure from this practice, DOE clarified in the February 2020 Final Rule that 42 U.S.C. 6295(p)(4) is a procedure for issuing a DFR and not an independent grant of rulemaking authority. As such, under the February 2020 Final Rule, any joint proposal submitted to DOE under the DFR provision must identify a separate rulemaking authority such as 42 U.S.C. 6295(m) (amendment of standards) or 42 U.S.C. 6295(n) (petition for amended standard) and comply with the requirements (*e.g.,* compliance periods) listed in that provision. *Id.* DOE also provided additional guidance on the Department's interpretation of ''fairly representative'' and obligations upon receipt of an adverse comment. *Id.* at 85 FR 8683–8685.

In the April 2021 NOPR, DOE explained that it is reconsidering whether these clarifications regarding the DFR process are appropriate or necessary, for the reasons set forth subsequently. This reconsideration begins with the language of the statute. The language in 42 U.S.C. 6295(p)(4) is clear that DOE may issue standards recommended by interested persons that are fairly representative of relative points of view as a DFR when the recommended standards are in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. There are no other requirements listed, which is consistent with the unique circumstances of rules issued under the DFR provision. DOE's overarching statutory mandate in issuing energy conservation standards is to choose a standard that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified—a requirement found in 42 U.S.C. 6295(o).

Many of the other requirements found in EPCA constrain DOE's discretion in setting standards for the benefit of stakeholders. For example, mandatory compliance periods are intended to give manufacturers sufficient lead time to design new products and shift manufacturing capacity as necessary. Similarly, EPCA provides that manufacturers shall not be required to apply new standards to a product with respect to which other new standards have been required during the prior 6-year period. (42 U.S.C. 6295(m)(4)(B)) But, if manufacturers agree to a shorter compliance period or two tiers of standards as part of a consensus agreement submitted under the DFR provision, it would be odd if DOE were then forced to deny such a proposal based upon requirements designed to protect the interests of those same manufacturers. That being said, DOE will still deny such a proposal if it is not fairly representative of manufacturers' points of view. (42 U.S.C. 6295(p)(4)(A)) Similarly, DOE will also deny such a proposal if it does not meet applicable criteria in 42 U.S.C. 6295(o), which, among other things, require DOE to consider the economic impact on manufacturers (including small manufacturers) and any possible lessening of competition that may result from imposition of the proposed standard. As to this latter point, pursuant to EPCA, DOE receives a written determination from the Attorney General as to the potential anti-competitive effects from any proposed energy conservation standard. (*See* 42 U.S.C. 6295(o)(2)(B)(i)(V) and (ii))

Issuing standards through a consensus agreement among stakeholders is different than DOE's normal rulemaking process. There is a corresponding difference in the statutory criteria that DOE must apply to each process, one that is made clear by the language in 42 U.S.C. 6295(p)(4). Accordingly, DOE has proposed to eliminate the rigid requirement that DFR submittals identify a separate rulemaking authority and instead revert to the Department's prior practice of evaluating DFR submittals based on the criteria laid out in 42 U.S.C. 6295(p)(4).

As discussed previously, DOE also provided additional guidance on the Department's interpretation of ''fairly representative'' and obligations upon receipt of an adverse comment. Upon reconsideration, DOE believes that the additional guidance may be overly prescriptive in some circumstances. For instance, the February 2020 Final Rule required a group submitting a DFR proposal to include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities (as appropriate for the given covered product or equipment), consumers, and States. 85 FR 8626, 8683. While this list may be appropriate for some DFR proposals, it is not universally applicable. For instance, some of DOE's regulated industries do not have small business manufacturers (*e.g.,* external power supplies).[16] DOE also stated it would publish in the **Federal Register** any DFR proposal to obtain feedback as to whether the proposal was submitted by a group that is fairly representative of relevant points of view. *Id.* Once again, this may be good practice for some DFR proposals (*e.g.,* those concerning newly covered products or equipment), but it may be unnecessary for most DFR proposals. The bulk of DOE's covered products and equipment have gone through multiple rounds of rulemakings, and DOE has become very familiar with the relevant points of view for these covered products and equipment.

With respect to DOE's discussion of adverse comments in the February 2020 Final Rule, DOE largely repeated the requirements listed in 42 U.S.C. 6295(p)(4)(C). Namely, DOE will withdraw a DFR if one or more adverse comments may provide a reasonable basis for withdrawing the rule under 42 U.S.C. 6295(o), 42 U.S.C. 6313(a)(6)(B), or any other applicable law. The one clarification DOE offered was that the Department may consider comments as adverse, even if the issue was brought up previously during the rulemaking process. *Id.* at 85 FR 8685. However, this clarification does not offer any insight into how DOE will determine whether an adverse comment provides a reasonable basis for withdrawing the rule.

For these reasons, DOE considered whether the guidance contained in the February 2020 Final Rule concerning DFRs is unnecessary or redundant to the statutory language in 42 U.S.C. 6295(p)(4) and proposed to add ''where appropriate'' to clarify that DOE retains the discretion to determine what ''fairly representative'' means for a given DFR submission on a case-by-case basis. Regardless of whether the DFR section in appendix A is retained, deleted, or revised, DOE stated that it will continue to evaluate DFR proposals in accordance with 42 U.S.C. 6295(p)(4).

DOE requested comments on the merits of its proposed revisions to the DFR section, as well as any alternative approaches, such as deletion of or amendments to the section or retention of aspects of this section. Additionally, DOE sought comment regarding small business perspectives and related impacts as to the proposed application of the DFR provision of EPCA.

In response to the April 2021 NOPR, DOE received a considerable number of comments on its proposal related to DFRs, which were overwhelmingly supportive of DOE's proposed return to the Department's historic approach to DFRs that was in place before adoption of the February 2020 Final Rule. (Hamdi, No. 7 at p. 1; NPCC, No. 12 at p. 5; Carrier, No. 26 at p. 3; A.O. Smith, No. 27 at p. 5; MHI, No. 32 at pp. 3–4; Nortek, No. 19 at p. 4; Joint Environmentalist Commenters, No. 31 at pp. 6–7; CA IOUs, No. 34 at p. 4; CEC, No. 35 at p. 7; Grundfos, No. 37 at p. 3; Joint Advocacy Commenters, No. 38 at pp. 5–6; Joint Advocacy Commenters (appendix I), No. 38 at pp. 1, 2, 13–14; NEEA, No. 43 at p. 4; Lennox, No. 18 at p. 7; Goodman, No. 22 at p. 4; Trane, No. 23 at p. 3; Joint Industry Commenters, No. 40 at p. 16) However, there were a few commenters who opposed DOE's proposal and instead supported retention of the approach to DFRs contained in the February 2020 Final Rule. (AGA, No. 33 at p. 6; AFP, No. 36 at p. 2; Anonymous, No. 39 at p. 1) These comments and their rationale are discussed in further detail in the paragraphs that follow.

Comments in Support of DOE's Proposal To Return to Its Prior Practice Regarding the Use of the DFR Provision in EPCA

A number of commenters argued that a return to DOE's prior interpretation of EPCA's DFR provisions are authorized by and consistent with the statute's requirements. (Joint Environmentalist Commenters, No. 31 at pp. 6–7; CEC, No. 35 at p. 7; Joint Advocacy Commenters, No. 38 at p. 6; A.O. Smith, No. 27 at p. 5) On this point, the Joint Environmentalist Commenters made the case that EPCA's DFR provision at 42 U.S.C. 6295(p)(4) expressly authorizes DOE to accept a proposed standard negotiated by a representative group of stakeholders, provided that the proposal complies with 42 U.S.C. 6295(o) (residential products) or 42 U.S.C. 6313(a)(6)(B) (commercial and industrial products). The Joint Environmentalist Commenters disagreed with DOE's interpretation in the February 2020 Final Rule that 42 U.S.C. 6295(p)(4) confers no independent grant of rulemaking authority upon DOE, and, as a result DFRs must satisfy the statutory requirements associated with another rulemaking authority, *e.g.,* 42 U.S.C. 6295(m) or 42 U.S.C. 6295(n). Instead, these commenters favored a return to DOE's prior flexibility in this area (*e.g.,* consideration of different compliance timelines). (Joint Environmentalist Commenters, No. 31 at pp. 6–7) Similarly, the CEC supported DOE's proposed interpretation in the April 2021 NOPR that the direct final rule provision at 42 U.S.C. 6295(p)(4) grants the agency rulemaking authority separate and distinct from its general authority to adopt energy conservation standards. The commenter argued that the interpretation of that statutory provision contained in the February 2020 Final Rule is inconsistent with the language of the statute and congressional intent to facilitate DFRs. Consequently, the CEC encouraged DOE to move forward with its proposal. (CEC, No. 35 at p. 7)

The NPCC reasoned that the direct final rule provision enacted by Congress was designed with the intent to streamline mutually agreed upon standards. The NPCC stated that the current rule's requirement that DOE first identify a separate and independent basis for a given standards rulemaking adds unnecessary steps and requirements to the direct final rule process. Consequently, the NPCC supported the removal of this provision. (NPCC, No. 12 at p. 5) Likewise, Nortek stated that it disagrees with DOE's decision in the February 2020 Final Rule to define DFRs as a procedural tool and to eliminate the use of DFRs in negotiated rulemaking. (Nortek, No. 19 at p. 4) Trane and Lennox also agreed with DOE's proposal to eliminate the requirement for a separate rulemaking

[16] *See* 85 FR 30636, 30648 (May 20, 2020).

authority and to implement its DFR authority on a case-by-case basis, evaluating consensus proposal submissions based on the criteria laid out in 42 U.S.C. 6295(p)(4). (Trane, No. 23 at p. 3; Lennox, No. 18 at p. 6)

Most of the commenters favored a return to DOE's prior approach to DFRs because of the increased flexibility that approach provided. (Joint Environmentalist Commenters, No. 31 at pp. 6–7; CA IOUs, No. 34 at p. 4; Joint Advocacy Commenters, No. 38 at p. 6; Joint Advocacy Commenters (Appendix I), No. 38 at pp. 1, 2, 13–14) For example, Carrier characterized DOE's earlier direct final rule process as an efficient, cost-effective regulatory process for both the government and stakeholders, a point echoed by MHI and NEEA. (Carrier, No. 26 at p. 3; MHI, No. 32 at pp. 3–4; NEEA, No. 43 at p. 4) A.O. Smith stated that applying the DFR authority in a flexible manner, so as to permit consideration of measures such as alternative compliance dates, dual metrics, phased-in compliance by product/equipment class, and two-tiered standards, is both permitted under EPCA and essential to maintain as part of the Program's structure. The company supports the use of the DFR authority in this manner because it affords manufacturers with flexibility for consensus-based or negotiated solutions. (A.O. Smith, No. 27 at p. 5) The CA IOUs made a similar point, arguing that DOE's pre-2020 Final Rule guidance for direct final rules may lead to more nuanced and detailed approaches to test procedures and energy conservation standards through utilization of the mechanisms cited by A.O. Smith. (CA IOUs, No. 34 at p. 4) MHI added the DFRs can incentivize the consensus process. (MHI, No. 32 at pp. 3–4)

Citing the ability to utilize those same mechanisms, the Joint Advocacy Commenters reasoned that many of the other EPCA requirements beyond those included in 42 U.S.C. 6295(o) and 42 U.S.C. 6313(a)(6)(B) are for the benefit of stakeholders, but they are arguably unnecessary in the context of DFRs. For example, the Joint Advocacy Commenters stated that other EPCA provisions specify lead times for compliance so as to provide manufacturers with sufficient time to comply with a new standard, but such considerations are not necessary when manufacturers negotiate an agreement subjecting themselves to a different compliance date. (Joint Advocacy Commenters, No. 38 at pp. 5–6; Joint Advocacy Commenters (Appendix I), No. 38 at pp. 1, 2, 13–14)

There was considerable discussion and overlap of issues between appendix A's DFRs and negotiated rulemaking provisions, because in the past, most DFRs have arisen out of that type of rulemaking proceeding. A number of commenters stressed that in contrast to the restriction in the February 2020 Final Rule, negotiated rulemakings should once again be permitted to result in a consensus recommendation that leads to a DFR. (Grundfos, No. 37 at p. 3; NEEA, No. 43 at p. 4; Lennox, No. 18 at p. 7) Generally, commenters pointed to the statutory protections associated with both DFRs and negotiated rulemaking as adequate to ensure the fairness, transparency, and integrity of the process, as explained subsequently.

For example, NEEA noted how the DFR provisions already provide several safeguards, including a requirement that the consensus recommendation for standards be fairly representative of relevant points of view and the potential for a DFR to be withdrawn upon receipt of one or more adverse comments (leading to further notice and comment rulemaking). Particularly where there is a consensus agreement, NEEA argued that further comment beyond that provided by the DFR would be redundant. (NEEA, No. 43 at p. 4) Similarly, MHI asserted that the interested persons that are fairly representative of relevant points of view who participate in that process will have taken the time during or in advance of the rulemaking to exchange views and reach a common or joint understanding of what level of energy efficiency or energy use will reasonably strike a balance between benefits and burdens. (MHI, No. 32 at pp. 3–4). Consequently, MHI argued that DOE should give substantial weight to the consensus views of these participants in light of their competing interests. (MHI, No. 32 at p. 4) Furthermore, the Joint Industry Commenters stated that, ''[a]t a minimum, the 'relevant points of view' are likely to reflect the views of the persons who will bear the heaviest burden of implementing the regulatory mandate and the responsibility for certifying compliance (manufacturers, specifically those who make and use the covered product), the persons who are active in promoting the maximum improvement in energy savings (energy efficiency advocates), and representatives of the country's citizens who are expected to realize net benefits from a mandatory rule (States).'' (Joint Industry Commenters, No. 40 at p. 16)

However, the Joint Advocacy Commenters cautioned that the February 2020 Final Rule's additional guidance regarding what constitutes a ''fairly representative'' group of stakeholders and its clarification regarding adverse comments may be overly prescriptive, a position in agreement with DOE's April 2021 NOPR. (Joint Advocacy Commenters, No. 38 at pp. 5–6; Joint Advocacy Commenters (appendix I), No. 38 at pp. 1, 2, 13–14) Along these lines, Lennox also warned that appendix A should not go further than the statutory language regarding participants (*i.e.,* manufacturers, States, and efficiency advocates) to also include ''energy utilities, consumers,'' per the February 2020 Final Rule. Instead, Lennox stated that it supports amending appendix A to include the language ''where appropriate'' regarding parties, thereby avoiding any unnecessary constraints to the DFR process. (Lennox, No. 18 at pp. 6–7)

In a more neutral posture, NAFEM took the position that this is not a critical issue, arguing that it is not overly concerned either with DOE maximizing its use of DFR when issues are routine and non-controversial, or even to reflect the results of a well-conducted negotiated rulemaking, so long as DOE can overcome the other statutory issues it identifies with such negotiated rulemakings. (NAFEM, No. 30 at pp. 6–7)

A few commenters provided suggestions for potential process improvements. For example, although Grundfos supported DOE's proposal that a negotiated rulemaking may culminate in a term sheet recommending a DFR, the commenter suggested that before such recommendation is accepted, DOE should be required to publish a determination (with supporting reasoning) that the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) Working Group meets the EPCA requirement to be ''fairly representative of relevant points of view.'' (Grundfos, No. 37 at p. 3)

The Joint Advocacy Commenters stated that although they have no qualms about retaining the DFR section of appendix A with the modifications proposed, they alternatively support removal of that section, because the statute already provides sufficient guidance regarding DOE's DFR authority. (Joint Advocacy Commenters, No. 38 at p. 6)

Comments Opposing DOE's Proposal To Return To Its Prior Practice Regarding the Use of the DFR Provision in EPCA

Three commenters provided dissenting views in opposition to DOE's proposal regarding DFRs as set forth in the April 2021 NOPR. (AGA, No. 33 at p. 6; AFP, No. 36 at p. 2; Anonymous,

No. 39 at p. 1) These commenters largely supported the approach to DFRs presented in the February 2020 Final Rule, for the reasons that follow.

AFP supported the reasoning DOE provided in its 2020 Final Rule indicating that the DFR statutory provision does not provide an independent grant of rulemaking authority (*i.e.,* outlining its own set of substantive requirements when establishing or amending a standard) but is instead only a procedural process for issuing a standard authorized under another provision of EPCA. In AFP's view, nothing in EPCA permits DOE to interpret the DFR provision as a means to evade EPCA's requirements with respect to compliance periods, energy efficiency metrics, or other factors. (AFP, No. 36 at p. 2) An anonymous commenter expressed similar views, quoting extensively from that portion of the February 2020 Final Rule final rule making the case that the DFR provision does not create any additional flexibility with regard to such statutory requirements. (Anonymous, No. 39 at p. 1)

AGA stated that the February 2020 Final Rule contains appropriate and necessary clarifications and requirements to help ensure that negotiated rulemakings and direct final rules are treated distinctly from each other and not conflated. (AGA, No. 33 at p. 6) Rather than making a broad change, AGA suggested that it would be preferable for DOE to allow for divergences from the current set of requirements where the need for such divergences is appropriately substantiated by DOE. It added that a DFR and its accompanying process should be consistent with EPCA and the APA and that since a DFR is issued without prior notice and comment, the process for these rules should only be used when DOE has deemed that rule to be routine or noncontroversial in accordance with the relevant statutory requirements. (AGA, No. 33 at p. 6)

DOE Response to Comments

After careful consideration of these comments, DOE has decided to adopt the identified changes to its DFR process along the lines proposed in the April 2021 NOPR. In essence, DOE has concluded that it is appropriate to return to its historic practice for DFRs in place prior to the February 2020 Final Rule. DOE agrees with the commenters who argued that the February 2020 Final Rule's interpretation of EPCA's DFR provision (*i.e.,* as a purely procedural one) is not the best reading of the statute, and DOE disagrees with those commenters such as AFP and AGA, who support the opposite statutory reading. Instead, DOE is reverting to its longstanding interpretation that the DFR provision conveys upon DOE a substantive grant of rulemaking authority, thereby allowing stakeholders to negotiate over more aspects of the energy or water conservation standard, *e.g.,* compliance periods, so long as the requirements of 42 U.S.C. 6295(o) (and 42 U.S.C. 6313(a)(6)(B), as applicable) are met.

DOE has determined that the February 2020 Final Rule imposed certain unnecessary restrictions upon the use of DFRs, thereby limiting DOE's flexibility, program efficiency, and the usefulness of this important regulatory tool provided by Congress. In the past, DFRs—arising from both consensus agreement submissions and negotiated rulemakings—have frequently utilized measures such as alternative compliance dates, dual metrics, phased-in compliance by product/equipment class, and two-tiered standards. These measures have typically resulted in greater overall energy savings more quickly, an outcome which the Department finds consistent with the energy-saving purposes of EPCA, and DOE agrees with MHI that the Department should give such consensus recommendations appropriate weight.

In providing a streamlined process for DFRs, Congress built in certain safeguards in the relevant statutory provision, namely the requirement that a joint statement recommending an energy or water conservation standard must be ''fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates)'' and the potential for withdrawal of a DFR upon receipt of one or more adverse comments. (42 U.S.C. 6295(p)(4)(A) and (C)) However, because each rulemaking proceeding is different (in terms of both issues and stakeholders), DOE has concluded that it is beneficial for the agency to assess representativeness and any adverse comments on a case-by-case basis. For example, if there are no small business manufacturers producing a certain covered product, that should not preclude consideration of a consensus agreement or a negotiated rulemaking leading to a DFR. Unfortunately, in seeking to clarify DOE's DFR process, the February 2020 Final Rule inadvertently imposed a one-size-fits-all regime that may not be appropriate for all proceedings.

DOE is not adopting the suggestion of Grundfos that before such a consensus recommendation is accepted, the Department should be required to publish a determination (with supporting reasoning) that an ASRAC Working Group meets the EPCA requirement to be ''fairly representative of relevant points of view.'' If an interested party has concerns as to representativeness, this issue may be addressed in a comment on the DFR (potentially as an ''adverse'' comment). Particularly given the numerous statutory deadlines DOE faces for energy conservation rulemakings, the agency does not find it reasonable to put in place a separate comment opportunity for this narrow issue, as a consolidated comment opportunity would suffice and serve the same purpose.

Thus, in this final rule, DOE is retaining the expanded list of potentially representative parties (*i.e.,* beyond the statutorily required manufacturers, States, and efficiency advocates) but adding ''where appropriate'' in recognition of the fact that there is no set group of relevant points of view across all rulemakings. DOE anticipates that such an approach will encourage consensus agreement and DFRs, consistent with the requirements of EPCA. Similarly, DOE is removing discussion of adverse comments from appendix A, so as not to limit the Department's ability to consider the merits of such comments on a case-by-case basis.

In addition, DOE is also returning to its historic practice that a negotiated rulemaking may result in a term sheet with recommendations culminating in a DFR. (For further discussion of negotiated rulemaking, see section G of this final rule.) The Department has concluded that the contrary position taken in the February 2020 Final Rule was an overly restrictive interpretation not compelled by EPCA or the NRA. Upon further consideration, DOE now sees the applicable provisions of these two statutory sources can be read in harmony to allow for DFRs to arise from such proceedings, a result consistent with 5 U.S.C. 561, *Purpose,* of the NRA which states, ''Nothing in this subchapter shall be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or with other innovative rulemaking procedures otherwise authorized by law.'' DOE does not agree with the more restrictive approach recommended by the AGA, because it could unnecessarily limit use of the provision Congress placed in statute. Consequently, DOE is clarifying that a negotiated rulemaking can result in a DFR.

DOE notes that even if the position taken in the February 2020 rule was not erroneous, as a matter of policy, a

negotiated rulemaking can still result in a direct final rule. DOE's independent (and separate) authority to initiate a direct final rule does not preclude the possibility that it may be the product of a negotiated rulemaking. The consensus agreement contemplated under DOE's authority under 42 U.S.C. 6295(p)(4) only requires that DOE receive a joint statement from specified interested parties and that the recommended standard(s) be in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable.

For the aforementioned reasons, DOE is finalizing its proposed revisions to the DFR section of appendix A, thereby restoring flexibility to the process and allowing the Department to tailor its approach to the needs of individual energy conservation standard or test procedure rulemakings on a case-by-case basis. DOE concludes that retention of a revised DFR section as part of appendix A will provide additional clarity for interested parties.

G. Negotiated Rulemaking

As discussed in the April 2021 NOPR (*see* 86 FR 18901, 18909–18911), the Department adopted a new section 11, *Negotiated Rulemaking Process,* in the February 2020 Final Rule to set forth the procedures that DOE would follow when using negotiated rulemaking under the Appliance Standards Program. 85 FR 8626, 8708–8709. These provisions discussed DOE's historical use of negotiated rulemaking, along with a few modifications to the agency's past approach. 85 FR 8626, 8685–8686. As that final rule explained, negotiated rulemaking is a process by which an agency attempts to develop a consensus proposal for regulation in consultation with interested parties, thereby addressing comments from stakeholders before issuing a proposed rule. This process is conducted in accordance with the requirements of the NRA. To facilitate potential negotiated rulemakings, DOE established the Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC'') to comply with the Federal Advisory Committee Act, Public Law 92–463 (5 U.S.C. App. 2). As part of the DOE process, working groups have been established as subcommittees of ASRAC, from time to time, for specific products, with one member from the ASRAC committee attending and participating in the meetings of the specific working group. Ultimately, the working group reports to ASRAC, and ASRAC itself votes on whether to make a recommendation to DOE to adopt a consensus agreement. The negotiated rulemaking process allows real-time adjustments to the analyses as the working group is considering them. Furthermore, it allows parties with differing viewpoints and objectives to negotiate face-to-face regarding the terms of a potential standard. Additionally, it encourages manufacturers to provide data for the analyses in a more direct manner, thereby helping to better account for manufacturer concerns. DOE recognizes the value of this process and encourages submission of joint stakeholder recommendations.

The February 2020 Final Rule also discussed the following key points related to negotiated rulemaking at 85 FR 8626, 8685:

- Negotiated rulemakings will go through the ASRAC process outlined above, and the appropriateness of a negotiated rulemaking for any given rulemaking will be determined on a case-by-case basis.
- In making this determination, DOE will use a convener to ascertain, in consultation with relevant stakeholders, whether review for a given product or equipment type would be conducive to negotiated rulemaking, with the agency evaluating the convener's recommendation before reaching a decision on such matter.
- The following five factors militate in favor of a negotiated rulemaking: (1) Stakeholders have commented in favor of negotiated rulemaking in response to the initial rulemaking notice; (2) the rulemaking analysis or underlying technologies in question are complex, and DOE can benefit from external expertise and/or real-time changes to the analysis based on stakeholder feedback, information, and data; (3) the current standards have already been amended one or more times; (4) stakeholders from differing points of view are willing to participate; and (5) DOE determines that the parties may be able to reach an agreement.
- If a negotiated rulemaking is initiated, a neutral and independent facilitator, who is not a DOE employee or consultant, shall be present at all ASRAC working group meetings.
- DOE will set aside a portion of each ASRAC working group meeting to receive input and data from non-members of the ASRAC working group.
- Finally, a negotiated rulemaking in which DOE participates under the ASRAC process will not result in the issuance of a DFR, and further, any potential term sheet upon which an ASRAC working group reaches consensus must comply with all of the provisions of EPCA under which the rule is authorized.

After further consideration, DOE tentatively determined in the April 2021 NOPR that further changes to its approach to negotiated rulemaking are necessary and appropriate. Although section 11 of appendix A largely mirrors the process DOE has followed when the Department has determined, on a case-by-case basis, that such alternative rulemaking procedures would be useful to supplement the normal notice-and-comment rulemaking process, DOE proposed in the April 2021 NOPR to make certain modifications to the process articulated in that section. On a number of points, DOE proposed to revert to the approach it employed prior to promulgation of the February 2020 Final Rule. The following paragraphs outline the proposed changes from the April 2021 NOPR.

First, DOE would clarify that although the Department has frequently used facilitators and considered whether to use convenors in past negotiated rulemakings, the use of such individuals is left to agency discretion and is not required under the NRA (*see* 5 U.S.C. 563(b)). A ''convenor'' performs the task of canvassing various interested parties regarding the potential and feasibility of achieving consensus in a particular matter. In contrast, a ''facilitator'' helps guide the discussion among the participants to a negotiated rulemaking. While DOE recognizes the value of using a convenor and/or a facilitator in certain cases, there are also instances where DOE can adequately assess whether a given situation is ripe for a consensus-based approach through negotiated rulemaking. These instances may occur where DOE has accumulated years or decades of experience with setting standards with a particular product or equipment, or where DOE is approached by concerned stakeholders. In those instances, it may not be necessary to expend the time and/or resources associated with the use of a convenor. Consequently, DOE proposed to eliminate the requirement for use of a convenor and a facilitator and to instead retain discretion to utilize the services of such individuals in appropriate cases. This change in approach would allow the agency to conserve resources and avoid delay where such services are not necessary.

Second, DOE proposed that the list of factors militating in favor of a negotiated rulemaking, as currently articulated at section 11(a)(3) of appendix A, are neither mandatory nor exclusive. The NRA already sets forth factors for consideration at 5 U.S.C. 563(a). Because the factors set forth in section 11(a)(3) of appendix A may not be appropriate in all cases, DOE proposed

to no longer be bound by this list when determining whether it is appropriate to convene a negotiated rulemaking. Instead, the Department proposed to consider the factors articulated under 5 U.S.C. 563(a), as well as any other considerations relevant to the specific product/equipment proceeding in question.

Third, DOE proposed to revert to its prior approach, which would allow for a negotiated rulemaking to result in a term sheet recommending promulgation of a DFR under 42 U.S.C. 6295(p)(4). (*See* section III.F of this document for a more complete discussion of DFRs.) DOE tentatively concluded that the approach adopted in the February 2020 Final Rule (*i.e.,* that a negotiated rulemaking must result in a proposed rule followed by a final rule) was an overly restrictive reading of the NRA. While 5 U.S.C. 563(a) discusses issuance of a proposed rule and a final rule, 42 U.S.C. 6295(p)(4) (under EPCA) already mandates publication of a proposed rule simultaneously with a DFR—and in the event of an adverse comment that may provide a reasonable basis for withdrawal, DOE is required to conduct further rulemaking under the proposed rule, proceeding to a final rule, if appropriate. (42 U.S.C. 6295(p)(4)(C)(i)(II)) Furthermore, at 5 U.S.C. 561, *Purpose,* the NRA states, ''Nothing in this subchapter shall be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or with other innovative rulemaking procedures otherwise authorized by law.'' In light of the above, DOE has tentatively concluded that these relevant legal authorities can be read in harmony and do not preclude the possibility of a negotiated rulemaking that results in a recommendation to implement the body's consensus through a DFR. Accordingly, DOE proposed to revert to its prior position on this topic.

In light of these proposed modifications, DOE tentatively concluded that section 11 of the revised appendix A would become largely redundant of the NRA requirements to which the agency is already subject, and therefore, the Department found section 11 to be unnecessary and proposed its removal. DOE noted, however, that its proposal to remove this section from appendix A in no way reflected a change in the Department's perception of the value of negotiated rulemaking or its intention to use negotiated rulemaking in appropriate cases. Similarly, this proposal was not expected to affect DOE's practice of providing opportunities for public comment and access to working group documents and meetings/webinars throughout the negotiated rulemaking process. DOE requested comments on the merits of this proposed approach including comments regarding the proposed complete removal of section 11, as well as any alternatives to this proposal, such as amendments or revisions to the section or retention of aspects of section 11. *See generally* April 2021 NOPR 86 FR 18901, 18909–18911.

In response to the April 2021 NOPR, DOE received a considerable number of comments on its proposal related to the topic of negotiated rulemaking, which like the comments on the proposed DFR provisions, were overwhelmingly supportive of both the negotiated rulemaking mechanism itself and DOE's proposal to return to the Department's historic approach to such rulemakings that was in place before adoption of the February 2020 Final Rule. (Hamdi, No. 7 at p. 1; NPCC, No. 12 at p. 5; Carrier, No. 26 at p. 3; ALA, No. 28 at p. 4; CEC, No. 35 at p. 7; Joint Advocacy Commenters, No. 38 at p. 7; Joint Advocacy Commenters (appendix I), No. 38 at pp. 1, 2, 15; NEEA, No. 43 at p. 4; Lennox, No. 18 at pp. 8–9; Goodman, No. 22 at p. 3; Nortek, No. 19 at p. 4; CEC, No. 35 at p. 7; CA IOUs, No. 34 at p. 4) A small minority of commenters either favored the approach to negotiated rulemaking contained in the February 2020 Final Rule or otherwise expressed concern with the proposal set forth in the April 2021 NOPR. (AGA, No. 33 at p. 6; MHI, No. 32 at pp. 1–2) All of these comments and their rationale are discussed in further detail in the paragraphs that follow.

Comments in Support of DOE's Proposal Regarding Negotiated Rulemaking

Commenters generally agreed that DOE's use of negotiated rulemakings has yielded substantial benefits. For example, ALA stated that negotiated rulemakings implemented through DOE's ASRAC process have produced significant energy savings by allowing a collaborative effort among interested parties that can be faster, more transparent, and less contentious than the normal rulemaking process. (ALA, No. 28 at p. 4)

A number of commenters favored a return to DOE's prior practice regarding negotiated rulemaking because of the increased flexibility that approach provided. On this point, the Joint Environmentalist Commenters generally opposed what they characterized as the unnecessarily strict limits and restrictions related to negotiated rulemaking in the February 2020 Final Rule, beyond the requirements of the NRA, so these commenters expressed support for returning flexibility to the process for negotiated rulemakings. (Joint Environmentalist Commenters, No. 31 at pp. 6–7; CA IOUs, No. 34 at p. 4) The CA IOUs argued that the use of negotiated rulemaking (in combination with DFRs) offers flexibility and can lead to more nuanced and detailed approaches to test procedures and standards, such as staged standards, different compliance dates, and multiple efficiency standards. The CA IOUs added that it has been their experience that direct negotiations between stakeholders has resulted in energy conservation standards that are quicker and easier for industry to implement and that save more energy overall than would have been achievable through the conventional rulemaking process. (CA IOUs, No. 34 at p. 4) The CEC added that a reversion back to DOE's prior, effective negotiated rulemaking practice is based on and consistent with the requirements of the NRA. (CEC, No. 35 at p. 7) GEA described negotiated rulemaking with direct final rules as a powerful tool for fast progress that reduce the use of DOE resources. GEA added that negotiated rulemaking offers all stakeholders an opportunity for increased control, decreases the likelihood of litigation, and provides an opportunity for solutions outside the scope of EPCA's analytical framework and for the consideration and resolution of standards and test procedures for multiple products at once. (GEA, No. 20 at p. 3) NEEA also stated that negotiated rulemakings (in combination with DFRs) can lead to more efficient rulemaking. (NEEA, No. 43 at p. 4)

As discussed previously, there was considerable discussion and overlap of issues between appendix A's DFR and negotiated rulemaking provisions, because in the past, most DFRs arose out of that type of rulemaking proceeding. A number of commenters stressed that in contrast to the restriction in the February 2020 Final Rule, negotiated rulemakings should once again be permitted to result in a term sheet with a consensus recommendation that leads to a DFR. (NPCC, No. 12 at p. 5; Carrier, No. 26 at p. 4; MHI, No. 32 at p. 3; Nortek, No. 19 at p. 4; Joint Environmentalist Commenters, No. 31 at pp. 6–7; Joint Advocacy Commenters, No. 38 at p. 7; Joint Advocacy Commenters (appendix I), No. 38 at pp. 1, 2, 15; NEEA, No. 43 at p. 4; NAFEM, No. 30 at p. 7; Joint Industry Commenters, No. 40 at p. 15) On this point, A.O. Smith argued that the

approach contained in the February 2020 Final Rule undermines DOE's own authority under EPCA. In A.O. Smith's view, DOE's past application of the DFR provision to permit a DFR to result from a negotiated rulemaking has ensured that the DFR's ''fairly representative'' requirement has been met, and the commenter asserted that the negotiated rulemaking process has been an important advancement and addition to the Appliance Standards Program, and for these reasons, its use should continue. A.O. Smith also asserted that applying the DFR provision in this manner meets the goal of Congress to promote consensus agreements that reflect broad input from interested parties who can fashion agreements that best promote the aims of the statute. It added that when DOE receives a consensus agreement consistent with the DFR process, that act alone is sufficient to satisfy the statute so long as 42 U.S.C. 6295(o) (or 42 U.S.C. 6313(a)(6)(B) as applicable) are met. (A.O. Smith, No. 27 at p. 5)

Commenters also addressed the individual proposed changes regarding negotiated rulemakings that DOE presented in the April 2021 NOPR. On the topic of convenors and facilitators, most stakeholders expressed support for DOE's proposal to make their use discretionary in appropriate cases. (NPCC, No. 12 at p. 5; Carrier, No. 26 at p. 3; Grundfos, No. 37 at p. 3) Commenters offered the following views. The Joint Industry Commenters agreed that a convenor and a facilitator may not be necessary in every negotiated rulemaking, and the Joint Advocacy Commenters added that use of facilitators and convenors is not required under the NRA. (Joint Industry Commenters, No. 40 at p. 15; Joint Advocacy Commenters, No. 38 at p. 7) Similarly, NAFEM stated that although it generally acknowledges the benefits of facilitators in appropriate cases, DOE and stakeholders have experience as to when engagement of facilitators would be helpful. (NAFEM, No. 30 at p. 7) However, Grundfos argued that DOE has sufficient experience with these roles to clearly define in appendix A when their use would be warranted. (Grundfos, No. 37 at p. 3)

Once again, DOE proposed in the April 2021 NOPR to clarify that the list of factors militating in favor of a negotiated rulemaking, as currently articulated at section 11(a)(3) of appendix A, are neither mandatory nor exclusive. Because the specified factors may not be appropriate in all cases, DOE reasoned that it should no longer be bound by this list when determining whether it is appropriate to convene a negotiated rulemaking, but instead proposed to consider the factors articulated under 5 U.S.C. 563(a), as well as any other considerations relevant to the specific product/equipment proceeding in question. In response, commenters offered the following input. Carrier and the Joint Advocacy Commenters agreed that the factors favoring a negotiated rulemaking currently listed in Section 11(a)(3) of appendix A are not exclusive, and the Joint Advocacy Commenters also pointed out that they are not mandatory. (Carrier, No. 26 at pp. 3–4; Joint Advocacy Commenters, No. 38 at p. 7) The Joint Industry Commenters likewise stated that they have no objection to DOE eliminating the list of factors in appendix A militating in favor of a negotiated rulemaking, and, instead considering the factors under 5 U.S.C. 563(a). (Joint Industry Commenters, No. 40 at p. 15)

Among commenters who generally supported DOE's proposal regarding negotiated rulemaking, there was mixed reaction as to how best to address section 11 of appendix A (Negotiated Rulemaking Process). Some commenters recommended that section 11 should be eliminated (as the Department proposed in the April 2021 NOPR). (NPCC, No. 12 at p. 5; Joint Advocacy Commenters, No. 38 at p. 7; NEEA, No. 43 at p. 4) Other commenters recommended that section 11 should be retained with revisions. (Carrier, No. 26 at p. 4; Grundfos, No. 37 at p. 3; Joint Industry Commenters, No. 40 at pp. 14–15; Lennox, No. 18 at pp. 8–9)

Commenters favoring removal of section 11 offered the following reasoning in support of their position. The Joint Advocacy Commenters agreed that DOE's proposal complies with the requirements of the NRA and that given the existing NRA requirements, section 11 of the February 2020 Final Rule is unnecessary and should be removed. (Joint Advocacy Commenters, No. 38 at p. 7) NEEA stated its agreement with DOE's proposal to remove the language related to negotiated rulemaking from appendix A, arguing that the NRA already sufficiently specifies that process. The commenter asserted that the negotiated rulemaking provisions of the February 2020 Final Rule did not clarify that process and that it may have added unnecessary burden in some cases. (NEEA, No. 43 at p. 4)

Commenters who favored retention of section of 11 with revisions offered the following reasoning in support of that view, including any specific language offered. Grundfos argued that a modified version of section 11 of appendix A should be allowed to remain in the regulation, because it assists stakeholders in understanding how that process will work under the NRA. (Grundfos, No. 37 at p. 3) Along those same lines, Carrier suggested that DOE should expressly state its modified process for negotiated rulemakings by updating the current text of section 11 to: (1) Provide the flexibility to determine whether a convener or facilitator is needed; (2) provide the flexibility to consider factors beyond those currently listed in Section 11(a)(3); and (3) allow the promulgation of a direct final rule from a negotiated rulemaking. (Carrier, No. 26, at p. 4) Finally, the Joint Industry Commenters also stated that DOE should reinsert several aspects of the July 1996 Final Rule, which include the following: First, DOE should include the following statement from the July 1996 Final Rule: ''[u]nder the guidelines in this appendix, DOE will support the development and submission of consensus recommendations for standards by representative groups of interested parties to the fullest extent possible.'' Second, DOE should indicate that it will consider deferring its rulemaking analysis while a representative group of interested parties works to develop joint recommendations on standards. Third, DOE should propose a consensus recommendation submitted by a breadth of interested parties so long as it met the applicable statutory criteria. Lastly, DOE should give substantial weight to consensus recommendations. (Joint Industry Commenters, No. 40 at pp. 14–15) MHI recommended inclusion of nearly identical language as that suggested by the Joint Industry Commenters. (MHI, No. 32 at p. 3)

While Lennox is generally supportive of DOE's clarifications regarding the negotiated rulemaking process, the company suggests retaining an abbreviated version of appendix A's section on negotiated rulemaking. (Lennox, No. 18 at p. 8). Lennox offered the following suggested modifications. First, Lennox stated that DOE could retain the substance of the first two sentences in section 11(a)(1) indicating ''In those instances where negotiated rulemaking is determined to be appropriate, DOE will comply with the requirements of the Negotiated Rulemaking Act (NRA) (5 U.S.C. 561–570) and the requirements of the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). To facilitate potential negotiated rulemakings, and to comply with the requirements of the NRA and the FACA, DOE established the Appliance Standards and Rulemaking

Federal Advisory Committee (ASRAC).'' Similarly, Lennox argued that DOE could retain some or all of section 11(a)(4) whereby ''DOE will provide notice in the **Federal Register** of its intent to form an ASRAC working group (including a request for nominations to serve on the committee), announcement of the selection of working group members (including their affiliation), and announcement of public meetings and the subject matter to be addressed.'' Furthermore, according to Lennox, DOE has not explained why it is deleting appendix A subsections 11(b) and (c), and the commenters believes these subsections seem appropriate. For instance, Lennox pointed out that subsection 11(c) merely states ''A negotiated rulemaking may be used to develop energy conservation standards, test procedures, product coverage, and other categories of rulemaking activities.'' Lennox opined that retaining this language seems a helpful clarification on the potential scope of negotiated rulemaking. Subsection 11(b) states ''DOE's role in the negotiated rulemaking process is to participate as a member of a group attempting to develop a consensus proposal for energy conservation standards [and the commenter noted that 'test procedures or other rulemaking activities' should be added here] for a particular product/equipment and to provide technical/analytical advice to the negotiating parties and legal input where needed to support the development of a potential consensus recommendation in the form of a term sheet.'' Again, Lennox argued that this language seems to be a helpful clarification, and the commenter asserted that DOE does not explain the reasons for deleting this particular subsection. Moreover, Lennox argued that appendix A should affirmatively indicate a negotiated rulemaking (*e.g.,* through ASRC) can lead directly to a DFR. (Lennox, No. 18 at pp. 8–9)

Comments Opposing DOE's Proposal Regarding Negotiated Rulemaking

Finally, some commenters expressed opposition to or concern about the April 2021 NOPR's proposed changes to the negotiated rulemaking section of appendix A. Specifically, AGA stated that although it supports the use of negotiated rulemakings, it had previously sought to include provisions in appendix A to promote and require full participation. In AGA's view, DOE's current proposal to remove appendix A's provisions regarding negotiated rulemakings should not be adopted because the current set of requirements are critical elements to help ensure full participation in the negotiated rulemaking process. (AGA, No. 33 at p. 6) Furthermore, MHI asserted that the negotiated rulemaking process that it experienced as part of its efforts to assist in the development of energy conservation standards for manufactured homes resulted in certain stakeholders having an outsized influence, which led to skewed outcomes. In MHI's view, the proposed rule that resulted from that negotiated rulemaking would have had a detrimental impact on the ability of consumers to afford a manufactured home. MHI argued that any DOE standard-setting process should be transparent, allow for input from all affected stakeholders, and provide a reasonable cost-benefit analysis before engaging in a rulemaking that can have significant impacts on industry and consumers. (MHI, No. 32 at pp. 1–2)

DOE's Response to Comments

After careful consideration of these comments, DOE has decided to adopt the identified changes to its negotiated rulemaking process along the lines proposed in the April 2021 NOPR. In essence, DOE has concluded that it is appropriate to return to its historic practice for negotiated rulemaking in place prior to the February 2020 Final Rule. DOE agrees with the commenters who argued that in attempting to codify DOE's existing practice, appendix A provisions in section 11, *Negotiated Rulemaking Process,* imposed certain unnecessary restrictions that were beyond the requirements of the NRA, thereby limiting DOE's flexibility and the usefulness of this important regulatory tool. Consequently, through this final rule, DOE is restoring its flexibility in the context of the negotiated rulemaking process, thereby allowing the Department to tailor its approach to the needs of individual energy conservation standard or test procedure rulemakings on a case-by-case basis.

To be clear, DOE hereby reiterates its strong support for negotiated rulemakings and consensus agreements in appropriate cases, and the Department acknowledges the substantial benefits of such mechanisms mentioned by commenters. DOE and many stakeholders have considerable experience with negotiated rulemakings, including those conducted under the auspices of ASRAC. DOE is familiar with the circumstances under which a negotiated rulemaking is most likely to have the potential to be successful, and the Department is also aware when the services of a convenor or facilitatory would be useful. Consequently, rather than having a mandatory but non-exhaustive list of factors for consideration for initiation of a negotiated rulemaking, DOE believes that it is better for the Department to be able to consider all relevant circumstances, so it has decided that the February 2020 Final Rule's list of factors is unnecessary and overly restrictive, and therefore, it should be eliminated. Similarly, because of limited resources and the need for rulemaking efficiency, DOE has decided to eliminate the required use of convenors and facilitators as part of every negotiated rulemaking, but to instead employ such individuals on a case-by-case basis when the agency determines it appropriate.

DOE also agrees with the vast majority of commenters that, consistent with the agency's historic approach, it should be permissible for a negotiated rulemaking to result in a term sheet with recommendations that culminate in a DFR. DOE has concluded that contrary provisions in the February 2020 Final Rule were driven by an interpretation of EPCA not compelled by the statute. For the reasons explained in the April 2021 NOPR, DOE has once again concluded that the DFR provision at 42 U.S.C. 6295(p)(4) constitutes substantive authority which offers DOE some flexibility for rulemakings with consensus agreements, as long as the requirements of 42 U.S.C. 6295(o) (or 42 U.S.C. 6313(a)(6)(B) as applicable) are met. When the negotiated rulemaking process has been combined with a DFR, it has been possible to implement agreements with staged standards, different compliance dates, and multiple efficiency standards. Typically, such process has achieved greater energy savings, done so more expeditiously, and reduced the risk of litigation. DOE agrees with AGA and MHI as to the importance of public participation in its negotiated rulemaking process, and that is why ASRAC meetings are open to the public with opportunities for non-Working Group member input. DOE does not agree with MHI that members of any ASRAC negotiating committee have more influence than others, given the balance of various points of view that is required by ASRAC. DOE also notes that EPCA itself imposes a requirement that any joint statement recommending an energy conservation standard must be fairly representative of relevant points of view (*see* 42 U.S.C. 6295(p)(4)(A)). DOE has concluded that these measures provide adequate safeguard in terms of public participation.

As for the suggestion from Joint Industry Commenters that DOE reinsert several statements regarding negotiated

rulemaking from the July 1996 Final Rule, DOE believes that the statements are either unnecessary or potentially in tension with the Department's obligations and authority under EPCA. First, the Objectives section of appendix A already contains a statement encouraging the development of consensus recommendations for new or revised standards. DOE has also clarified in the Objectives section that this support and encouragement extends to consensus recommendations developed in accordance with the NRA. Second, with regards to potentially delaying a rulemaking analysis while stakeholders work to develop a consensus recommendation, DOE believes it would be ill-advised in many situations to curtail its own rulemaking analysis in the hopes that stakeholders come to a consensus agreement in time to meet a statutory deadline. With respect to affording substantial weight to consensus recommendations and issuing them as proposals, EPCA already contains criteria for evaluating consensus proposals. (*See* 42 U.S.C. 6295(p)(4)(A)) DOE will determine whether to issue a consensus agreement as a proposal in accordance with these criteria.

In light of the changes being adopted for negotiated rulemaking as part of this final rule, DOE sees little reason to retain a separate section of appendix A dedicated to negotiated rulemaking. What remains essentially grants DOE the same level of flexibility accorded to it under the NRA, and it is noted that the Department's past attempt to clarify its existing process produced some level of confusion. Furthermore, DOE's prior, longstanding negotiated rulemaking practice has generally been transparent, open to the public, and well understood by interested stakeholders. Consequently, for these reasons, DOE has concluded that inclusion of a section on negotiated rulemaking in appendix A is unnecessary and susceptible to generating further confusion, so, therefore, the Department is removing such section entirely.

H. Other Topics

In addition to receiving comments on the proposed revisions to appendix A set forth in the April 2021 NOPR, DOE received numerous other comments related to appendix A. These comments fall primarily into two categories: (1) Comments related to aspects of appendix A not addressed in the April 2021 NOPR; and (2) comments challenging the basis for the rulemaking. Regarding the first category, DOE will address these comments and the additional revisions proposed in the July 2021 NOPR in a separate final rule.

As to the second category, several commenters stated that since the February 2020 Final Rule has only been in effect for a limited period of time DOE has not had sufficient experience with the rule to establish a reasonable basis for determining that modifications are needed to help meet the Department's statutory obligations under EPCA. (*See, e.g.,* AHRI, No. 25 at p. 7; Crown Boiler, No. 10 at p. 2) DOE does not agree with these comments. First, many of the effects of the February 2020 Final Rule on the Department's rulemaking processes were readily apparent on issuance of the rule. The February 2020 Final Rule created a one-size-fits-all rulemaking process that was binding on DOE. Further, the February 2020 Final Rule and the August 2020 Final Rule added additional, mandatory steps to the rulemaking process that are not required by any applicable statute. These mandatory provisions, among other things, added steps to the rulemaking process and required buffer periods (*i.e.,* delays) between certain rulemaking actions. Further, since the February 2020 Final Rule became effective on April 14, 2020, DOE has had to conduct additional rulemaking steps (early assessment RFIs) [17] and delay other rulemaking actions in accordance with the binding provisions of the February 2020 Final Rule. Consequently, these provisions increased both the length of the rulemaking process and the overall resource burdens on DOE by requiring additional steps that may not always be needed under the circumstances of a given rulemaking. In addition, as stated throughout the April 2021 NOPR and this final rule, DOE is not revising appendix A because the February 2020 Final Rule revisions offered no policy benefits or were otherwise legally deficient. Instead, DOE is revising appendix A because it unnecessarily constrains DOE's ability to readily meet its considerable statutorily-imposed rulemaking obligations under EPCA. From a practical perspective, applying a mandatory, one-size-fits-all rulemaking process does not allow the Department to account for the specific circumstances of a particular rulemaking. For example, the February 2020 Final Rule required that all test procedures be finalized at least 180 days prior to issuance of an associated standards proposal. DOE recognizes that in certain cases a delay between finalization of a test procedure and issuance of a standards proposal is necessary for stakeholders to gain familiarity with the new test procedure before having to comment on proposed standards. However, that is not the case for all of DOE's test procedure rulemakings, such as those instances where DOE makes minor, technical amendments to the test procedure that do not affect measured energy use or efficiency. In such cases, there is no need to delay a standards proposal for 180 days, especially when DOE is striving to meet rulemaking deadlines and facing lawsuits regarding missed rulemaking deadlines.

AHRI also disagreed with DOE's statement that appendix A is best described and utilized as generally applicable guidance that may guide, but not bind, the Department's rulemaking process. AHRI stated that the modifications proposed in the April 2021 NOPR are not enough to render appendix A as an interpretive rule that is not binding on DOE and does not require notice and comment rulemaking procedures. AHRI went on to state that appendix A promulgates rules governing specific contexts such that it amounts to an exhaustive framework designed to cabin its discretion. (AHRI, No. 25 at pp. 11–12)

DOE disagrees with AHRI's characterization of the revisions made to appendix A in this document. As DOE has made clear throughout the April 2021 NOPR and this document, the purpose of these revisions to appendix A is to ensure that DOE is not bound by a rigid, one-size-fits-all rulemaking process that does not account for the specific circumstances of a rulemaking. This rule does not cabin DOE's discretion. Instead, this rule restores DOE's discretion to tailor its rulemaking processes to, among things, avoid unnecessary delays and burdens on the Department's rulemaking resources.

Finally, AHRI also argued that DOE's proposal did not consider the regulated community's reliance on the February 2020 Final Rule's procedures in the context of ongoing proceedings for test procedures and energy conservation standards. In its view, the regulated community has a significant interest in both the regulations relating to test procedures and energy conservation standards that DOE develops, as well as the process in promulgating those regulations. These regulatory actions, it argued, trigger a complex series of

[17] *See* ''Energy Conservation Program: Energy Conservation Standards for Certain Commercial and Industrial Equipment; Early Assessment Review; Refrigerated Bottled or Canned Beverage Vending Machines,'' 85 FR 35394 (June 10, 2020); ''Energy Conservation Program: Test Procedures for Certain Commercial and Industrial Equipment; Early Assessment Review; Pumps,'' 85 FR 60734 (Sept. 28, 2020).

business and governance decisions by the regulated community requiring precise planning and budgeting to respond to those actions. AHRI argued that by proposing to rescind appendix A six months after the rule itself took effect and without addressing concerns related to the regulated community's efforts to prepare for adjustments related to the February and August 2020 Final Rules, DOE has not considered these serious reliance interests. (AHRI, No. 25 at p. 12) Citing *Nat'l Urban League* v. *Ross,* 977 F.3d 770 (9th Cir. 2020), AHRI emphasized that there is no specific length of time for which a rule must have been in place for serious reliance interests to exist, and in certain cases, a shorter period of time may be sufficient to create those interests in light of the surrounding circumstances. (AHRI, No. 25 at pp. 12–13) As a result, AHRI argued that given the link between test procedures and standards—including the process by which DOE develops them—and the regulated community's critical organizational and financial obligations to achieve compliance, it has clearly demonstrated that the regulated entities have serious reliance interests in the February 2020 Final Rule. (AHRI, No. 25 at p. 13)

DOE notes that AHRI's stated reliance interests are general in nature, and at no point does AHRI detail with any specificity what those specific reliance interests are or their extent. While it is true that, at the time of the NOPR's publication, appendix A in its current form had been in effect for a six-month period, this fact alone, in spite of AHRI's views to the contrary, does not lend itself towards establishing a particularly strong reliance interest. When coupled with DOE's clearly stated intention to further modify appendix A to enhance DOE's flexibility in addressing the considerable rulemaking obligations imposed by EPCA, any purported reliance interest that interested parties may claim to have regarding the various provisions that DOE sought to make in its April 2021 proposal—and that are being finalized in this document—are further diminished.[18]

To elaborate on these points, DOE notes that in establishing its reliance interests, AHRI relied upon bare assertions to that effect. Thus, DOE has been presented with no credible evidence of the reliance interests or impacts at stake as a result of DOE's change to appendix A. *See, Kiewit Power Construction* v. *Sec'y, Department of Labor,* 959 F.3d 381, 399 (D.C. Cir. 2020) (noting the absence of reliance concerns where a regulation existed for less than four months). *Compare, Encino Motorcars* v. *Navarro,* 126 S. Ct. 2117, 2126–2127 (2016) (finding reliance interests on the part of regulated employers were implicated in an agency's attempt to change that agency's decades-old approach in an opposite manner). Moreover, to the extent that reliance interests may exist, DOE does not believe that, based on the current record, these reliance interests were as significant as AHRI claims. If such reliance interest did exist and were as significant as AHRI claims, DOE expects that the commenter would have demonstrated such reliance with some particularity, but AHRI did not. Presumably, reliance interests could not form until such time as DOE finalized its changes to appendix A; at earliest, the clock could have started February 14, 2020, but even then, stakeholders knew that at least one important aspect of appendix A (*i.e.,* the comparative analysis of potential standard levels) was still undergoing ongoing rulemaking, with such provision not being finalized until August 19, 2020. Further, Executive Order 13990, which directed DOE to consider suspending, revising, or rescinding the February and August 2020 Final Rules, was issued on January 20, 2021. Given that DOE once again proposed changes to appendix A on April 12, 2021, the intervening period arguably left very little time for significant reliance interests to develop or strongly attach. Furthermore, as evidenced by the earlier review/revision process for appendix A, stakeholders were aware that DOE's internal procedures are subject to change, and such fact should have tempered their reliance expectations.

DOE also notes that in those instances where rulemakings are currently underway, the Department is following the existing requirements of appendix A by providing early assessment requests for information to the public to help DOE decide its next steps with respect to test procedure and energy conservation standard rulemaking activities—thereby mitigating any harm to the reliance interests of interested parties. DOE also notes that interested parties will have a transition period (the 30 days between publication of this final rule and its effective date) in which to adjust to the application of the version of appendix A being adopted in this final rule. Consequently, under the current set of circumstances, DOE has seen no evidence of ''serious reliance interests'' regarding a rule that governed DOE's rulemaking procedures and was only in effect for 6 months. *See, FCC* v. *Fox Television,* 556 U.S. 502, 514–15 (2009) (noting an agency need not conduct a more searching review beyond explaining its reasons for reversing course and accounting for any ''serious reliance interests'' that may be present). And assuming *arguendo* that some limited reliance interests were found to exist, the agency has clearly stated its reasons regarding the need to change course consistent with and in light of the Department's EPCA obligations.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866

This regulatory action is a significant regulatory action under section 3(f)(4) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this final regulatory action was subject to review under the Executive order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

The revisions contained in this final regulatory action are procedural changes designed to improve DOE's ability to meet its rulemaking obligations and deadlines under EPCA. These revisions would not impose any regulatory costs or burdens on stakeholders, nor would they limit public participation in DOE's rulemaking process. Instead, these revisions would allow DOE to tailor its rulemaking processes to fit the facts and circumstances of a particular rulemaking for a covered product or equipment.

DOE currently has energy conservation standards and test procedures in place for more than 60 categories of covered products and equipment and is typically working on anywhere from 50 to 100 rulemakings (for both energy conservation standards and test procedures) at any one time. Further, these rulemakings are all subject to deadlines. Typically, review cycles for energy conservation standards and test procedures for covered products are 6 and 7 years, respectively.

[18] The effective date for the August 2020 Final Rule was October 19, 2020, and a NOPR proposing changes to appendix A was published in the **Federal Register** on April 12, 2021. Consequently, while nearly a year has passed since the promulgation of appendix A's stricter requirements, the public—including all interested industry parties—have been on notice since the release of the April 2021 NOPR as to DOE's intentions to modify these requirements. As such, stakeholders have been accorded lead time to modify their expectations and plans regarding the prospective functioning of DOE's regulatory process for the Appliance Standards Program and any reliance on them have been necessarily diminished.

(42 U.S.C. 6295(m)(1); 42 U.S.C. 6293(b)(1)) Additionally, if DOE decides not to amend an energy conservation standard for a covered product, the subsequent review cycle is shortened to 3 years. (42 U.S.C. 6295(m)(3)(B)) It is challenging to meet these cyclical deadlines for more than 60 categories of covered products and equipment. In fact, as previously discussed, DOE is currently facing two lawsuits that allege DOE has failed to meet rulemaking deadlines for 25 different consumer products and commercial equipment. In order to meet these rulemaking deadlines, DOE cannot afford the inefficiencies that come with a one-size-fits-all rulemaking approach. For example, having to issue an early assessment RFI followed by an ANOPR to collect early stakeholder input when a NODA would accomplish the same purpose unnecessarily lengthens the rulemaking process and wastes limited DOE resources. Similarly, having to delay issuance of a proposed energy conservation standard for 180 days because of a minor modification to a test procedure makes it more difficult for DOE to meet rulemaking deadlines, while offering no benefit to stakeholders. The revisions contained in this document allow DOE to eliminate these types of inefficiencies that lengthen the rulemaking process and waste DOE resources, while not affecting the ability of the public to participate in the rulemaking process. Eliminating inefficiencies that lengthen the rulemaking process allows DOE to more quickly develop energy conservation standards that deliver the environmental benefits, including reductions in greenhouse gas emissions, that DOE is directed to implement under E.O. 13990. Further, the sooner new or amended energy conservation standards eliminate less-efficient covered products and equipment from the market, the greater the resulting energy savings and environmental benefits.

Further, the revisions contained in this document would not dictate any particular rulemaking outcome in an energy conservation standard or test procedure rulemaking. DOE will continue to calculate the regulatory costs and benefits of new and amended energy conservation standards and test procedures issued under EPCA in future, individual rulemakings.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website at: *https://energy.gov/gc/office-general-counsel.*

This final rule details generally applicable guidance that may guide, but not bind, the Department's rulemaking process. The revisions are intended to improve DOE's ability to meet the obligations and deadlines outlined in EPCA by allowing DOE to tailor its rulemaking procedures to fit the specific facts and circumstances of a particular covered product or equipment, while not affecting the ability of any interested person, including small entities, to participate in DOE's rulemaking process. Because this final rule imposes no regulatory obligations on the public, including small entities, and does not affect the ability of any interested person, including small entities, to participate in DOE's rulemaking process, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no final regulatory flexibility analysis is required. *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Specifically, this final rule, addressing clarifications to appendix A itself, does not contain any collection of information requirement or revisions to existing information collections that would trigger the PRA.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has analyzed this proposed action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE has also determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix A6 because it is strictly procedural and meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an Environmental Assessment or an Environmental Impact Statement.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing

policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that each executive agency make every reasonable effort to ensure that when it issues a regulation, the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and has determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *https://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined this final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed

statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE concluded that the regulatory action in this document, which makes clarifications to appendix A that guides the Department in proposing energy conservation standards is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this final rule.

L. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. The results from that review are expected later in 2021.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

Signing Authority

This document of the Department of Energy was signed on November 19, 2021 by Kelly J. Speakes-Backman, Principal Deputy 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 November 19, 2021.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix A to subpart C of part 430 is revised to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment

1. Objectives
2. Scope
3. Application
4. Setting Priorities for Rulemaking Activity
5. Coverage Determination Rulemakings
6. Process for Developing Energy Conservation Standards
7. Policies on Selection of Standards
8. Test Procedures
9. ASHRAE Equipment
10. Direct Final Rules
11. Principles for Distinguishing Between Effective and Compliance Dates
12. Principles for the Conduct of the Engineering Analysis
13. Principles for the Analysis of Impacts on Manufacturers
14. Principles for the Analysis of Impacts on Consumers
15. Consideration of Non-Regulatory Approaches
16. Cross-Cutting Analytical Assumptions

1. Objectives

This appendix establishes procedures, interpretations, and policies to guide the Department of Energy (''DOE'' or the ''Department'') in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under the Energy Policy and Conservation Act (EPCA). This appendix applies to both covered consumer products and covered commercial/industrial equipment. The Department's objectives in establishing these procedures include:

(a) *Provide for early input from stakeholders.* The Department seeks to provide opportunities for public input early in the rulemaking process so that the initiation and direction of rulemakings is informed by comment from interested parties. DOE will be able to seek early input from interested parties in determining whether establishing new or amending existing energy conservation standards will result in significant savings of energy and is economically justified and technologically feasible. In the context of test procedure rulemakings, DOE will be able to seek early input from interested parties in determining whether—

(1) Establishing a new or amending an existing test procedure will better measure the energy efficiency, energy use, water use (as specified in EPCA), or estimated annual

operating cost of a covered product/equipment during a representative average use cycle or period of use (for consumer products); and

(2) Will not be unduly burdensome to conduct.

(b) *Increase predictability of the rulemaking timetable.* The Department seeks to make informed, strategic decisions about how to deploy its resources on the range of possible standards and test procedure development activities, and to announce these prioritization decisions so that all interested parties have a common expectation about the timing of different rulemaking activities. Further, DOE will offer the opportunity to provide input on the prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

(c) *Eliminate problematic design options early in the process.* The Department seeks to eliminate from consideration, early in the process, any design options that present unacceptable problems with respect to manufacturability, consumer utility, or safety, so that the detailed analysis can focus only on viable design options. DOE will be able to eliminate from consideration design options if it concludes that manufacture, installation or service of the design will be impractical, or that the design option will have a material adverse impact on the utility of the product, or if the design option will have a material adverse impact on safety or health. DOE will also be able to eliminate from consideration proprietary design options that represent a unique pathway to achieving a given efficiency level. This screening will be done at the outset of a rulemaking.

(d) *Fully consider non-regulatory approaches.* The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary programs can be used most effectively. DOE will continue to be able to support voluntary efforts by manufacturers, retailers, utilities, and others to increase product/equipment efficiency.

(e) *Conduct thorough analysis of impacts.* In addition to understanding the aggregate social and private costs and benefits of standards, the Department seeks to understand the distribution of those costs and benefits among consumers, manufacturers, and others, as well as the uncertainty associated with these analyses of costs and benefits, so that any adverse impacts on subgroups and uncertainty concerning any adverse impacts can be fully considered in selecting a standard. DOE will be able to consider the variability of impacts on significant groups of manufacturers and consumers in addition to aggregate social and private costs and benefits, report the range of uncertainty associated with these impacts, and take into account cumulative impacts of regulation on manufacturers. The Department will also be able to conduct appropriate analyses to assess the impact that new or amended test procedures will have on manufacturers and consumers.

(f) *Use transparent and robust analytical methods.* The Department seeks to use qualitative and quantitative analytical methods that are fully documented for the public and that produce results that can be explained and reproduced, so that the analytical underpinnings for policy decisions on standards are as sound and well-accepted as possible.

(g) *Support efforts to build consensus on standards.* The Department seeks to encourage development of consensus proposals, including proposals developed in accordance with the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), for new or revised standards because standards with such broad-based support are likely to balance effectively the various interests affected by such standards.

2. Scope

The procedures, interpretations, and policies described in this appendix apply to rulemakings concerning new or revised Federal energy conservation standards and test procedures, and related rule documents (*i.e.,* coverage determinations) for consumer products in Part A and commercial and industrial equipment under Part A–1 of the Energy Policy and Conservation Act (EPCA), as amended, except covered ASHRAE equipment in Part A–1 are governed separately under section 9 in this appendix.

3. Application

(a) This appendix contains procedures, interpretations, and policies that are generally applicable to the development of energy conservation standards and test procedures. The Department may, as necessary, deviate from this appendix to account for the specific circumstances of a particular rulemaking. In those instances where the Department may find it necessary or appropriate to deviate from these procedures, interpretations or policies, DOE will provide interested parties with notice of the deviation and an explanation.

(b) If the Department concludes that changes to the procedures, interpretations or policies in this appendix are necessary or appropriate, DOE will provide notice in the **Federal Register** of modifications to this appendix with an accompanying explanation. DOE expects to consult with interested parties prior to any such modification.

(c) This appendix is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity.

4. Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

(1) Potential energy savings;

(2) Potential social and private, including environmental or energy security, benefits;

(3) Applicable deadlines for rulemakings;

(4) Incremental DOE resources required to complete the rulemaking process;

(5) Other relevant regulatory actions affecting the products/equipment;

(6) Stakeholder recommendations;

(7) Evidence of energy efficiency gains in the market absent new or revised standards;

(8) Status of required changes to test procedures; and

(9) Other relevant factors.

(b) DOE will offer the opportunity to provide input on prioritization of rulemakings through a request for comment as DOE begins preparation of its Regulatory Agenda each spring.

5. Coverage Determination Rulemakings

(a) DOE has discretion to conduct proceedings to determine whether additional consumer products and commercial/industrial equipment should be covered under EPCA if certain statutory criteria are met. (42 U.S.C. 6292 and 42 U.S.C. 6295(l) for consumer products; 42 U.S.C. 6312 for commercial/industrial equipment)

(b) If DOE determines to initiate the coverage determination process, it will first publish a notice of proposed determination, providing an opportunity for public comment of not less than 60 days, in which DOE will explain how such products/equipment that it seeks to designate as ''covered'' meet the statutory criteria for coverage and why such coverage is ''necessary or appropriate'' to carry out the purposes of EPCA. In the case of commercial equipment, DOE will follow the same process, except that the Department must demonstrate that coverage of the equipment type is ''necessary'' to carry out the purposes of EPCA.

(c) DOE will publish its final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking (*i.e.,* DOE will not issue any Requests for Information (RFIs), Notices of Data Availability (NODAs), or any other mechanism to gather information for the purpose of initiating a rulemaking to establish a test procedure or energy conservation standard for the proposed covered product/equipment prior to finalization of the coverage determination). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. Specifically, DOE will finalize coverage for a product/equipment at least 180 days prior to publication of a proposed rule to establish a test procedure.

(d) If, during the substantive rulemaking proceedings to establish test procedures or energy conservation standards after completing a coverage determination, DOE finds it necessary and appropriate to expand or reduce the scope of coverage, a new coverage determination process will be initiated and finalized prior to moving forward with the test procedure or standards rulemaking.

6. Process for Developing Energy Conservation Standards

This section describes the process to be used in developing energy conservation standards for covered products and equipment other than those covered equipment subject to ASHRAE/IES Standard 90.1.

(a) *Early assessment*—(1) *Initiating the rulemaking process.* As the first step in any proceeding to consider establishing or amending any energy conservation standard, DOE will publish a document in the **Federal Register** announcing that DOE is considering initiating a rulemaking proceeding. As part of that document, DOE will solicit submission of related comments, including data and information on whether DOE should proceed with the rulemaking, including whether any new or amended rule would be cost effective, economically justified, technologically feasible, or would result in a significant savings of energy. Based on the information received in response to the notice and its own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard or an amended test procedure. If DOE determines that a new or amended standard would not satisfy applicable statutory criteria, DOE would engage in notice and comment rulemaking to issue a determination that a new or amended standard is not warranted. If DOE receives sufficient information suggesting it could justify a new or amended standard or the information received is inconclusive with regard to the statutory criteria, DOE would undertake the preliminary stages of a rulemaking to issue or amend an energy conservation standard, as discussed further in paragraph (a)(2) of this section.

(2) *Preliminary rulemaking documents.* If the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a Framework Document and Preliminary Analysis, or an Advance Notice of Proposed Rulemaking (ANOPR). Requests for Information (RFI) and Notices of Data Availability (NODA) could be issued, as appropriate, in addition to these preliminary stage documents.

(3) *Continued evaluation of statutory criteria.* In those instances where the early assessment either suggested that a new or amended energy conservation standard might be justified or in which the information was inconclusive on this point, and DOE undertakes the preliminary stages of a rulemaking to establish or amend an energy conservation standard, DOE may still ultimately determine that such a standard is not economically justified, technologically feasible or would not result in a significant savings of energy. Therefore, DOE will examine the potential costs and benefits and energy savings potential of a new or amended energy conservation standard at the preliminary stage of the rulemaking. DOE notes that it will, consistent with its statutory obligations, consider both cost effectiveness and economic justification when issuing a determination not to amend a standard.

(b) *Design options*—(1) *General.* Once the Department has initiated a rulemaking for a specific product/equipment but before publishing a proposed rule to establish or amend standards, DOE will typically identify the product/equipment categories and design options to be analyzed in detail, as well as those design options to be eliminated from further consideration. During the pre-proposal stages of the rulemaking, interested parties may be consulted to provide information on key issues through a variety of rulemaking documents. The preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking (ANOPR). Requests for Information (RFI) and Notice of Data Availability (NODA) could also be issued, as appropriate.

(2) *Identification and screening of design options.* During the pre-NOPR phase of the rulemaking process, the Department will typically develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (b)(3) of this section and the policies stated in section 7 of this Appendix (*i.e.,* Policies on Selection of Standards). The reasons for eliminating or retaining any design option at this stage of the process will be fully documented and published as part of the NOPR and as appropriate for a given rule, in the pre-NOPR documents. The technologically feasible design options that are not eliminated in this screening will be considered further in the Engineering Analysis described in paragraph (c) of this section.

(3) *Factors for screening of design options.* The factors for screening design options include:

(i) *Technological feasibility.* Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.

(ii) *Practicability to manufacture, install and service.* If mass production of a technology under consideration for use in commercially-available products (or equipment) and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

(iii) *Adverse Impacts on Product Utility or Product Availability.*

(iv) *Adverse Impacts on Health or Safety.*

(v) *Unique-Pathway Proprietary Technologies.* Unique-Pathway Proprietary Technologies. If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

(c) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the appropriate rulemaking documents.

(1) *Identification of engineering analytical methods and tools.* DOE will select the specific engineering analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(2) *Engineering and life-cycle cost analysis of design options.* DOE and its contractor will perform engineering and life-cycle cost analyses of the design options.

(3) *Review by stakeholders.* Interested parties will have the opportunity to review the results of the engineering and life-cycle cost analyses. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(4) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts, that design option or combination of design options will not be included in a candidate standard level.

(5) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in paragraph (b) of this section, DOE will select the candidate standard levels for further analysis.

(d) *Pre-NOPR Stage*—(1) *Documentation of decisions on candidate standard selection.*

(i) *New or amended standards.* If the early assessment and screening analysis indicates that continued development of a standard is appropriate, the Department will publish either:

(A) A notice accompanying a framework document and, subsequently, a preliminary analysis or;

(B) An ANOPR. The notice document will be published in the **Federal Register**, with accompanying documents referenced and posted in the appropriate docket.

(ii) *No new or amended standards.* If DOE determines at any point in the pre-NOPR stage that no candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or constitute significant energy savings, that conclusion will be announced in the **Federal Register** with an opportunity for public comment provided to stakeholders. In such cases, the Department will proceed with a rulemaking that proposes not to adopt new or amended standards.

(2) *Public comment and hearing.* The length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For such documents, DOE will determine whether a public hearing is appropriate.

(3) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis or the candidate standard levels will be made.

(e) *Analysis of impacts and selection of proposed standard level.* After the pre-NOPR stage, if DOE has determined preliminarily that a candidate standard level is likely to produce the maximum improvement in energy efficiency that is both technologically feasible and economically justified or

constitute significant energy savings, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose new or amended standards based on the results of the impact analysis.

(1) *Identification of issues for analysis.* The Department, in consideration of comments received, will identify issues that will be examined in the impacts analysis.

(2) *Identification of analytical methods and tools.* DOE will select the specific economic analysis tools (or multiple tools, if necessary, to address uncertainty) to be used in the analysis of the candidate standard levels.

(3) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels.

(4) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(i) *Impacts on manufacturers.* The analysis of private manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products/equipment and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impacts on manufacturing capacity, plant closures, and loss of capital investment.

(ii) *Private impacts on consumers.* The analysis of consumer impacts will include: Estimated private energy savings impacts on consumers based on national average energy prices and energy usage; assessments of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; sensitivity analyses using high and low discount rates reflecting both private transactions and social discount rates and high and low energy price forecasts; consideration of changes to product utility, changes to purchase rate of products, and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs; and loss of utility.

(iii) *Impacts on competition.* The analysis of impacts on competition will include an industry concentration analysis.

(iv) *Impacts on utilities.* The analysis of utility impacts will include estimated marginal impacts on electric and gas utility costs and revenues.

(v) *National energy, economic, and employment impacts.* The analysis of national energy, economic, and employment impacts will include: Estimated energy savings by fuel type; estimated net present value of benefits to all consumers; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers, suppliers of complementary and substitution products, and the economy in general.

(vi) *Impacts on the environment.* The analysis of environmental impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants, and impacts on pollution control costs.

(vii) *Impacts of non-regulatory approaches.* The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product/equipment efficiency, usage, and related characteristics in the absence of updated efficiency standards.

(viii) *New information relating to the factors used for screening design options.*

(f) *Notice of proposed rulemaking*—(1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the **Federal Register** that proposes standard levels and explains the basis for the selection of those proposed levels, and will post on its website a draft TSD documenting the analysis of impacts. The draft TSD will also be posted in the appropriate docket on *www.regulations.gov.* As required by 42 U.S.C. 6295(p)(1) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be not less than 75 days for public comment on the NOPR, with at least one public hearing or workshop. (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6306).

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received, DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, DOE will publish a Supplemental Notice of Proposed Rulemaking (SNOPR), when required. DOE may also publish a NODA or RFI, where appropriate.

(g) *Final rule.* The Department will publish a Final Rule in the **Federal Register** that promulgates standard levels, responds to public comments received on the NOPR, and explains how the selection of those standards meets the statutory requirement that any new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and constitutes significant energy savings, accompanied by a final TSD.

7. Policies on Selection of Standards

(a) *Purpose.* Section 6 describes the process that will be used to consider new or revised energy efficiency standards and lists a number of factors and analyses that will be considered at specified points in the process. Department policies concerning the selection of new or revised standards, and decisions preliminary thereto, are described in this section. These policies are intended to elaborate on the statutory criteria provided in 42 U.S.C. 6295. The procedures described in this section are intended to assist the Department in making the determinations required by EPCA and do not preclude DOE's consideration of any other information consistent with the relevant statutory criteria. The Department will consider pertinent information in determining whether a new or revised standard is consistent with the statutory criteria.

(b) *Screening design options.* These factors will be considered as follows in determining whether a design option will receive any further consideration:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially-viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have significant adverse impact on the utility of the product/equipment to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns.

(c) *Identification of candidate standard levels.* Based on the results of the engineering and cost/benefit analyses of design options, DOE will identify the candidate standard levels for further analysis. Candidate standard levels will be selected as follows:

(1) *Costs and savings of design options.* Design options that have payback periods that exceed the median life of the product or which result in life-cycle cost increases relative to the base case, using typical fuel costs, usage, and private discount rates, will not be used as the basis for candidate standard levels.

(2) *Further information on factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts under the policies stated in this Appendix, that design option or combination of design options will not be included in a candidate standard level.

(3) *Selection of candidate standard levels.* Candidate standard levels, which will be identified in the pre-NOPR documents and on which impact analyses will be conducted, will be based on the remaining design options.

(i) The range of candidate standard levels will typically include:

(A) The most energy-efficient combination of design options;

(B) The combination of design options with the lowest life-cycle cost; and

(C) A combination of design options with a payback period of not more than three years.

(ii) Candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standard levels also may be selected.

(d) *Pre-NOPR Stage.* New information provided in public comments on any pre-NOPR documents will be considered to determine whether any changes to the candidate standard levels are needed before proceeding to the analysis of impacts.

(e)(1) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. As required under 42 U.S.C. 6295(o)(2)(A), any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be both technologically feasible and economically justified.

(2) *Statutory policies.* The fundamental policies concerning the selection of standards include:

(i) A trial standard level will not be proposed or promulgated if the Department determines that it is not both technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) For a trial standard level to be economically justified, the Secretary must determine that the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the factors listed in 42 U.S.C. 6295(o)(2)(B)(i). A standard level is subject to a rebuttable presumption that it is economically justified if the payback period is three years or less. (42 U.S.C. 6295(o)(2)(B)(iii))

(ii) If the Department determines that interested persons have established by a preponderance of the evidence that a standard level is likely to result in the unavailability in the United States of any covered product/equipment type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time of the determination, then that standard level will not be proposed. (42 U.S.C. 6295(o)(4))

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. (42 U.S.C. 6295(o)(3)(B))

(f) *Selection of a final standard.* New information provided in the public comments on the NOPR and any analysis by the Department of Justice concerning impacts on competition of the proposed standard will be considered to determine whether issuance of a new or amended energy conservation standard produces the maximum improvement in energy efficiency that is both technologically feasible and economically justified and still constitutes significant energy savings or whether any change to the proposed standard level is needed before proceeding to the final rule. The same policies used to select the proposed standard level, as described in this section, will be used to guide the selection of the final standard level or a determination that no new or amended standard is justified.

8. Test Procedures

(a) *General.* As with the early assessment process for energy conservation standards, DOE believes that early stakeholder input is also very important during test procedure rulemakings. DOE will follow an early assessment process similar to that described in the preceding sections discussing DOE's consideration of amended energy conservation standards. Consequently, DOE will publish a notice in the **Federal Register** whenever DOE is considering initiation of a rulemaking to amend a test procedure. In that notice, DOE will request submission of comments, including data and information on whether an amended test procedure rule would:

(1) *Measurements.* More accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use without being unduly burdensome to conduct; or

(2) *Reduce testing burden.* DOE will review comments submitted and, subject to statutory obligations, determine whether it agrees with the submitted information. If DOE determines that an amended test procedure is not justified at that time, it will not pursue the rulemaking and will publish a notice in the **Federal Register** to that effect. If DOE receives sufficient information suggesting an amended test procedure could more accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct, reduce testing burden, or the information received is inconclusive with regard to these points, DOE would undertake the preliminary stages of a rulemaking to amend the test procedure, as discussed further in the paragraphs that follow in this section.

(b) *Identifying the need to modify test procedures.* DOE will identify any necessary modifications to established test procedures prior to initiating the standards development process. It will consider all stakeholder comments with respect to needed test procedure modifications. If DOE determines that it is appropriate to continue the test procedure rulemaking after the early assessment process, it would provide further opportunities for early public input through **Federal Register** documents, including NODAs and/or RFIs.

(c) *Adoption of Industry Test Methods.* DOE will adopt industry test procedure standards as DOE test procedures for covered products and equipment, but only if DOE determines that such procedures would not be unduly burdensome to conduct and would produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that equipment during a representative average use cycle. DOE may also adopt industry test procedure standards with modifications, or craft its own procedures as necessary to ensure compatibility with the relevant statutory requirements, as well as DOE's compliance, certification, and enforcement requirements.

(d) *Issuing final test procedure*—(1) *Process.* Test procedure rulemakings establishing methodologies used to evaluate proposed energy conservation standards will be finalized prior to publication of a NOPR proposing new or amended energy conservation standards. Except as provided in paragraph (d)(2) of this section, new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the comment period for:

(i) A NOPR proposing new or amended energy conservation standards; or

(ii) A notice of proposed determination that standards do not need to be amended. With regards to amended test procedures, DOE will state in the test procedure final rule whether the amendments impact measured energy use or efficiency.

(2) *Exceptions.* The 180-day period for new test procedures and amended test procedures that impact measured energy use or efficiency specified in paragraph (d)(1) of this section is not applicable to:

(i) Test procedures developed in accordance with the Negotiated Rulemaking Act or by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary; or

(ii) Test procedure amendments limited to calculation changes (*e.g.,* use factor or adder). Parties submitting a consensus recommendation in accordance with paragraph (i) of this section may specify a time period between finalization of the test procedure and the close of the comment for a NOPR proposing new or amended energy conservation standards or a notice of proposed determination that standards do not need to be amended.

(e) *Effective Date of Test Procedures.* If required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedures typically will not be required until the implementation date of updated standards.

9. ASHRAE Equipment

(a) EPCA provides that ASHRAE equipment are subject to unique statutory requirements and their own set of timelines. More specifically, pursuant to EPCA's statutory scheme for covered ASHRAE equipment, DOE is required to consider amending the existing Federal energy conservation standards and test procedures for certain enumerated types of commercial and industrial equipment (generally, commercial water heaters, commercial packaged boilers, commercial air-conditioning and heating equipment, and packaged terminal air conditioners and heat pumps) when ASHRAE Standard 90.1 is amended with respect to standards and test procedures applicable to such equipment. Not later than 180 days after the amendment of the standard, the Secretary will publish in the **Federal Register** for public comment an

analysis of the energy savings potential of amended energy efficiency standards. For each type of equipment, EPCA directs that if ASHRAE Standard 90.1 is amended, not later than 18 months after the date of publication of the amendment to ASHRAE Standard 90.1, DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1 as the uniform national standard for such equipment, or amend the test procedure referenced in ASHRAE Standard 90.1 for the equipment at issue to be consistent with the applicable industry test procedure, respectively, unless—

(1) DOE determines by rule, and supported by clear and convincing evidence, that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified; or

(2) The test procedure would not meet the requirements for such test procedures specified in EPCA. In such case, DOE must adopt the more stringent standard not later than 30 months after the date of publication of the amendment to ASHRAE/IES Standard 90.1 for the affected equipment.

(b) For ASHRAE equipment, DOE will adopt the revised ASHRAE levels or the industry test procedure, as contemplated by EPCA, except in very limited circumstances. With respect to DOE's consideration of standards more-stringent than the ASHRAE levels or changes to the industry test procedure, DOE will do so only if it can meet a very high bar to demonstrate the ''clear and convincing evidence'' threshold. Clear and convincing evidence would exist only where the specific facts and data made available to DOE regarding a particular ASHRAE amendment demonstrates that there is no substantial doubt that a standard more stringent than that contained in the ASHRAE Standard 90.1 amendment is permitted because it would result in a significant additional amount of energy savings, is technologically feasible and economically justified, or, in the case of test procedures, that the industry test procedure does not meet the EPCA requirements. DOE will make this determination only after seeking data and information from interested parties and the public to help inform the Agency's views. DOE will seek from interested stakeholders and the public data and information to assist in making this determination, prior to publishing a proposed rule to adopt more-stringent standards or a different test procedure.

(c) DOE's review in adopting amendments based on an action by ASHRAE to amend Standard 90.1 is strictly limited to the specific standards or test procedure amendment for the specific equipment for which ASHRAE has made a change (*i.e.,* determined down to the equipment class level). DOE believes that ASHRAE not acting to amend Standard 90.1 is tantamount to a decision that the existing standard remain in place. Thus, when undertaking a review as required by 42 U.S.C. 6313(a)(6)(C), DOE would need to find clear and convincing evidence, as defined in this section, to issue a standard more stringent than the existing standard for the equipment at issue.

10. Direct Final Rules

In accordance with 42 U.S.C. 6295(p)(4), on receipt of a joint proposal, including a consensus recommendation developed in accordance with the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), that is submitted by interested persons that are fairly representative of relevant points of view, DOE may issue a direct final rule (DFR) establishing energy conservation standards for a covered product or equipment if DOE determines the recommended standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B) as applicable. To be ''fairly representative of relevant points of view'' the group submitting a joint statement must, where appropriate, include larger concerns and small businesses in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether fewer or additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.''

11. Principles for Distinguishing Between Effective and Compliance Dates

(a) *Dates, generally.* The effective and compliance dates for either DOE test procedures or DOE energy conservation standards are typically not identical, and these terms should not be used interchangeably.

(b) *Effective date.* The effective date is the date a rule is legally operative after being published in the **Federal Register**.

(c) *Compliance date.* (1) For test procedures, the compliance date is the specific date when manufacturers are required to use the new or amended test procedure requirements to make representations concerning the energy efficiency or use of a product, including certification that the covered product/equipment meets an applicable energy conservation standard.

(2) For energy conservation standards, the compliance date is the specific date upon which manufacturers are required to meet the new or amended standards for applicable covered products/equipment that are distributed in interstate commerce.

12. Principles for the Conduct of the Engineering Analysis

(a) The purpose of the engineering analysis is to develop the relationship between efficiency and cost of the subject product/equipment. The Department will use the most appropriate means available to determine the efficiency/cost relationship, including an overall system approach or engineering modeling to predict the reduction in energy use or improvement in energy efficiency that can be expected from individual design options as discussed in paragraphs (b) and (c) of this section. From this efficiency/cost relationship, measures such as payback, life-cycle cost, and energy savings can be developed. The Department will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. DOE will select appropriate contractors, subcontractors, and expert consultants, as necessary, to perform the engineering analysis and the impact analysis. Also, the Department will consider data, information, and analyses received from interested parties for use in the analysis wherever feasible.

(b) The engineering analysis begins with the list of design options developed in consultation with the interested parties as a result of the screening process. The Department will establish the likely cost and performance improvement of each design option. Ranges and uncertainties of cost and performance will be established, although efforts will be made to minimize uncertainties by using measures such as test data or component or material supplier information where available. Estimated uncertainties will be carried forward in subsequent analyses. The use of quantitative models will be supplemented by qualitative assessments as appropriate.

(c) The next step includes identifying, modifying, or developing any engineering models necessary to predict the efficiency impact of any one or combination of design options on the product/equipment. A base case configuration or starting point will be established, as well as the order and combination/blending of the design options to be evaluated. DOE will then perform the engineering analysis and develop the cost-efficiency curve for the product/equipment. The cost efficiency curve and any necessary models will be available to stakeholders during the pre-NOPR stage of the rulemaking.

13. Principles for the Analysis of Impacts on Manufacturers

(a) *Purpose.* The purpose of the manufacturer analysis is to identify the likely private impacts of efficiency standards on manufacturers. The Department will analyze the impact of standards on manufacturers with substantial input from manufacturers and other interested parties. This section describes the principles that will be used in conducting future manufacturing impact analyses.

(b) *Issue identification.* In the impact analysis stage, the Department will identify issues that will require greater consideration in the detailed manufacturer impact analysis. Possible issues may include identification of specific types or groups of manufacturers and concerns over access to technology. Specialized contractor expertise, empirical data requirements, and analytical tools required to perform the manufacturer impact analysis also would be identified at this stage.

(c) *Industry characterization.* Prior to initiating detailed impact studies, the Department will seek input on the present and past industry structure and market characteristics. Input on the following issues will be sought:

(1) Manufacturers and their current and historical relative market shares;

(2) Manufacturer characteristics, such as whether manufacturers make a full line of models or serve a niche market;

(3) Trends in the number of manufacturers;

(4) Financial situation of manufacturers;

(5) Trends in product/equipment characteristics and retail markets including manufacturer market shares and market concentration; and

(6) Identification of other relevant regulatory actions and a description of the nature and timing of any likely impacts.

(d) *Cost impacts on manufacturers.* The costs of labor, material, engineering, tooling, and capital are difficult to estimate, manufacturer-specific, and usually proprietary. The Department will seek input from interested parties on the treatment of cost issues. Manufacturers will be encouraged to offer suggestions as to possible sources of data and appropriate data collection methodologies. Costing issues to be addressed include:

(1) Estimates of total private cost impacts, including product/equipment-specific costs (based on cost impacts estimated for the engineering analysis) and front-end investment/conversion costs for the full range of product/equipment models.

(2) Range of uncertainties in estimates of average cost, considering alternative designs and technologies which may vary cost impacts and changes in costs of material, labor, and other inputs which may vary costs.

(3) Variable cost impacts on particular types of manufacturers, considering factors such as atypical sunk costs or characteristics of specific models which may increase or decrease costs.

(e) *Impacts on product/equipment sales, features, prices, and cost recovery.* In order to make manufacturer cash-flow calculations, it is necessary to predict the number of products/equipment sold and their sale price. This requires an assessment of the likely impacts of price changes on the number of products/equipment sold and on typical features of models sold. Past analyses have relied on price and shipment data generated by economic models. The Department will develop additional estimates of prices and shipments by drawing on multiple sources of data and experience including: Actual shipment and pricing experience; data from manufacturers, retailers, and other market experts; financial models, and sensitivity analyses. The possible impacts of candidate/trial standard levels on consumer choices among competing fuels will be explicitly considered where relevant.

(f) *Measures of impact.* The manufacturer impact analysis will estimate the impacts of candidate/trial standard levels on the net cash flow of manufacturers. Computations will be performed for the industry as a whole and for typical and atypical manufacturers. The exact nature and the process by which the analysis will be conducted will be determined by DOE, with input from interested parties, as appropriate. Impacts to be analyzed include:

(1) Industry net present value, with sensitivity analyses based on uncertainty of costs, sales prices, and sales volumes;

(2) Cash flows, by year; and

(3) Other measures of impact, such as revenue, net income, and return on equity, as appropriate. DOE also notes that the characteristics of a typical manufacturers worthy of special consideration will be determined in consultation with manufacturers and other interested parties and may include: Manufacturers incurring higher or lower than average costs; and manufacturers experiencing greater or fewer adverse impacts on sales. Alternative scenarios based on other methods of estimating cost or sales impacts also will be performed, as needed.

(g) *Cumulative Impacts of Other Federal Regulatory Actions.* (1) The Department will recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products or equipment. DOE will analyze and consider the impact on manufacturers of multiple product/equipment-specific regulatory actions. These factors will be considered in setting rulemaking priorities, conducting the early assessment as to whether DOE should proceed with a standards rulemaking, assessing manufacturer impacts of a particular standard, and establishing compliance dates for a new or revised standard that, consistent with any statutory requirements, are appropriately coordinated with other regulatory actions to mitigate any cumulative burden.

(2) If the Department determines that a proposed standard would impose a significant impact on product or equipment manufacturers within approximately three years of the compliance date of another DOE standard that imposes significant impacts on the same manufacturers (or divisions thereof, as appropriate), the Department will, in addition to evaluating the impact on manufacturers of the proposed standard, assess the joint impacts of both standards on manufacturers.

(3) If the Department is directed to establish or revise standards for products/equipment that are components of other products/equipment subject to standards, the Department will consider the interaction between such standards in setting rulemaking priorities and assessing manufacturer impacts of a particular standard. The Department will assess, as part of the engineering and impact analyses, the cost of components subject to efficiency standards.

(h) *Summary of quantitative and qualitative assessments.* The summary of quantitative and qualitative assessments will contain a description and discussion of uncertainties. Alternative estimates of impacts, resulting from the different potential scenarios developed throughout the analysis, will be explicitly presented in the final analysis results.

(1) Key modeling and analytical tools. In its assessment of the likely impacts of standards on manufacturers, the Department will use models that are clear and understandable, feature accessible calculations, and have clearly explained assumptions. As a starting point, the Department will use the Government Regulatory Impact Model (GRIM). The Department will also support the development of economic models for price and volume forecasting. Research required to update key economic data will be considered.

(2) [Reserved]

14. Principles for the Analysis of Impacts on Consumers

(a) *Early consideration of impacts on consumer utility.* The Department will consider at the earliest stages of the development of a standard whether particular design options will lessen the utility of the covered products/equipment to the consumer. See paragraph (b) of section 6.

(b) *Impacts on product/equipment availability.* The Department will determine, based on consideration of information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products/equipment generally available in the U.S. at the time. DOE will not promulgate a standard if it concludes that it would result in such unavailability.

(c) *Department of Justice review.* As required by law, the Department will solicit the views of the Department of Justice on any lessening of competition likely to result from the imposition of a proposed standard and will give the views provided full consideration in assessing economic justification of a proposed standard. In addition, DOE may consult with the Department of Justice at earlier stages in the standards development process to seek its preliminary views on competitive impacts.

(d) *Variation in consumer impacts.* The Department will use regional analysis and sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate/trial standard levels among different subgroups of consumers. The Department will consider impacts on significant segments of consumers in determining standards levels. Where there are significant negative impacts on identifiable subgroups, DOE will consider the efficacy of voluntary approaches as a means to achieve potential energy savings.

(e) *Payback period and first cost.* (1) In the assessment of consumer impacts of standards, the Department will consider Life-Cycle Cost, Payback Period, and Cost of Conserved Energy to evaluate the savings in operating expenses relative to increases in purchase price. The Department also performs sensitivity and scenario analyses when appropriate. The results of these analyses will be carried throughout the analysis and the ensuing uncertainty described.

(2) If, in the analysis of consumer impacts, the Department determines that a candidate/trial standard level would result in a substantial increase in product/equipment first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will assess the likely impacts of such a standard on low-income households, product/equipment sales and fuel switching, as appropriate.

15. Consideration of Non-Regulatory Approaches

The Department recognizes that non-regulatory efforts by manufacturers, utilities, and other interested parties can result in substantial efficiency improvements. The Department intends to consider the likely effects of non-regulatory initiatives on product/equipment energy use, consumer utility and life-cycle costs, manufacturers, competition, utilities, and the environment, as well as the distribution of these impacts among different regions, consumers, manufacturers, and utilities. DOE will attempt to base its assessment on the actual impacts of such initiatives to date, but also will consider information presented regarding the impacts that any existing initiative might have in the future. Such information is likely to include a demonstration of the strong commitment of manufacturers, distribution channels, utilities, or others to such non-regulatory efficiency improvements. This information will be used in assessing the likely incremental impacts of establishing or revising standards, in assessing—where possible—appropriate compliance dates for new or revised standards, and in considering DOE support of non-regulatory initiatives.

16. Cross-Cutting Analytical Assumptions

In selecting values for certain cross-cutting analytical assumptions, DOE expects to continue relying upon the following sources and general principles:

(a) *Underlying economic assumptions.* The appliance standards analyses will generally use the same economic growth and development assumptions that underlie the most current *Annual Energy Outlook* (*AEO*) published by the Energy Information Administration (EIA).

(b) *Analytic time length.* The appliance standards analyses will use two time lengths—30 years and another time length that is specific to the standard being considered such as the useful lifetime of the product under consideration. As a sensitivity case, the analyses will also use a 9-year regulatory timeline in analyzing the effects of the standard.

(c) *Energy price and demand trends.* Analyses of the likely impact of appliance standards on typical users will generally adopt the mid-range energy price and demand scenario of the EIA's most current *AEO.* The sensitivity of such estimated impacts to possible variations in future energy prices are likely to be examined using the EIA's high and low energy price scenarios.

(d) *Product/equipment-specific energy-efficiency trends, without updated standards.* Product/equipment-specific energy-efficiency trends will be based on a combination of the efficiency trends forecast by the EIA's residential and commercial demand model of the National Energy Modeling System (NEMS) and product-specific assessments by DOE and its contractors with input from interested parties.

(e) *Price forecasting.* DOE will endeavor to use robust price forecasting techniques in projecting future prices of products.

(f) *Private Discount rates.* For residential and commercial consumers, ranges of three different real discount rates will be used. For residential consumers, the mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity costs of reduced savings) experienced by typical consumers. Sensitivity analyses will be performed using discount rates reflecting the costs more likely to be experienced by residential consumers with little or no savings and credit card financing and consumers with substantial savings. For commercial users, a mid-range discount rate reflecting DOE's approximation of the average real rate of return on commercial investment will be used, with sensitivity analyses being performed using values indicative of the range of real rates of return likely to be experienced by typical commercial businesses. For national net present value calculations, DOE would use the Administration's approximation of the average real rate of return on private investment in the U.S. economy. For manufacturer impacts, DOE typically uses a range of real discount rates which are representative of the real rates of return experienced by typical U.S. manufacturers affected by the program.

(g) *Social discount rates.* Social discount rates as specified in OMB Circular A–4 will be used in assessing social effects such as costs and benefits.

(h) *Environmental impacts.* (1) DOE calculates emission reductions of carbon dioxide, sulfur dioxide, nitrogen oxides, methane, nitrous oxides, and mercury likely to be avoided by candidate/trial standard levels based on an emissions analysis that includes the two components described in paragraphs (h)(2) and (3) of this section.

(2) The first component estimates the effect of potential candidate/trial standard levels on power sector and site combustion emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide. DOE develops the power sector emissions analysis using a methodology based on DOE's latest *Annual Energy Outlook.* For site combustion of natural gas or petroleum fuels, the combustion emissions of carbon dioxide and nitrogen oxides are estimated using emission intensity factors from the Environmental Protection Agency.

(3) The second component of DOE's emissions analysis estimates the effect of potential candidate/trial standard levels on emissions of carbon dioxide, nitrogen oxides, sulfur dioxide, mercury, methane, and nitrous oxide due to ''upstream activities'' in the fuel production chain. These upstream activities include the emissions related to extracting, processing, and transporting fuels to the site of combustion as detailed in DOE's Fuel-Fuel-Cycle Statement of Policy (76 FR 51281 (August 18, 2011)). DOE will consider the effects of the candidate/trial standard levels on these emissions after assessing the seven factors required to demonstrate economic justification under EPCA. Consistent with Executive Order 13783, dated March 28, 2017, when monetizing the value of changes in reductions in CO_2 and nitrous oxides emissions resulting from its energy conservation standards regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, DOE ensures, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A–4 of September 17, 2003 (Regulatory Analysis).

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Part III

The President

Executive Order 14057—Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 14057 of December 8, 2021

Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reestablish the Federal Government as a leader in sustainability, it is hereby ordered as follows:

Section 101. *Policy.* The Federal Government faces broad exposure to the mounting risks and costs already posed by the climate crisis. In responding to this crisis, we have a once-in-a-generation economic opportunity to create and sustain jobs, including well-paying union jobs; support a just transition to a more sustainable economy for American workers; strengthen America's communities; protect public health; and advance environmental justice. As the single largest land owner, energy consumer, and employer in the Nation, the Federal Government can catalyze private sector investment and expand the economy and American industry by transforming how we build, buy, and manage electricity, vehicles, buildings, and other operations to be clean and sustainable.

We also must build on past progress and pursue new strategies to improve the Nation's preparedness and resilience to the effects of a changing climate, including advancing the Federal Government's strategic planning, governance, financial management, and procurement to ensure climate resilient operations.

It is therefore the policy of my Administration for the Federal Government to lead by example in order to achieve a carbon pollution-free electricity sector by 2035 and net-zero emissions economy-wide by no later than 2050. Through a whole-of-government approach, we will demonstrate how innovation and environmental stewardship can protect our planet, safeguard Federal investments against the effects of climate change, respond to the needs of all of America's communities, and expand American technologies, industries, and jobs.

Sec. 102. *Government-wide Goals.* (a) Leading the Nation on a firm path to net-zero emissions by 2050 and achieving the policy set forth in section 101 of this order will require bold action to transform Federal procurement and operations and secure a transition to clean, zero-emission technologies. Through a coordinated whole-of-government approach, the Federal Government shall use its scale and procurement power to achieve:

(i) 100 percent carbon pollution-free electricity on a net annual basis by 2030, including 50 percent 24/7 carbon pollution-free electricity, as defined in section 603(a) of this order;

(ii) 100 percent zero-emission vehicle acquisitions by 2035, including 100 percent zero-emission light-duty vehicle acquisitions by 2027;

(iii) a net-zero emissions building portfolio by 2045, including a 50 percent emissions reduction by 2032;

(iv) a 65 percent reduction in scope 1 and 2 greenhouse gas emissions, as defined by the Federal Greenhouse Gas Accounting and Reporting Guidance, from Federal operations by 2030 from 2008 levels;

(v) net-zero emissions from Federal procurement, including a Buy Clean policy to promote use of construction materials with lower embodied emissions;

(vi) climate resilient infrastructure and operations; and

(vii) a climate- and sustainability-focused Federal workforce.

(b) The actions and investment required to achieve these goals will protect the environment, drive innovation, spur private sector investment, improve public infrastructure, and create new economic opportunity. Pursuant to section 511 of this order, agencies shall implement this order in accordance with my Administration's policies to combat the climate crisis; help American businesses compete in strategic industries; create and sustain well-paying union jobs that allow workers to thrive; maximize the use of American goods, products, materials, and services; and promote a secure, just, and equitable future for all Americans.

Sec. 201. *Agency Goals and Targets.* (a) In implementing the policy set forth in section 101 of this order and to support the achievement of the government-wide goals of section 102 of this order, the head of each agency shall propose targets, including annual progress targets as applicable, to meet the requirements of sections 202 through 206 of this order.

(b) The Chair of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) shall review the targets, and agencies shall incorporate such targets into the performance management systems described under section 503 of this order, as appropriate.

Sec. 202. *Reducing Agency Greenhouse Gas Emissions.* Each agency shall reduce its scope 1, 2, and 3 greenhouse gas emissions, as defined by the Federal Greenhouse Gas Accounting and Reporting Guidance, by setting and meeting targets for fiscal year 2030 measured from a fiscal year 2008 baseline.

Sec. 203. *Transitioning to 100 Percent Carbon Pollution-Free Electricity.* Each agency shall increase its percentage use of carbon pollution-free electricity, so that it constitutes 100 percent of facility electrical energy use on an annual basis, and seek to match use on an hourly basis to achieve 50 percent 24/7 carbon pollution-free electricity, by fiscal year 2030. In addition, agencies shall facilitate new carbon pollution-free electricity generation and energy storage capacity by authorizing use of their real property assets, such as rooftops, parking structures, and adjoining land, for the development of new carbon pollution-free electricity generation and energy storage through leases, grants, permits, or other mechanisms, to the extent permitted by law.

Sec. 204. *Transitioning to a Zero-Emission Fleet.* Each agency's light-duty vehicle acquisitions shall be zero-emission vehicles by the end of fiscal year 2027. Each agency with a fleet comprising at least 20 vehicles shall develop and annually update a zero-emission fleet strategy that shall include optimizing fleet size and composition; deploying zero-emission vehicle refueling infrastructure; and maximizing acquisition and deployment of zero-emission light-, medium-, and heavy-duty vehicles where the General Services Administration (GSA) offers one or more zero-emission vehicle options for that vehicle class.

Sec. 205. *Achieving Net-Zero Emissions Buildings, Campuses, and Installations.* (a) Each agency shall achieve net-zero emissions across its portfolio of buildings, campuses, and installations by 2045 and reduce greenhouse gas emissions by 50 percent from buildings, campuses, and installations by 2032 from 2008 levels, prioritizing improvement of energy efficiency and the elimination of onsite fossil fuel use.

(b) To prioritize reductions in scope 1 greenhouse gas emissions, as defined by the Federal Greenhouse Gas Accounting and Reporting Guidance, agencies should use the Federal building performance standards issued pursuant to section 510 of this order.

(c) To reduce scope 1 and 2 greenhouse gas emissions, as defined by the Federal Greenhouse Gas Accounting and Reporting Guidance, to achieve net-zero emissions buildings, agencies shall:

(i) pursue building electrification strategies in conjunction with carbon pollution-free energy use, deep-energy retrofits, whole-building commissioning, energy and water conservation measures, and space reduction and consolidation;

(ii) design new construction and modernization projects greater than 25,000 gross square feet to be net-zero emissions by 2030;

(iii) implement CEQ's Guiding Principles for Sustainable Federal Buildings in building design, construction, and operation of all new Federal buildings and renovated existing buildings; and

(iv) use performance contracting, in accordance with the provisions of section 1002 of the Energy Act of 2020 (Public Law 116–133, division Z), to improve efficiency and resilience of Federal facilities, deploy clean and innovative technologies, and reduce greenhouse gas emissions from building operations.

Sec. 206. *Increasing Energy and Water Efficiency.* Each agency shall increase facility energy efficiency and water efficiency and shall establish targets for fiscal year 2030 for agency-wide facility energy use intensity and potable water use intensity, with consideration of performance benchmarks for categories of building types (*e.g.,* hospitals, office buildings) and the composition of the agency's building portfolio.

Sec. 207. *Reducing Waste and Pollution.* Each agency shall minimize waste, including the generation of wastes requiring treatment and disposal; advance pollution prevention; support markets for recycled products; and promote a transition to a circular economy, as defined in section 2 of the Save Our Seas 2.0 Act (Public Law 116–224), by annually diverting from landfills at least 50 percent of non-hazardous solid waste, including food and compostable material, and construction and demolition waste and debris by fiscal year 2025; and 75 percent by fiscal year 2030.

Sec. 208. *Sustainable Acquisition and Procurement.* (a) Agencies shall reduce emissions, promote environmental stewardship, support resilient supply chains, drive innovation, and incentivize markets for sustainable products and services by prioritizing products that can be reused, refurbished, or recycled; maximizing environmental benefits and cost savings through use of full lifecycle cost methodologies; purchasing products that contain recycled content, are biobased, or are energy and water efficient, in accordance with relevant statutory requirements; and, to the maximum extent practicable, purchasing sustainable products and services identified or recommended by the Environmental Protection Agency (EPA).

(b) The Chair of CEQ shall consider establishing Federal food procurement policies to reduce associated greenhouse gas emissions and drive sustainability in the Federal food supply chain.

Sec. 209. *Adapting the Federal Government to the Impacts of Climate Change.* Consistent with its mission, each agency shall:

(a) develop or revise polices and processes to promote climate resilient investment that advances adaptation to climate change and protects public health and the environment;

(b) conduct climate adaptation analysis and planning for climate-informed financial and management decisions and program implementation;

(c) reform agency policies and funding programs that are maladaptive to climate change and increase the vulnerability of communities, natural or built systems, economic sectors, and natural resources to climate impacts, or related risks; and

(d) develop and enhance tools that assess climate change impacts and support climate adaptation planning and implementation.

Sec. 301. *Federal Supply Chain Sustainability.* Federal supply chains should support a Government and economy that serves all Americans by creating and sustaining well-paying union jobs, protecting public health, advancing

environmental justice, reducing greenhouse gas emissions, and building resilience to climate change. Consistent with applicable law, agencies shall pursue procurement strategies to reduce contractor emissions and embodied emissions in products acquired or used in Federal projects.

Sec. 302. *Supplier Emissions Tracking.* The Administrator of GSA shall track disclosure of greenhouse gas emissions, emissions reduction targets, climate risk, and other sustainability-related actions by major Federal suppliers, based on information and data collected through supplier disclosure pursuant to the requirements of section 5(b)(i) of Executive Order 14030 of May 20, 2021 (Climate-Related Financial Risk), and shall assist the Chair of CEQ in assessing the results of efforts to reduce Federal supply chain emissions.

Sec. 303. *Buy Clean.* The Buy Clean Task Force established pursuant to section 508 of this order shall provide recommendations to the Chair of CEQ and the Director of OMB, through the Administrator of the Office of Federal Procurement Policy, on policies and procedures to expand consideration of embodied emissions and pollutants of construction materials in Federal procurement and federally funded projects, to include:

(a) identifying and prioritizing pollutants and materials, such as concrete and steel, to be covered under a Buy Clean policy, taking into account the availability of relevant data, including from environmental product declarations, and consistency with existing environmental reporting requirements;

(b) providing recommendations to increase transparency of embodied emissions, including supplier reporting; procedures for auditing environmental product declarations and verifying accuracy of reported emissions data; and recommendations for grants, loans, technical assistance, or alternative mechanisms to support domestic manufacturers in enhancing capabilities to report and reduce embodied emissions in priority materials they produce; and

(c) recommending pilot programs that incentivize Federal procurement of construction materials with lower embodied emissions.

Sec. 401. *Engaging, Educating, and Training the Federal Workforce.* Meeting the challenges of climate change and achieving the goals of this order requires an investment in the Federal Government's employees and a workforce with the knowledge and skills to effectively apply sustainability, climate adaptation, and environmental stewardship across disciplines and functions. Agencies shall foster a culture of sustainability and climate action; build employees' skills and knowledge through engagement, education, and training; and incorporate environmental stewardship values and, where appropriate, sustainability goals and objectives into performance plans of executives, managers, and staff. The Director of the Office of Personnel Management (OPM), within 90 days of the date of this order, shall prepare a report for the Chair of CEQ that outlines opportunities for including or expanding environmental sustainability and climate adaptation training content in existing Federal training programs, including OPM leadership training programs, and strategies for incorporating sustainability into performance plans. In developing this report, the Director of OPM shall coordinate with the Secretary of Energy, the Administrator of the EPA, the Administrator of GSA, and, as appropriate, the heads of other agencies, as well as Federal employee unions.

Sec. 402. *Incorporating Environmental Justice.* Environmental justice can only be achieved by ensuring that all those affected by agency operations enjoy the same degree of protection from environmental and health hazards. Accordingly, it is critical that the Federal Government incorporate environmental justice considerations into sustainability and climate adaptation planning, programs, and operations. Consistent with applicable law, agencies shall consider incorporating recommendations of the Justice40 Initiative, required by section 223 of Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), on how Federal investments might be made toward a goal that 40 percent of the overall benefits

flow to disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, energy, water, wastewater infrastructure, and health care, into operational planning and decision-making regarding Federal facilities, fleets, and operations. Agencies shall address actions taken to advance environmental justice as part of sustainable operations within the annual Sustainability Plans and Climate Adaptation and Resilience Plans required under section 503 of this order.

Sec. 403. *Accelerating Progress Through Public, Private, and Non-profit Sector Engagement.* (a) Through strong partnerships with the public, private, and non-profit sectors and labor unions and worker organizations, we can more effectively catalyze the growth of clean energy industries and jobs. The Federal Chief Sustainability Officer, reestablished in section 501 of this order, and the heads of agencies shall seek to engage with stakeholders and partners in achieving the goals of this order.

(b) In coordination with the Chair of CEQ and the heads of other agencies, as appropriate, the Director of OPM shall facilitate establishment of a Presidential Sustainability Executives Program to place senior leaders from the private and non-profit sectors into term-limited appointments to bring innovative perspectives and expertise to Federal Government and assist agencies in efforts related to climate action and sustainability.

Sec. 501. *Establishment of the Office of the Federal Chief Sustainability Officer.* The Office of the Federal Chief Sustainability Officer is reestablished within CEQ. The EPA shall provide funding and administrative support for the Office.

(a) The Office shall be headed by a Federal Chief Sustainability Officer, who shall be appointed by the President. The Federal Chief Sustainability Officer shall lead the development of policies, programs, and partnerships to achieve the policies set forth in this order, advance sustainability and climate resilient Federal operations, and ensure the Federal Government leads by example in combating the climate crisis.

(b) The heads of all agencies shall cooperate with the Federal Chief Sustainability Officer and provide such information, support, and assistance as the Federal Chief Sustainability Officer may request, as appropriate and consistent with applicable law.

Sec. 502. *Designation and Duties of Agency Chief Sustainability Officers.* Within 30 days of the date of this order or 30 days of an Agency Chief Sustainability Officer leaving that position, heads of agencies shall designate an Agency Chief Sustainability Officer, and assign to the designated official the responsibility for leading agency planning, implementation, and related actions, to include establishment of internal metrics and performance management systems, to achieve the policy in section 101 and the goals set forth in and targets established under sections 201–209 of this order. Agency Chief Sustainability Officers shall provide to the Director of OMB, the Chair of CEQ, and the Federal Chief Sustainability Officer any information and assistance necessary to implement this order, consistent with applicable law.

Sec. 503. *Agency Planning and Performance Management.* (a) The heads of principal agencies shall develop and implement annual Sustainability Plans, based on annual guidance provided by CEQ, describing actions and progress toward the goals and requirements of this order.

(b) The heads of principal agencies shall develop, implement, and update Climate Adaptation and Resilience Plans that build on the agency's plan submitted pursuant to section 211 of Executive Order 14008.

(c) The Chair of CEQ and the Director of OMB shall conduct management reviews with each principal agency, at least annually or more frequently as appropriate, to assess implementation and progress on agency plans developed pursuant to this order, the goals set forth in this order, and targets established under this order.

(d) The heads of agencies other than principal agencies are encouraged to develop, implement, or update plans and participate in management reviews under this section.

Sec. 504. *Duties of the Chair of the Council on Environmental Quality.* In coordination with the Director of OMB, the Chair of CEQ shall:

(a) issue guidance, including the guidance required by section 510(b) of this order, or revise existing guidance, as necessary, for agency implementation of this order,

(b) establish a Chief Sustainability Officer Council that shall advise the Director of OMB and the Chair of CEQ on the performance of agency responsibilities under this order. The Federal Chief Sustainability Officer shall chair the Council. Members of the Council shall include those Agency Chief Sustainability Officers invited by the Chair of CEQ, as well as representatives designated by the heads of other agencies at the invitation of CEQ, including representatives from OMB, the Federal Energy Management Program within the Department of Energy, the Office of Federal High-Performance Green Buildings within GSA, and a Federal expert on environmental justice.

(c) establish, as appropriate and consistent with applicable law, committees, interagency groups, or task forces to provide information, recommendations, and assistance to CEQ and OMB in implementing this order.

Sec. 505. *Duties of the Director of OMB.* The Director of OMB shall coordinate with the Chair of CEQ on implementation of the duties contained in section 504 of this order and, after consultation with the Chair of CEQ and the National Climate Advisor, issue instructions to the heads of agencies concerning periodic performance evaluation of agency implementation of this order and prepare scorecards providing periodic evaluation of principal agency performance in implementing this order.

Sec. 506. *Duties of the National Climate Advisor.* The National Climate Advisor shall monitor and evaluate progress toward the government-wide goals set forth in section 102 of this order in coordination with the National Climate Task Force established pursuant to section 203 of Executive Order 14008.

Sec. 507. *Duties of Heads of Agencies.* (a) To ensure successful implementation of the policy established in section 101 of this order and the goals set forth in section 102 of this order, the head of each agency shall:

(i) develop an agency-wide strategic process that coordinates appropriate agency functions and programs to ensure that those functions and programs consider and address the goals of this order; and

(ii) issue or revise existing agency policies, directives, and guidance, as appropriate.

(b) To support a whole-of-government approach to achieve the policy in section 101 of this order, independent agencies are encouraged to implement the policy, goals, and provisions of this order, consistent with applicable law.

Sec. 508. *Establishment of Federal Leaders Working Groups.* The following Federal Leaders working groups are hereby established, to be housed within CEQ: 100 Percent 24/7 Carbon Pollution-Free Electricity; Zero-Emission Vehicle Fleets; Net-Zero Emissions Buildings; Net-Zero Emissions Procurement, including a Buy Clean Task Force; and Climate Adaptation and Resilience. The Chair of CEQ shall designate the chair or co-chairs for each working group and provide guidance on their membership and responsibilities. The working groups shall provide semiannual reports to the National Climate Task Force on actions, findings, and progress toward government-wide goals.

Sec. 509. *Government-wide Support and Collaboration.* Achieving the government-wide goals of section 102 and the agency goals of sections 201 through 209 of this order requires transforming how we build, buy, and manage across the Federal Government. To support a whole-of-government approach:

(a) Consistent with applicable law, the Secretary of Defense, the Secretary of Energy, and the Administrator of GSA shall use the scale of the Federal Government's electricity use to aggregate and accelerate new carbon pollution-free electricity generation capacity to meet Federal energy needs.

(b) The Secretary of Transportation and the Administrator of GSA shall coordinate with States, Tribes, and local governments to facilitate wider adoption of zero-emission vehicles and, where appropriate, use the Federal Government's acquisition programs for non-Federal Government purchasers.

(c) In coordination with the Chair of CEQ and the Director of OMB, the Secretary of Energy shall provide tools and technical support to agencies to develop targets for greenhouse gas emissions, zero-emission vehicle fleets, energy, and water required under section 201 of this order; and shall collect, analyze, and report agency data for the purposes of monitoring and evaluating performance toward the goals of this order.

Sec. 510. *Additional Guidance and Instructions for Agencies.* (a) The Director of OMB, in coordination with the Chair of CEQ and the National Climate Advisor, shall issue a memorandum for agencies that provides direction on immediate actions and further requirements to meet the policies and goals of this order.

(b) To assist agencies in complying with this order, the Chair of CEQ, in consultation with the Director of OMB, shall:

(i) within 120 days of the date of this order, issue and, as needed, update implementing guidance for agencies that provide directions, strategies, and recommended actions to meet the policies and goals of this order;

(ii) issue building performance standards to support achievement of net-zero emissions in the Federal building portfolio under section 205 of this order; and

(iii) consider issuing guidance for agencies to promote sustainable locations for Federal facilities and strengthen the vitality and livability of the communities in which Federal facilities are located.

Sec. 511. *Coordination of Administration Priorities.* The heads of agencies shall implement this order consistent with my Administration's policies to spur growth of domestic industry and well-paying union jobs, address the climate crisis, and deliver equity and environmental justice. These policies include those contained in Executive Order 13990 of January 20, 2021 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis), Executive Order 14008, and Executive Order 14030, which have placed our public health, the environment, and the climate crisis at the forefront of national policy and planning, along with environmental justice, expanding the economy, and the creation of the well-paying union jobs critical to delivering on those goals; Executive Order 14005 of January 25, 2021 (Ensuring the Future Is Made in All of America by All of America's Workers), which establishes that Federal agencies shall maximize the use of goods, products, and materials that are made in America; Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which directs action with the goal of making Government contracting and procurement opportunities available on an equal basis; and Executive Order 14017 of February 24, 2021 (America's Supply Chains), which establishes the policy to strengthen the resilience of America's supply chains to fight climate change, create well-paying jobs, and secure our economic prosperity and national security.

Sec. 601. *Limitations.* (a) This order applies to an agency's activities, personnel, resources, and facilities located within the United States. The head of an agency may apply this order, in whole or in part, to the activities, personnel, resources, and facilities of the agency located outside the United States if the head of the agency determines that such application is in the interest of the United States.

(b) To the extent the head of an agency does not apply this order to activities, personnel, resources, and facilities outside of the United States, the head of the agency shall manage, to the extent practicable, such activities, personnel, resources, and facilities in a manner consistent with the policy set forth in section 101 of this order.

Sec. 602. *Exemption Authority.* (a) The head of an agency may exempt particular agency activities and related personnel, resources, and facilities from the provisions of this order when it is in the interest of national security, to protect intelligence sources and methods from unauthorized disclosure, or where necessary to protect undercover law enforcement operations from unauthorized disclosure. If the head of an agency issues an exemption under this section, the agency shall notify the Chair of CEQ in writing within 30 days of issuance of the exemption under this section. To the maximum extent practicable and without compromising national security, each agency shall strive to comply with the purposes, goals, and implementation steps in this order.

(b) The head of an agency may exempt from the provisions of this order any vehicle, vessel, aircraft, or non-road equipment that is used in combat support, combat service support, military tactical or relief operations, or training for such operations or spaceflight vehicles, including associated ground-support equipment.

(c) The head of an agency may submit to the President, through the Chair of CEQ, a request for an exemption of an agency activity and related personnel, resources, and facilities from this order for any reason not otherwise addressed by subsections (a) and (b) of this section.

Sec. 603. *Definitions.* As used in this order:

(a) ''24/7 carbon pollution-free electricity'' means carbon pollution-free electricity procured to match actual electricity consumption on an hourly basis and produced within the same regional grid where the energy is consumed;

(b) ''Agency'' means an executive agency as defined in section 105 of title 5, United States Code, excluding the Government Accountability Office and independent regulatory agencies, as defined in 44 U.S.C. 3502(5);

(c) ''Buy clean'' means a policy to promote purchase of construction materials with lower embodied emissions, taking into account the life-cycle emissions associated with the production of those materials;

(d) ''Carbon pollution-free electricity'' means electrical energy produced from resources that generate no carbon emissions, including marine energy, solar, wind, hydrokinetic (including tidal, wave, current, and thermal), geothermal, hydroelectric, nuclear, renewably sourced hydrogen, and electrical energy generation from fossil resources to the extent there is active capture and storage of carbon dioxide emissions that meets EPA requirements;

(e) ''Embodied emissions'' means the quantity of emissions, accounting for all stages of production including upstream processing and extraction of fuels and feedstocks, emitted to the atmosphere due to the production of a product per unit of such product;

(f) ''Federal Leaders working group'' means a working group, composed of Deputy Secretaries or equivalents, that provides recommendations to the Federal Chief Sustainability Officer and National Climate Task Force on implementation and reports on actions and progress toward the goals of this order;

(g) ''National Climate Task Force'' means the National Climate Task Force established pursuant to section 203 of Executive Order 14008;

(h) ''Principal agencies'' means the Departments of State, the Treasury, Defense (including the United States Army Corps of Engineers), Justice, the Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, Veterans Affairs, and Homeland Security; the Environmental Protection Agency;

the Small Business Administration; the Social Security Administration; the National Aeronautics and Space Administration; the Office of Personnel Management; the General Services Administration; and the National Archives and Records Administration.

Sec. 604. *Revocation.* Executive Order 13834 of May 17, 2018 (Efficient Federal Operations), is revoked.

Sec. 605. *Determination.* Pursuant to section 742(b) of Public Law 111–117, I have determined that this order will achieve equal or better environmental or energy efficiency results than Executive Order 13423 of January 24, 2007 (Strengthening Federal Environmental, Energy, and Transportation Management).

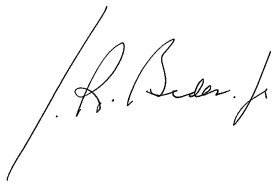
Sec. 606. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



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