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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–SC–21–0069; SC21–927–1 FR]

Pears Grown in Oregon and Washington; Increased Assessment Rate for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Fresh Pear Committee (Committee) to increase the assessment rate established for the 2021–22 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503)326–2724, or Email: *DaleJ.Novotny@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers and handlers of pears operating within the production area, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this rule is unlikely to 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.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Oregon and Washington fresh pear handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable fresh pears for the 2021–22 fiscal period, and continue unless amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Members are familiar with the Committee's needs and with the costs of goods and services in their local area, and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This final rule increases the assessment rate from $0.463 per 44-pound standard box or equivalent of fresh ''summer/fall'' and ''winter'' pears, the rate that was established for the 2018–19 and subsequent fiscal periods, to $0.468 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears for the 2021–22 and subsequent fiscal periods.

For the 2018–19 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of $0.463 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears. That assessment rate continued in effect from fiscal period to fiscal period unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 3, 2021, and unanimously recommended expenditures of $8,472,263 and an assessment rate of $0.468 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears handled for the 2021–22 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $8,901,114. The

assessment rate of $0.468 is $0.005 higher than the rate previously in effect. The Committee recommended increasing the assessment rate due to a smaller estimated 2021 crop and to provide adequate income, along with reserve funds and interest income, to cover all of the Committee's budgeted expenses for the 2021–22 fiscal period.

Major expenditures recommended by the Committee for the 2021–22 fiscal period include $391,047 for contracted administration, $159,540 for industry development, $964,476 for production research and market development, $27,200 for miscellaneous expenses, and $6,930,000 for promotion and paid advertising for ''summer/fall'' and ''winter'' varieties of fresh pears. Budgeted expenses for these items for the 2020–21 fiscal period were $388,520, $172,000, $997,394, $28,200, and $7,315,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, and an estimated 2021 crop of 18,000,000 44-pound standard boxes or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears. Income derived from handler assessments, calculated at $8,424,000 (18,000,000 standard boxes or equivalent multiplied by $0.468 assessment rate), along with reserve funds and interest income ($48,263), will be adequate to cover budgeted expenses of $8,472,263.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2021–22 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order to ensure that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 708 growers of fresh pears in the production area and 27 handlers subject to the regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service, the 2020 average grower price received for fresh pears produced in Oregon and Washington was $11.39 per standard 44-pound box or equivalent. Committee data indicates total production was 16,290,225 44-pound standard boxes or equivalent in the 2019–20 fiscal period. The total 2019–20 fiscal period value of assessable fresh ''summer/fall'' and ''winter'' pears grown in Oregon and Washington was $185,545,663 (16,290,225 44-pound standard boxes or equivalent times $11.39 per box equals $185,545,663). Dividing the crop value by the estimated number of growers (708) yields an estimated average receipt per grower of $262,070.

According to AMS Market News data, the reported average terminal price for 2020 Oregon and Washington fresh pears was $34.87 per 44-pound standard box or equivalent (data reported in 4/5 bushel). Multiplying the Committee-reported 2019–20 Oregon and Washington total production of 16,290,225 44-pound standard boxes or equivalent by the estimated average price per box or equivalent of $34.87 equals $568,040,146. Dividing this figure by 27 regulated handlers yields estimated average annual handler receipts of $21,038,524. Therefore, using the above data, the majority of growers and handlers of Oregon and Washington fresh pears may be classified as small entities.

As noted above, the average price received by growers in the 2019–20 crop year was $11.39 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears. Given the Committee-estimated production of 18,000,000 44-pound standard boxes or equivalent of assessable fresh pears for the 2021–22 crop year, the total grower revenue is estimated to be $205,020,000. The total assessment revenue is expected to be $8,424,000 (18,000,000 boxes multiplied by $0.468 per box). Thus, the total assessment revenue compared to total grower revenue is 4.1 percent ($8,424,000 divided by $205,020,000).

This rule increases the assessment rate collected from handlers for the 2021–22 and subsequent fiscal periods from $0.463 to $0.468 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears. The Committee unanimously recommended 2021–22 fiscal period expenditures of $8,472,263 and an assessment rate of $0.468 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears handled. The assessment rate of $0.468 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears is $0.005 higher than the rate previously in effect. The volume of assessable fresh ''summer/fall'' pears and ''winter'' pears in the production area for the 2021–22 fiscal period is estimated to be 18,000,000 44-pound standard boxes or equivalent. Thus, the $0.468 per 44-pound standard box or equivalent of assessable fresh ''summer/fall'' pears and ''winter'' pears assessment rate should provide $8,424,000 in assessment income (18,000,000 multiplied by $0.468). Income derived from handler assessments, along with reserve funds and interest income, will be adequate to cover budgeted expenses for the 2021–22 fiscal period.

Major expenditures recommended by the Committee for the 2021–22 fiscal period include $391,047 for contracted administration, $159,540 for industry development, $964,476 for production research and market development, $27,200 for miscellaneous expenses, and $6,930,000 for promotion and paid advertising for ''summer/fall'' and ''winter'' varieties of fresh pears. Budgeted expenses for these items for the 2020–21 fiscal period were $388,520, $172,000, $997,394, $28,200, and $7,315,000, respectively.

The Committee recommended increasing the assessment rate due to a smaller crop and to provide adequate

income, along with reserve funds and interest income, to cover the Committee's budgeted expenses for the 2021–22 fiscal period. Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the previous assessment rate and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate, along with reserve funds and interest income, will adequately fund budgeted expenses.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the Oregon and Washington pear industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 2021, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Oregon and Washington pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the **Federal Register** on November 19, 2021 (86 FR 64830). Copies of the proposed rule were also mailed or sent via email to all fresh pear handlers. A copy of the proposed rule was made available through internet by AMS and Office of the Federal Register. A 30-day comment period ending December 20, 2021, was provided for interested persons to respond to the proposal. One comment was received in support of the action. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 927 as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 927.236, revise the introductory text and paragraphs (a) and (b) to read as follows:

§ 927.236 Fresh pear assessment rate.

On and after July 1, 2021, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

(a) $0.468 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as ''summer/fall'';

(b) $0.468 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as ''winter''; and

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–10855 Filed 5–19–22; 8:45 am]

BILLING CODE

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Part 217

[CBP Dec. 22–08]

RIN 1651–AB40

Electronic System for Travel Authorization (ESTA) Fee Increase

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

ACTION: Final rule.

SUMMARY: This document amends Department of Homeland Security (DHS) regulations pertaining to the Electronic System for Travel Authorization (ESTA). ESTA is the online system through which nonimmigrant visitors intending to enter the United States under the Visa Waiver Program (VWP) at air or sea ports of entry must obtain an electronic travel authorization in advance of travel to the United States. Pursuant to updates in Congressional mandates, the ESTA travel promotion fee (also referred to as the ''authorization charge'') was increased from $10 to $17 and extended to 2027. As a result of the increase in the travel promotion fee, the fee for an approved ESTA (which includes the travel promotion fee and a $4 operational fee) is $21. CBP will begin collecting the new fee following the effective date of this rule.

DATES: The final rule is effective May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sikina S. Hasham, Director, Electronic System for Travel Authorization (ESTA), Office of Field Operations, 202–325–8000, *sikina.hasham@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security, in consultation with the Secretary of State, may

designate countries for participation in the Visa Waiver Program (VWP) if certain requirements are met. Eligible citizens and nationals of VWP countries [1] may apply for admission to the United States at a U.S. port of entry as nonimmigrant visitors for a period of ninety (90) days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. Other nonimmigrant visitors must obtain a visa from a U.S. embassy or consulate and generally must undergo an interview by consular officials overseas in advance of travel to the United States.

B. The Electronic System for Travel Authorization (ESTA)

On August 3, 2007, the President signed into law the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Public Law 110–53. Section 711 of the 9/11 Act required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system to collect biographical and other information as the Secretary of Homeland Security determines necessary to evaluate, in advance of travel, the eligibility of the applicant to travel to the United States under the VWP, and whether such travel poses a law enforcement or security risk.[2]

On June 9, 2008, DHS published an interim final rule in the **Federal Register** (73 FR 32440) announcing the creation of the ESTA program for nonimmigrant visitors traveling to the United States by air or sea under the VWP, and regulations have since been codified in the Code of Federal Regulations (CFR), at 8 CFR 217.5. ESTA provided for an automated collection of the information required on the Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure paper form (Form I–94W), in advance of travel. ESTA is intended to fulfill the statutory requirements described in section 711 of the 9/11 Act.

On November 13, 2008, DHS published a notice in the **Federal Register** (73 FR 67354) announcing that the use of ESTA would be mandatory for all VWP travelers traveling to the United States seeking admission at air and sea ports of entry beginning January 12, 2009. Since that date, VWP travelers have been required to receive travel authorization through ESTA prior to boarding a conveyance destined for an air or sea port of entry in the United States. Travelers unable to receive authorization through ESTA to travel under the VWP may still apply for a visa to travel to the United States.[3]

C. The Fee for the Use of ESTA and the Travel Promotion Act Fee

There have been several laws enacted that include provisions regarding ESTA fees, which have been incorporated into the DHS regulations. The relevant statutes and prior DHS rules are described below. However, some recent statutory changes have not yet been incorporated into the DHS regulations. This rule incorporates those changes.

On March 4, 2010, the United States Capitol Police Administrative Technical Corrections Act of 2009, Public Law 111–145, was enacted. Section 9 of this law, the Travel Promotion Act of 2009 (TPA), mandated that the Secretary of Homeland Security establish a fee for the use of ESTA and begin assessing and collecting the fee no later than six months after enactment.[4] The TPA provided that the initial fee consists of the sum of ''$10 per travel authorization'' (travel promotion fee) to fund the newly authorized Corporation for Travel Promotion plus ''an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary'' (known as the ''operational fee'' or the ''processing charge'').[5] The TPA authorized collection of the $10 travel promotion fee through September 30, 2014. On July 2, 2010, the Homebuyer Assistance and Improvement Act of 2010, Public Law 111–198 at § 5, amended the TPA by extending the sunset provision of the travel promotion fee and authorizing the Secretary to collect this fee through September 30, 2015.

On August 9, 2010, DHS published an interim final rule in the **Federal Register** (75 FR 47701) announcing that, beginning September 8, 2010, a $4 operational fee would be charged to each ESTA applicant to ensure recovery of the full costs of providing and administering the system in addition to the $10 travel promotion fee that would be charged to each applicant receiving a travel authorization through September 30, 2015. Accordingly, the regulations at 8 CFR 217.5(h) were amended to provide that until September 30, 2015, the fee for an approved ESTA was $14, the sum of the $10 travel promotion fee and the $4 operational fee, and that beginning October 1, 2015, and after the sunset of the travel promotion fee, the fee for using ESTA would be just the operational fee of $4.

On December 16, 2014, section 605 of the Travel Promotion, Enhancement, and Modernization Act of 2014, Public Law 113–235, further extended the sunset provision of the travel promotion fee through September 30, 2020. It did not make any changes to the operational fee and CBP continues to collect that fee. In contrast to the travel promotion fee, which is set by Congress, the operational fee does not include a sunset provision or a statutory amount. The Secretary of Homeland Security has discretion to determine the operational fee amount pursuant to the TPA. CBP will reassess the $4 operational fee on a regular basis to ensure that it is set at a level to fully recover ESTA operating costs. Any changes to this operational fee with be done through a subsequent rulemaking.

On June 8, 2015, DHS published a final rule in the **Federal Register** (80 FR 32267) finalizing the June 9, 2008 interim final rule regarding the ESTA program and the August 9, 2010 interim final rule regarding the ESTA fee for nonimmigrant visitors traveling to the United States by air or sea under the VWP. Due to oversight, 8 CFR 217.5(h)(1) was not appropriately amended to provide the sunset date of September 30, 2020. Nonetheless, in accordance with section 217(h)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. 1187(h)(3)(B), CBP continued to collect the $10 travel promotion fee.

On February 9, 2018, section 30203(a) of the Bipartisan Budget Act of 2018, Public Law 115–123, extended the sunset provision of the travel promotion fee through September 30, 2027.

On December 20, 2019, section 806 of the Further Consolidated Appropriations Act of 2020, Public Law 116–94, increased the travel promotion fee from $10 to $17. As a result of this provision, the ESTA fee, which includes both the travel promotion fee and the $4 operational fee, was increased to $21. CBP will begin collecting the new fee following the effective date of this rule. Pursuant to the Bipartisan Budget Act of 2018, this is the ESTA fee through September 30, 2027. Beginning on October 1, 2027, the ESTA fee will be $4. Pursuant to the TPA, the Secretary of Homeland Security has discretion to determine the operational fee amount. CBP will reassess the $4 operational fee on a regular basis to ensure that it is set

[1] The current list of designated VWP countries is set forth in 8 CFR 217.2(a).

[2] 8 U.S.C. 1187(h)(3)(A).

[3] 8 CFR 217.5(f)(2). More information can be found in the ''Frequently Asked Questions'' section of the Official ESTA Application website, *https://esta.cbp.dhs.gov/* (last accessed Apr. 27, 2022).

[4] 8 U.S.C. 1187(h)(3)(B).

[5] Public Law 111–145 at sec. 9.

at a level to fully recover ESTA operating costs. Any changes to this operational fee will be done through a separate rulemaking.

II. Discussion of Regulatory Changes

This rule updates the ESTA fee regulations to incorporate the most recent statutory provisions. To incorporate the new sunset provision for the travel promotion fee contained in section 30203(a) of the Bipartisan Budget Act of 2018, Public Law 115–123, this document amends 8 CFR 217.5(h)(1) by replacing ''September 30, 2015'' with ''September 30, 2027''. To reflect the fact that, after September 30, 2027, the only ESTA fee will be the operational fee, this document amends 8 CFR 217.5(h)(2) by replacing ''October 1, 2020'' with ''October 1, 2027''.

To implement the new travel promotion fee amount as set forth in section 806 of the Further Consolidated Appropriations Act of 2020, Public Law 116–94, this document amends 8 CFR 217.5(h)(1) by replacing the amount ''$14.00'' with ''$21'' and replacing the amount ''$10'' with ''$17''. Additionally, this document removes extraneous decimal points and zeros after the references to ''$4'' throughout section 217.5(h).

III. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(3)(B), (d)(3). Prior notice and comment is ''unnecessary'' when, ''so far as the public is concerned,'' the regulatory change is minor or merely technical.[6] Prior notice and comment has also been deemed ''unnecessary'' when there is no need to allow ''affected parties an opportunity to participate in agency decision making early in the process, when the agency is more likely to consider alternative ideas,'' [7] and where Congress requires an agency to perform a non-discretionary act, and where no extent of notice or commentary could have altered the obligation of the agency.[8] Additionally, courts have held that when there is a Congressionally approved extension to a program, further delay in implementing that program contravenes the program's purpose.[9]

In this case, CBP finds that good cause exists for dispensing with prior notice and public procedure as unnecessary because the amendments to the regulations are simply conforming amendments to reflect statutory changes and a non-substantive administrative change regarding how the $4 fee is referenced in the regulations. Specifically, the amendments in this document are necessary to reflect the changes to the sunset provision regarding the travel promotion fee in the Bipartisan Budget Act of 2018 and to reflect the change to the travel promotion fee amount in the Further Consolidated Appropriations Act of 2020. CBP has no discretion in raising the fee.

For the same reasons, CBP finds that good cause exists for dispensing with the requirement for a delayed effective date as provided in 5 U.S.C. 553(d)(3).

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' that is economically significant under section 3(f)(1) of Executive Order 12866 as it results in transfers of over $100 million in a given year. Accordingly, OMB has reviewed this regulation.

The ESTA program pertains to nonimmigrant visitors traveling to the United States by air or sea under the Visa Waiver Program. ESTA provides for an automated collection of information from these travelers in advance of travel. Under the current regulations, the ESTA fee is $14 for an approved ESTA and consists of both a $10 travel promotion fee and a $4 operational fee. The Bipartisan Budget Act of 2018 extended the sunset provision for the travel promotion fee to 2027, and the Further Consolidated Appropriations Act of 2020 increased the travel promotion fee from $10 to $17. As a result of these statutory changes, the total fee for an approved ESTA has increased from $14 to $21. This final rule makes conforming amendments to DHS regulations to reflect the increase and extension of the travel promotion fee. CBP will begin collecting the new fee following the effective date of this rule. In accordance with the statutory changes, CBP could collect the new $17 fee even if this regulation were not promulgated. This rule is being promulgated for consistency between the statute and the regulations and to minimize the confusion any inconsistency would cause. Although the effects of the fee increase are not a result of this rule, but rather a result of the statutory changes, we analyze the effects here to inform the public of the effect of this fee increase.

The travel promotion fee is collected by CBP, but the fee revenue is not kept by CBP or DHS. Instead, up to $100 million of fee revenue goes to the Travel Promotion Fund, which is made available to the Corporation for Travel Promotion (subject to a matching requirement) to carry out its functions. Any remaining fee revenue is retained by the general fund of the Treasury. As annual collections are already over $100 million before the increase in the fee, all of the additional revenue generated by this fee increase will be retained by the general fund of the Treasury. As the $7 fee increase is relatively small compared to costs involved to travel to the United States, CBP anticipates that the fee increase will not adversely affect travel to the United States.

Table 1 shows the number of approved ESTA applications from fiscal year (FY) 2016 to 2021. Prior to the COVID pandemic, the average annual number of approved ESTA applications was approximately 15 million. After FY 2019, travel decreased substantially, and we expect that travel will remain lower through FY 2022, though forecasting travel coming out of a pandemic is difficult. For the purposes of this analysis, we project travel returning to normal in FY 2022. To the extent that it takes longer than that, the effects of the fee change will be lower.

[6] *Northern Arapahoe Tribe* v. *Hodel,* 808 F.2d 741, 751 (10th Cir. 1987).

[7] *Id.*

[8] *McChesney* v. *Peterson,* 275 F. Supp. 3d. 1123, 1136 (Neb. 2016).

[9] *Id.* (citing *Combat Veterans for Cong. Political Action Comm.* v. *Fed. Election Comm'n,* 795 F.3d 151, 154 (D.C. Cir. 2015).

TABLE 1—TOTAL ANNUAL APPROVED ESTA APPLICATIONS

Fiscal year	Total approved ESTA applications
FY 2016	14,601,471
FY 2017	14,894,749
FY 2018	15,115,878
FY 2019	15,184,970
FY 2020	6,312,562
FY 2021	1,259,440
Total	67,369,070

In the absence of any publicly available forecast for post-pandemic travel, CBP uses an ordinary least squares (OLS) linear trend based on pre-pandemic data to forecast future approved ESTA applications once ESTA travel returns to pre-pandemic levels. Table 2 shows the forecasted future approved applications until FY 2027.[10]

TABLE 2—FUTURE APPROVED ESTA APPLICATIONS

[Forecast]

Fiscal year	Future approved ESTA applications (forecast)
FY 2022	15,442,174
FY 2023	15,639,336
FY 2024	15,836,499
FY 2025	16,033,661
FY 2026	16,230,824
FY 2027	16,427,987

Using the forecast and applying the proposed $7 increase would result in the following forecast of additional revenue from the travel promotion fee. As shown in Table 3, the corresponding revenue forecasted is $108 million in FY 2022 to approximately $115 million in FY 2027. As this fee is not tied to the costs of the services provided by ESTA, this effect is not a cost but rather a transfer[11] of funds from one party to another within society. In this case, it is a transfer from ESTA travelers to the U.S. Government.

TABLE 3—ANTICIPATED ADDITIONAL FEE REVENUE

[Forecast]

Fiscal year	Future approved ESTA applications	Fee increase amount	Anticipated additional fee revenue
FY 2022	15,442,174	$7	$108,095,215
FY 2023	15,639,336	7	109,475,353
FY 2024	15,836,499	7	110,855,491
FY 2025	16,033,661	7	112,235,629
FY 2026	16,230,824	7	113,615,767
FY 2027	16,427,987	7	114,995,906

Table 4 presents the estimated discounted future revenue that would result from the fee increase of $7. The estimated travel promotion fee revenue is discounted at both 3-percent and 7-percent. The total revenue generated from the fee increase over the six-year period of analysis from fiscal year 2022 to 2027 is expected to be $603,619,432 after applying a 3-percent discount rate, and $539,391,804 using a 7-percent discount rate. The annualized amount using a 3-percent discount rate is $111,426,638, and $111,273,973 using a 7-percent discount rate.

TABLE 4—DISCOUNTED ADDITIONAL TRAVEL PROMOTION FEE REVENUE

[Forecast]

Fiscal year (forecast)	Additional travel promotion fee revenue (discounted at 3%)	Additional travel promotion fee revenue (discounted at 7%)
2022	$104,946,811	$101,023,565
2023	103,191,020	95,620,013
2024	101,448,478	90,491,102
2025	99,719,903	85,624,024
2026	98,005,959	81,006,472
2027	96,307,261	76,626,628
Total	603,619,432	530,391,804
Annualized	111,426,638	111,273,973

[10] The linear trend (ESTA applications = 14,456,360 + 197,163*(time), time = 1, 2, 3, 4 where year 1 is FY 2016, 2 is FY 2017, 3 is FY 2018, 4 is FY2019, 5 is FY 2022, 6 is FY 2023, etc.) was determined based on FY 2016 to 2019 data. Data from FY 2020 and 2021 were not used to generate the forecasted amounts since travel data from those years were severely affected by the COVID–19 pandemic, including the strict restrictions governments imposed on nonessential travel. Accordingly, CBP estimates the linear trend for the growth in applications for the forecasted period (FY 2022–2027) beginning from FY 2019 levels. Note that projected FY 2022 applications are what we expect FY 2020 would have been without the COVID–19 pandemic. ESTA is only used for leisure and business travel.

[11] See OMB Circular A–4. (This analysis is performed from a global perspective, and includes those individuals who travel to the United States. Please note that individuals paying the fee are not U.S. citizens or permanent residents.)

Aside from the increase in fee revenue collection, the final rule is not expected to increase costs or benefits to the Government or any other entity.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*

C. 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 are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Executive Order 13132

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

E. Executive Order 12988 Civil Justice Reform

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

F. Paperwork Reduction Act

Under the Paperwork Reduction Act, 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. The collection of information in this final rule is approved in accordance with the requirements of the Paperwork Reduction Act under control number 1651–0111. There are no changes being made to the information collection as a result of this final rule.

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to the Regulations

For the reasons set forth above, 8 CFR part 217 is amended as set forth below.

PART 217—VISA WAIVER PROGRAM

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

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 2. In § 217.5, revise paragraph (h) to read as follows:

§ 217.5 Electronic System for Travel Authorization.

* * * * *

(h) *Fee.* (1) Through September 30, 2027, the fee for an approved ESTA is $21, which is the sum of two amounts: A $17 travel promotion fee to fund the Corporation for Travel Promotion and a $4 operational fee to at least ensure recovery of the full costs of providing and administering the system. In the event the ESTA application is denied, the fee is $4 to cover the operational costs.

(2) Beginning October 1, 2027, the fee for using ESTA is an operational fee of $4 to at least ensure recovery of the full costs of providing and administering the system.

Alejandro N. Mayorkas

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–10869 Filed 5–19–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 355

[Docket No. FSIS–2020–0013]

RIN 0583–AD83

Removal of 9 CFR 355—Certified Products for Dogs, Cats, and Other Carnivora; Inspection, Certification, and Identification as to Class, Quality, Quantity, and Condition

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations to end the program under which FSIS inspectors provide fee-for-service certification that certain foods for dogs, cats and other carnivora (pet food) are produced under sanitary conditions and meet compositional and labeling requirements. The certified pet food regulations are outdated, and no firms are paying for FSIS certification services for pet food. Further, the fact that both the United States Department of Agriculture (USDA) and the U.S. Food and Drug Administration (FDA) maintain regulations concerning pet food has led to industry and consumer confusion. Both agencies agreed that stakeholders will benefit from the simplification of Federal jurisdiction over pet food.

DATES: Effective July 19, 2022.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2021, FSIS proposed to remove the certified pet food provisions (9 CFR part 355) from the regulations because they are outdated and no companies use the voluntary service. In addition, because FDA also maintains regulations concerning pet food, the FSIS regulations have led to industry and consumer confusion (86 FR 40369).

As FSIS explained in the proposed rule, under the Federal Food, Drug, and Cosmetic Act (FFDCA), FDA is responsible for ensuring that pet food is safe for animals, produced under sanitary conditions, contains no harmful substances, and is truthfully labeled. FDA has had authority to regulate pet food since the FFDCA was passed in 1938. FDA does not charge pet food producers a fee for any FDA activities related to pet food. Individual States also regulate and inspect pet food, which also minimizes the need for FSIS's program.

Since 1958, under the Agricultural Marketing Act (7 U.S.C. 1622(h)), USDA also provided for the voluntary certification of pet food as having been produced under sanitary conditions and meeting compositional and labeling requirements. Under the regulations at 9 CFR part 355, participating facilities pay for this certification. The regulations governing FSIS certification services for pet food have not been substantively amended since the 1960s; therefore, the requirements are outdated (*e.g.,* requirements regarding pet food ingredients and the submission of firm blueprints). Additionally, the regulations allow for certification of

only certain categories of pet food (*i.e.,* canned or semi-moist maintenance food, canned or fresh frozen certified supplemental animal foods, and canned certified variety meats). Many types of pet foods that were developed in the last few decades are thus not eligible for FSIS certification (*e.g.,* pet jerky, pet treats, pet rawhides, raw pet food, freeze-dried pet food, and prescription pet food). Likely for these reasons, no firms are participating in the FSIS certified pet food program.

After considering the comments received on the proposed rule, discussed below, FSIS is finalizing the proposed rule without changes.

Summary of Comments and Responses

FSIS received 149 comments on the proposed rule from individuals and pet food industry groups. Below is a summary of the comments received and FSIS' responses.

Comments: FSIS received comments from several individuals and two industry groups that supported the removal of 9 CFR part 355. These commenters agreed that FSIS' voluntary pet food certification program is outdated and that having pet food under the jurisdiction of a single Federal agency will eliminate confusion by pet food consumers and manufacturers.

FSIS also received comments from pet food buyers and an industry group stating that FSIS should update its certified pet food program instead of removing it. The commenters suggested rewriting the regulation to remove obsolete references and updating the language to reflect more modern types of pet food.

Response: FSIS is not updating its certified pet food program because it would not be the best use of Agency resources. As noted above, no companies are currently participating in the FSIS certified pet food program, and FDA is responsible for ensuring that pet food is safe for animals, produced under sanitary conditions, contains no harmful substances, and is truthfully labeled.

Comments: Several individuals argued that FSIS should not remove its certified pet food program because they disagree with FDA's pet food inspection regulations. These individuals stated that FSIS' requirements are stricter than FDA's requirements.

Response: This final rule will not impact the safety of pet food products. As explained above and in the proposed rule (86 FR 40369), no firms are participating in FSIS' certified pet food program. Comments on FDA's regulation of pet food are outside the scope of this rulemaking.

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 final rule has been designated as a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Expected Costs and Benefits of the Final Rule

This final rule clarifies that FDA has sole jurisdiction over pet food inspection, which benefits industry and consumers by reducing confusion. No firms are participating in the FSIS certified pet food program. Therefore, the final rule will not increase industry or Agency costs or have a negative impact on public health.

Regulatory Flexibility Act Assessment

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–602), this final rule is not expected to increase costs to industry.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Order 13175

This proposed rule will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Environmental Impact

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) (NEPA), Federal agencies must prepare an environmental impact statement (EIS) for any ''major Federal actions significantly affecting the quality of the human environment'' (42 U.S.C. 4332(2)(C)). NEPA established the Council on Environmental Quality (CEQ), which promulgated regulations (40 CFR parts 1501–1508) to govern NEPA compliance. When a major Federal action is unlikely to have significant environmental effects or the significance of the effects is unknown, the Agency may prepare an environmental assessment (EA) (40 CFR 1501.3(a)(2), 1501.5) (2020). Federal agencies also may identify classes of actions that normally do not have significant environmental effects and therefore do require the preparation of either an EA or EIS (40 CFR 1501.4(a)). Such classes of actions are ''categorically excluded'' from NEPA review unless extraordinary circumstances exist in which a normally excluded action may have a significant environmental effect (40 CFR 1501.3(a)(1), 1501.4)).

USDA's NEPA implementing regulations establish a categorical exclusion for specified categories of actions and the actions of certain USDA agencies and agency units (7 CFR 1b.3, 1b.4). USDA has determined that the listed agencies, including FSIS (7 CFR 1b.4(b)(6)), ''conduct programs and activities that have been found to have no individual or cumulative effect on the human environment'' (7 CFR 1b.4(a)). Accordingly, all FSIS actions are categorically excluded from preparation of an EA or EIS unless the Agency head determines that a particular action may have a significant environmental effect (Id.). The action thus is categorically excluded unless FSIS anticipates that extraordinary circumstances from ending the certification program may have a significant environmental effect (7 CFR 1501.4(b)). This final rule, which removes 9 CFR 355 from the Code of Federal Regulations, will not create any extraordinary circumstances that will result in this normally excluded action having a significant effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4 of the USDA regulations.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will

be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purpose of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizens access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS website located at: *https://www.fsis.usda.gov/policy/federal-register-rulemaking.*

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS website. Through the website, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Congressional Review Act

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

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the 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/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.

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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 of 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: (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: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

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List of Subjects in 9 CFR Part 355

Animal foods, Certified pet food, Labeling, Meat inspection, Packaging and containers, Reporting and recordkeeping.

PART 355—[REMOVED AND RESERVED]

■ For the reasons set out in the preamble, and under the authority of 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), and 2.55, FSIS removes 9 CFR part 355.

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2022–10885 Filed 5–19–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–TP–0003]

RIN 1904–AE30

Energy Conservation Program: Test Procedures for Direct Heating Equipment

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is amending the test procedure for direct heating equipment to incorporate by reference the most recent versions of the industry consensus test standards previously referenced in the Federal test procedure, while maintaining the existing oil pressure measurement error value. DOE is also updating definitions regarding unvented heaters, accounting for multiple operational modes, specifying the input rate for conducting the cyclic condensate collection test, specifying the use of manufacturer values for gas supply pressure in certain circumstances, specifying the allowable range of regulator outlet pressure and specific gravity, providing an option to use fewer thermocouples in the thermocouple grid for models with small-diameter flues, clarifying instructions for calculations regarding condensate mass measurements, and specifying the methods to appropriately shield thermocouples from radiation.

DATES: The effective date of this rule is June 21, 2022. The final rule changes will be mandatory for product testing starting November 16, 2022. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on June 21, 2022. The incorporation by reference of other publications listed in this rulemaking was approved by the Director of the Federal Register on January 16, 2013.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, 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.

A link to the docket web page can be found at *www.regulations.gov/*

docket?D=EERE-2019-BT-TP-0003. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, 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. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: DOE maintains a previously approved incorporation by reference (IEC 62301 (Second Edition)) and incorporates by reference the following industry standards into the Code of Federal Regulations (''CFR'') at 10 CFR part 430:

American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 103–2017, (''ANSI/ASHRAE 103–2017''), ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' approved July 3, 2017.

Copies of ANSI/ASHRAE 103–2017 can be obtained from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 180 Technology Parkway NW, Peachtree Corners, GA 30092, (800) 527–4723 or (404) 636–8400, or online at: *www.ashrae.org.*

ANSI Standard Z21.86–2016 · CSA 2.32–2016 (''ANSI Z21.86–2016''), ''Vented Gas-Fired Space Heating Appliances,'' Sixth Edition, approved December 21, 2016.

Copies of ANSI Z21.86–2016 can be obtained from the CSA Group, 178 Rexdale Blvd., Toronto, ON, Canada M9W 1R3 or the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *www.csagroup.org/store/* or *www.ansi.org.*

ASTM International (''ASTM'') D2156–09 (Reapproved 2018) (''ASTM D2156–09 (R2018)''), ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels,'' reapproved October 1, 2018.

Copies of ASTM D2156–09 (R2018) can be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 or online at: *www.astm.org.*

International Electrotechnical Commission (''IEC'') 62301 (''IEC 62301 (Second Edition)''), ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01.

Copies of IEC 62301 (Second Edition) can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *www.webstore.ansi.org.*

Underwriters Laboratories, Inc. (''UL'') 729 (''UL 729–2016''), ''Standard for Safety for Oil-Fired Floor Furnaces,'' approved November 22, 2016.

UL 730 (''UL 730–2016''), ''Standard for Safety for Oil-Fired Wall Furnaces,'' approved November 22, 2016.

UL 896 (''UL 896–2016''), ''Standard for Safety for Oil-Burning Stoves,'' approved November 22, 2016.

Copies of UL 729–2016, UL 730–2016, and UL 896–2016 can be obtained from Underwriters Laboratories, Inc., 2600 NW Lake Rd., Camas, WA 98607–8542 or online at: *www.ul.com.*

See section IV.N of this document for a further discussion of these standards.

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I. Authority and Background

Direct heating equipment (''DHE'') is included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(9)) DOE defines ''direct heating equipment'' as vented home heating equipment and unvented home heating equipment. 10 CFR 430.2. (Hereafter in this final rule, the terms ''vented heater'' and ''unvented heater'' are used to describe the two types of DHE). DOE's energy conservation standards and test procedures for vented heaters are currently prescribed at 10 CFR 430.32(i) and 10 CFR part 430, subpart B, appendix O, ''Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment'' (''appendix O''), respectively. DOE's test procedures for unvented heaters are prescribed at 10 CFR part 430, subpart B, appendix G, ''Uniform Test Method for Measuring the Energy Consumption of Unvented Home Heating Equipment'' (''appendix G''). DOE currently does not prescribe energy conservation standards for unvented heaters because, as the Department explained in an April 2010 final rule for DHE, DOE has previously determined that a standard would produce little energy savings (largely due to the fact that any heat losses are dissipated directly into the conditioned space) and because of limitations in the applicable DOE test procedure. 75 FR 20112, 20130 (April 16, 2010). The appendix G test procedure includes neither a method for measuring energy

efficiency nor a descriptor for representing the efficiency of unvented heaters. Instead, appendix G provides a method to measure and calculate the rated output (for all unvented heaters) and annual energy consumption (for primary electric unvented heaters). The following sections discuss DOE's authority to establish and amend test procedures for vented and unvented heaters, as well as relevant background information regarding DOE's consideration of and amendments to test procedures for these products.

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 EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include DHE, the subject of this document. (42 U.S.C. 6292(a)(9))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s)) EPCA defines the efficiency descriptor for DHE to be annual fuel utilization efficiency (''AFUE''). (42 U.S.C. 6291(22)(A))

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

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, taking into consideration the most current versions of Standards 62301 [3] and 62807 [4] of the International Electrotechnical Commission (IEC), unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. *Id.*

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including DHE, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

As mentioned previously, DOE's existing test procedures for unvented heaters and vented heaters appear at appendix G and appendix O, respectively. DOE published a notice of proposed rulemaking (''NOPR'') on April 16, 2021 (''April 2021 NOPR'') that provides the full history of test procedure rulemakings for unvented heaters and vented heaters. 86 FR 20053, 20055–20056.

For unvented electric heaters that are the primary heating source for the home, appendix G includes provisions for measuring electric power and calculating annual energy consumption in sections 2.1 and 3.1, respectively. For all unvented heaters, appendix G includes provisions for determining the rated output, in section 3.3 for electric heaters and section 3.4 for natural gas, propane, or oil heaters. Appendix G does not contain provisions for determining energy efficiency, as unvented heaters are considered to be 100-percent efficient during the heating season because any heat losses are lost to the conditioned living space in which the unit is installed. Accordingly, DOE has not established energy conservation standards for unvented heaters.

[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)), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

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

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7:2018).

For vented heaters, appendix O includes provisions for determining AFUE, which is the efficiency metric used for determining compliance with the energy conservation standards for vented home heating equipment found in 10 CFR 430.32(i)(2). Section 4.6 of appendix O also specifies provisions for calculating the annual energy consumption of vented heaters. Manufacturers must use the test procedure at appendix O to demonstrate compliance with the current energy conservation standards for vented heaters. Further, there are currently no industry consensus test methods to measure DHE energy efficiency under the AFUE metric for vented home heating equipment.

To better understand potential issues with the current test procedures since the last amendments, DOE published a request for information (''RFI'') on February 26, 2019 (''February 2019 RFI''). 84 FR 6088. Following the February 2019 RFI, DOE published the April 2021 NOPR. 86 FR 20053.

DOE received comments in response to the April 2021 NOPR from the interested parties listed in Table I.1.

TABLE I.1—COMMENTS RECEIVED IN RESPONSE TO THE APRIL 2021 NOPR

Commenter(s)	Reference in this Final Rule	Commenter type
Association of Home Appliance Manufacturers	AHAM	Trade Association.
Air-conditioning, Heating, and Refrigeration Institute	AHRI	Trade Association.
Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas & Electric Company; collectively, the California Investor-Owned Utilities.	CA IOUs	Utility.
Ethel Kecaph	Ethel Kecaph	Individual.
Flux Tailor	Flux Tailor	Consultant.
Appliance Standards Awareness Project, Natural Resources Defense Council.	Joint Advocates	Efficiency Organizations.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.

A parenthetical reference at the end of a quoted or paraphrased comment provides the location of the item in the public record.[5]

II. Synopsis of the Final Rule

In this final rule, DOE amends the test procedures for unvented and vented heaters (Appendices G and O, respectively) and several associated definitions in 10 CFR 430.2, as follows:

- Update the definitions of ''floor electric heater,'' ''primary heater,'' ''unvented gas heater,'' ''unvented home heating equipment,'' ''unvented oil heater,'' ''vented home heating equipment,'' and ''vented room heater;'' and update the terms ''primary heater'' and ''supplementary heater'' to ''primary electric heater'' and ''supplementary electric heater,'' respectively;
- Update references to several industry consensus standards to the most recent versions, except that the test procedure maintains the existing oil pressure measurement error value (which was omitted in the most recent update to ANSI/ASHRAE 103–2017);
- Provide explicit direction on the operational mode for testing vented heaters with multiple automatic operation modes;
- Clarify the required input rate for the cyclic condensate collection tests;
- Allow for the use of the manufacturer-specified gas inlet pressure range when the required input rating cannot be achieved;
- Explicitly state the regulator outlet pressure and specific gravity tolerances for the gas supply;
- Provide the option to use five, rather than nine, thermocouples for the thermocouple grid in models with small (2-inch diameter or less) flues;
- Clarify the wording of the cyclic condensate collection test in the calculation of the allowable variance in condensate mass measurements; and
- Provide explicit direction on the methods to appropriately shield thermocouples from radiation.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN AMENDED TEST PROCEDURES RELATIVE TO PREVIOUS TEST PROCEDURES

Previous DOE test procedure	Amended test procedure	Attribution
Definitions for electric heater, primary heater, supplementary heater, floor electric heater, unvented gas heater, unvented home heating equipment, unvented oil heater, vented home heating equipment, and vented room heater had various inconsistencies in terminology.	Updates the definitions to use consistent terminology.	Ensure consistent use and application. Response to comments.
Referenced ANSI/ASHRAE 103–2007, ANSI Z21.86–2008, ASTM D–2156–09, UL729–2003, UL 730–2003, and UL 896–1993.	References ANSI/ASHRAE 103–2017 (but maintains existing oil pressure measurement error value), ANSI Z21.86–2016, ASTM D2156–09 (R2018), UL 729–2016, UL 730–2016, and UL 896–2016.	Update to most recent versions of industry standards. Response to comments.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for DHE. (Docket No. EERE–2019–BT–TP–0003, which is maintained at *www.regulations.gov*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN AMENDED TEST PROCEDURES RELATIVE TO PREVIOUS TEST PROCEDURES—Continued

Previous DOE test procedure	Amended test procedure	Attribution
Did not provide specific direction for units with multiple automatic operational modes.	Explicitly provides that for units with multiple automatic operational modes, the default or other similarly named mode is used for testing.	Ensure representativeness, repeatability, and reproducibility. Response to comments.
Did not provide specific direction regarding the input rate at which the cyclic condensate collection test is to be conducted.	Explicitly states at which input rate to conduct the cyclic condensate collection test.	Ensure repeatable and reproducible results.
Specified an inlet gas pressure level is to be between 7–10 inches water column.	Permits use of manufacturer's specified gas inlet pressure range, if the nameplate input rating ±2 percent cannot be achieved at 7–10 inches water column.	Ensure representativeness repeatability, and reproducibility.
Did not provide specific values that the regulator outlet pressure and specific gravity of the test gas must meet.	Explicitly state that the regulator outlet pressure be within the greater of ± 10 percent of the manufacturer-specified manifold pressure or ±0.2 inches water column, and that the specific gravity for natural gas and propane gas be 0.57–0.70 and 1.522–1.574, respectively.	Ensure consistent use and application. Ensure representativeness repeatability, and reproducibility.
Required use of a nine-thermocouple grid for measuring flue gas temperature, regardless of flue size.	For smaller size flues (2-inch diameter or less), require a five-thermocouple grid.	Reduce test burden, ensure representativeness.
For the variance of the condensate mass measurements, required that ''the sample standard deviation is within 20 percent of the mean value for three cycles'' in order to stop at three cycles. Otherwise, six cycles are required.	Clarifies that the standard deviation must be less than or equal to 20 percent of the mean value.	Clarification. Ensure representativeness repeatability, and reproducibility.
Did not provide specific direction for determining when a radiation shield is needed or what an appropriate radiation shield would be.	Explicitly states that any thermocouple with a direct line of sight to the burner must be shielded from radiation and that a radiation shield with an explicitly stated material and minimum thickness must be used.	Clarification. Ensure representativeness repeatability, and reproducibility.

DOE has determined that the amendments described in section III of this final rule will not alter the measured efficiency of DHE or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this final rule.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

A. Definitions

1. Unvented Heaters

In the April 2021 NOPR, DOE proposed several changes to the definitions pertaining to unvented heaters, including: (1) Changing the phrasing from ''heat'' or ''warm air'' to ''heated air,'' as the term ''warm'' is subjective and does not indicate that any process was used to add heat to the air being furnished by the heater, whereas ''heated'' indicates that thermal energy was added to the air; (2) explicitly including floor electric heaters as one of the examples provided in the definition of a ''primary electric heater,'' given that, to the extent that a floor electric heater is the principal source of heat for a structure, it is a primary heater; (3) adding the phrase ''a class of unvented home heating equipment'' to the definitions of ''electric heater,'' ''unvented gas heater,'' and ''unvented oil heater,'' to more clearly associate these definitions as being unvented home heating equipment; and (4) specifying that ''unvented home heating equipment or unvented heater'' furnishes heated air ''without exhaust venting,'' as the prior definition did not state this explicitly. 86 FR 20053, 20057–20058 (April 16, 2021).

AHAM, the CA IOUs, and NEEA generally stated their support of DOE's proposed updates to the DHE definitions. (AHAM, No. 15 at p. 1; CA IOUs, No. 14 at p. 1; NEEA, No. 16 at p. 1)

For the reasons identified in the preceding discussion and discussed in the April 2021 NOPR, this final rule amends the definitions pertaining to unvented heaters as proposed in the April 2021 NOPR.

2. Vented Heaters

In the April 2021 NOPR, DOE proposed updates to the definitions pertaining to vented heaters in 10 CFR 430.2, including: (1) Changing the phrasing of ''warm'' or ''warmed'' air to ''heated'' air in the definitions of ''vented home heating equipment or vented heater'' and ''vented room heater,'' for the reasons stated prior; (2) replacing the phrase ''to the living space of a residence, directly from the device'' in the ''vented home heating equipment or vented heater'' definition with ''to a space proximate to such heater, directly from the heater'' to align with the definition of ''unvented home heating equipment or unvented heater,'' and (3) specifying that ''vented home heating equipment or vented heater'' furnishes heated air ''with exhaust venting,'' as the prior definition did not state this explicitly. 86 FR 20053, 20058–20059 (April 16, 2021).

AHAM, the CA IOUs, and NEEA generally stated their support of DOE's proposed updates to the DHE definitions. (AHAM, No. 15 at p. 1; CA IOUs, No. 14 at p. 1; NEEA, No. 16 at p. 1)

For the reasons identified in the preceding discussion and discussed in the April 2021 NOPR, this final rule amends the definitions pertaining to vented heaters as proposed in the April 2021 NOPR.

B. Updates to Industry Consensus Test Methods

The unvented home heating equipment test procedure in appendix G referenced the International Electrotechnical Commission (''IEC'') 62301, ''Household electrical appliances—Measurement of standby power,'' (Second Edition). The vented home heating equipment test procedure in appendix O referenced the following industry standards:

- ANSI/ASHRAE Standard 103–2007, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'' (''ANSI/ASHRAE 103–2007'');
- ANSI Z21.86–2008, ''Vented Gas-Fired Space Heating Appliances'' (''ANSI Z21.86–2008'');
- ASTM D2156–09, ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels'' (''ASTM D2156–09'');
- IEC 62301 (Second Edition), ''Household electrical appliances—Measurement of standby power'' (''IEC 62301 (Second Edition)'');
- UL 729–2003, ''Standard for Safety for Oil-Fired Floor Furnaces'' (''UL 729–2003'');
- UL 730–2003, ''Standard for Safety for Oil-Fired Wall Furnaces'' (''UL 730–2003''); and
- UL 896–1993, ''Standard for Safety for Oil-Burning Stoves'' (''UL 896–1993'').

As described in the April 2021 NOPR, each of the referenced industry standards, except for ASTM D2156–09 [6] and IEC 62301 (Second Edition), have been superseded with a more recent version. 86 FR 20053, 20059. The changes in the most recent version of UL 729, UL 730, and UL 896 were made to sections not referenced by the DOE test procedure; and the changes in the most recent version of ANSI Z21.86, while affecting sections referenced by the DOE test procedure, were non-substantive and unlikely to have any impact on the test burden or measured energy consumption under the DOE test procedure. *Id.* DOE proposed to update the references to these industry standards to their most recent versions: ASTM D2156–09 (R2018), UL 729–2016, UL 730–2016, UL 896–2016, and ANSI Z21.86–2016.

DOE received no comments regarding its proposal to update these industry standards to their most recent versions.

In this final rule, DOE updates the references to the industry standards to the most recent versions for ASTM D2156–09, UL 729, UL 730, UL 896, and ANSI Z21.86, consistent with the proposal in the April 2021 NOPR.

ANSI/ASHRAE 103–2007, referenced in appendix O, has been superseded by ANSI/ASHRAE 103–2017. In the April 2021 NOPR, DOE discussed the various substantive changes between ANSI/ASHRAE 103–2007 and ANSI/ASHRAE 103–2017 and the proposed changes to appendix O to address the changes, including: (1) Adding the oil pressure measurement error values from ANSI/ASHRAE 103–2007 to appendix O (as these were not retained in ANSI/ASHRAE 103–2017); (2) incorporating by reference the equations to determine jacket loss provided in Section 8.6 of ANSI/ASHRAE 103–2017 (as the equations in ANSI/ASHRAE 103–2017 provide more accurate values as compared to the figures provided in the 2007 version and mitigate the possibility of human error in interpreting the figures); and (3) removing the mention of Sections 8.8.3 and 9.10 of ANSI/ASHRAE 103–2007 within section 3.6.2.4.2 of appendix O (as all the information stated in Section 8.8.3 of ANSI/ASHRAE 103–2007 is already stated in sections 3.6.1 and 3.6.2 of appendix O; and the inclusion of a reference to Section 9.10 of ANSI/ASHRAE 103–2007 could cause confusion due to the maximum post-purge requirement, which is not discussed within appendix O). 86 FR 20053, 20059–20060

The CA IOUs stated their support of DOE's decision to update the reference to the most recent version of ANSI/ASHRAE 103, stating that it will allow for more consistent test results. (CA IOUs, No. 14 at p. 1) The CA IOUs also stated their support of DOE's proposed decision to add the allowable error in the oil pressure measurement value as defined in ANSI/ASHRAE 103–2007 back into the test procedure to maintain consistency for manufacturers and contractors. (CA IOUs, No. 14 at p. 1) No additional comment was received on the proposal regarding the amendments related to the ANSI/ASHRAE 103 update.

For the reasons discussed in the April 2021 NOPR, in this final rule, DOE adopts ANSI/ASHRAE 103–2017 with the modifications as proposed in the April 2021 NOPR. 86 FR 20053, 20072–20073.

C. Unvented Heaters

1. Calculation of Annual Energy Consumption

For electric heaters, section 2.1 of appendix G specifies a requirement for measuring and recording the maximum electrical power consumed when heating, in terms of kilowatts, and section 3.3 specifies a requirement for calculating a rated output. For primary electric heaters only, section 3.1 of appendix G specifies a calculation for the national average annual energy consumption based on the maximum electrical power, and section 3.2 specifies a calculation for the annual energy consumption by geographic region. The calculation of national average annual energy consumption in section 3.1 of appendix G is based on several assumptions, including the national average annual heating load hours of 2080, an adjustment factor of 0.77,[7] and a typical oversizing factor for primary electric heaters of 1.2.[8] The calculation of regional annual energy consumption in section 3.2 of appendix G is based on the same assumptions as the national value, except that regional heating load hours are provided by a Figure 1, depicting geographic regions the United States and the associated heating load hours for each region. Appendix G does not specify a method for calculating annual fuel energy consumption for unvented gas and oil heaters.

In the April 2021 NOPR, DOE did not propose changes to the national and regional values used in the calculations of annual energy consumption based on the tentative determination that the existing calculations and assumptions are still appropriate. 86 FR 20053, 20061. DOE also did not propose to add calculations for annual fuel energy consumption of gas and oil unvented heaters because DOE tentatively concluded that such calculations would be unlikely to provide consumers with valuable information and could potentially confuse consumers if comparisons are made between vented and unvented heaters without the full understanding of the different applications and utilities of each product. *Id.*

[6] ASTM D2156–09 was reapproved in 2018 (ASTM D2156–09 (R2018)) without modification.

[7] The adjustment factor is a multiplier to adjust the heating load hours to the approximate burner operating hours experienced by the system.

[8] The oversizing factor accounts for space heating products generally being oversized when compared to the actual required heating load.

DOE did not receive any comments on its proposals to maintain the existing national and regional values used for calculating annual energy consumption and to not add calculations for annual fuel energy consumption of gas and oil unvented heaters. Therefore, DOE maintains its conclusions from the April 2021 NOPR and is not adopting changes related to these issues.

2. Standby Mode and Off Mode Energy Consumption

Section 2.3 of appendix G requires measuring the pilot light input rate except for those products specified in section 2.3.1 of appendix G;[9] however, the pilot light measurement is not used in the calculation of rated output in section 3.4 of appendix G.

In the April 2021 NOPR, DOE did not propose to include standby mode and off mode energy consumption into the annual energy consumption for unvented heaters, having tentatively determined that the standby mode energy consumption of unvented heaters is as effective at heating the space as active mode energy, and, therefore, it is unnecessary to integrate. 86 FR 20053, 20061–20062. Regarding off mode energy consumption, DOE tentatively concluded in the April 2021 NOPR that some consumers could potentially leave the pilot light on during the non-heating season, thereby resulting in consumption of additional energy. However, in its review of the market, DOE found that all identified models with a pilot light included instructions from the manufacturer for turning the pilot light off during the non-heating seasons. *Id.* DOE stated that it lacks data for the operational hours in off mode and the percentage of consumers that do not turn their pilot lights off during the non-heating seasons, thereby making it impossible to determine whether a problem exists or its magnitude. *Id.* Based on the presence of manufacturer instructions and lack of data on representative use, DOE did not propose to incorporate off mode energy use in the test procedure. *Id.*

The Joint Advocates encouraged DOE to continue investigating off mode energy use for unvented heaters, asserting that DHE models with standing pilot lights waste a significant amount of energy in off mode and that the instructions provided to turn the pilot light off may do little to reduce the operating hours of standing pilot lights. (Joint Advocates, No. 13 at p. 1) The CA IOUs requested that DOE further investigate the opportunity for regulation of standing pilot lights. (CA IOUs, No. 14 at pp. 2–3) The CA IOUs cited a NOPR that DOE published on February 9, 2015, for hearth products and a Statistics Canada study[10] that both showed that 44 percent of consumers do not turn off their fireplace standing pilot light during the non-heating season. The CA IOUs asserted that these results should provide an indication of the percentage of households that leave the standing pilot light on all year for DHE. *Id.* The CA IOUs stated that its research has uncovered products that do not appear to have directions in the manual for turning the pilot light off during the non-heating seasons. *Id.* The CA IOUs further requested that DOE demonstrate why consumer behavior regarding standing pilot lights would be different for DHE products and hearth products and provide more information regarding the market research conducted to make this determination. *Id.*

In response, DOE notes that, in addition to providing heat, consumers also purchase hearth products for aesthetic purposes. The sole purpose of unvented heaters, however, is to provide heat. As a result, the product designs, installation locations, and usage patterns may be significantly different for hearth products as compared to unvented heaters. These differences, especially differences in the way the consumer uses the appliance, could lead users to behave differently with respect to turning off the pilot light. In a final determination regarding energy conservations standards for DHE published on November 23, 2021, DOE considered this issue and agreed that amendments to appendix G to limit the exclusion to unvented heaters that are controlled with a thermostat or manually-controlled unvented heaters with both a fully off mode and a pilot on mode may be appropriate. 86 FR 66403, 66411. However, DOE stated that the information regarding hearth products cannot be used directly for unvented heaters because hearth products may be used differently than unvented heaters, and, at the time of the determination, DOE had not received information regarding consumer behavior for unvented heaters. *Id.* Regarding the comments on this rulemaking, the commenters did not present new information on the usage of pilot lights in unvented heaters during the non-heating season that would allow DOE to determine whether a significant number of unvented heater consumers leave the standing pilot light on during the non-heating season, or to draw comparisons between usage of pilot lights in hearth products as compared to unvented heaters. As a result, DOE maintains its position from the April 2021 NOPR that it lacks data at this time regarding the operational hours of the pilot in off mode and the percentage of consumers that do not turn their pilot lights off during the non-heating seasons, which would be needed for DOE to incorporate a representative measure of off mode energy use in the test procedure. DOE will continue to investigate this issue and, if appropriate, will address the pilot light energy consumption in a future rulemaking proceeding.

3. Efficiency Assumption

As stated in section I.B of this document, appendix G does not contain provisions for determining the energy efficiency of unvented heaters, as they are considered to be 100-percent efficient due to the fact that any heat loss from the heater is transferred to the conditioned space in which the unit is installed. Thus, DOE has not established energy conservation standards for unvented heaters.

In the February 2019 RFI, DOE noted the absence of provisions for calculating the energy efficiency of unvented heaters in appendix G and sought comment on whether calculations for the annual fuel energy consumption of unvented gas, propane, and oil heaters should be added to the test procedure. 84 FR 6088, 6092 (Feb. 26, 2019). In response, AHRI recommended against calculating annual fuel energy consumption for unvented gas and oil heaters, stating that all heat is contained within the conditioned space, so that such products should be considered 100-percent efficient. (AHRI, No. 5 at p. 2). NEEA commented that unvented heaters have higher efficiencies than vented heaters because all the heated air and combustion gases are delivered to the consumer's heated space. (NEEA, No. 7 at pp. 1–2) The Joint Advocates recommended that DOE require the annual fuel energy consumption calculations for gas and oil unvented heaters to ensure that any representations of annual energy use for these products would be based on a consistent calculation methodology. (Joint Advocates, No. 6 at p. 1)

In the April 2021 NOPR, DOE did not propose to add calculations for annual

[9] Section 2.3.1 of appendix G specifies that that measurement of the pilot light input rate is not required for unvented heaters where the pilot light is designed to be turned off by the user when the heater is not in use (*i.e.,* for units where turning the control to the OFF position will shut off the gas supply to the burner(s) and the pilot light) and instruction to turn off the unit is provided on the heater near the gas control value (*e.g.,* by label).

[10] Statistics Canada study: *www150.statcan.gc.ca/n1/pub/11-526-s/2013002/t013-eng.htm.*

fuel energy consumption of gas and oil unvented heaters to appendix G, having tentatively determined that such calculations would be unlikely to provide consumers with valuable information, and that an annual fuel energy consumption value for unvented gas and oil heaters could potentially confuse consumers if comparisons are made to the values for vented heaters without full understanding of the different applications and utilities of each product. 86 FR 20053, 20062.

In response to the April 2021 NOPR, the CA IOUs asserted that some unvented heaters, depending on installed conditions, may lose heat to an unconditioned space such as a wall or ceiling, which could result in the consumer setting the unit's thermostat higher, ultimately leading to more energy consumption relative to a unit with less peripheral heat loss. The CA IOUs urged DOE to perform further analysis that includes the installation and use of unvented heaters to verify its assumption of 100 percent efficiency. (CA IOUs, No. 14 at p. 2)

AHAM stated its support of DOE's assumption that unvented heaters are 100 percent efficient and commented that it would object to amendments that would add efficiency or energy calculations for unvented heaters that are not used as the primary heating source for the home. (AHAM, No. 15 at pp. 1–2)

Flux Tailor stated that the rate at which the unvented heater heats the conditioned space affects the energy use of the product, as the unvented heater will operate less if the conditioned space is heated more quickly. (Flux Tailor, Public Meeting Transcript, No. 12 at pp. 20–22)

In response to the CA IOUs comment, DOE notes that unvented heaters can typically be installed either on the wall or ceiling, or free-standing within the room (mounted on supports that are provided with the unit or can be purchased separately). For an unvented heater installed on a wall or ceiling, a portion of the heat losses through the jacket may heat the wall or ceiling; however, the wall and ceiling are part of the overall envelope of the heated space. Therefore, DOE does not find such an installation would result in losses that do not provide heat to the conditioned space. Further, DOE notes that its assumption that unvented heaters are 100 percent efficient is consistent with the treatment of vented heaters in appendix O. The test procedure for vented heaters requires a jacket loss test for vented floor furnaces (section 3.2), but does not require this test for any other type of vented heater, because a floor furnace is the only type of vented heater that is considered to have some portion of the jacket outside the heated space.[11]

In response to Flux Tailor's comment, DOE notes that the total amount of heat supplied to a space to satisfy a given heat load would be the same regardless of the rate at which the heat is supplied. Supplying heat at a higher rate of energy consumption will satisfy a particular heating load more quickly (*i.e.,* the heater will be on for a shorter duration); whereas, supplying heat at a lower rate of energy consumption will satisfy the same heating load more slowly (*i.e.,* the heater will be on for a longer duration). In both cases, however, the total amount of energy consumption (*i.e.,* heat supplied to the room) would be the same. Therefore, DOE has determined not to amend appendix G to account for the rate at which an unvented heater can heat a conditioned space.

D. Vented Heaters

For vented heaters, appendix O specifies provisions for determining the product's AFUE, which is the efficiency descriptor established by EPCA for these products. (42 U.S.C. 6291(22)(A))

1. Models With Multiple Automatic Operation Modes

Section 2.11 of appendix O specifies that for equipment that has both manual and automatic thermostat control modes, the unit must be tested according to the procedure for its automatic control mode (*i.e.,* single-stage, two-stage, or step-modulating). However, when a unit has multiple automatic operational modes, the test procedure did not explicitly specify what automatic operating mode must be used for testing.

In the April 2021 NOPR DOE proposed to amend section 2.11 of appendix O to explicitly specify that models with multiple automatic operation modes be tested in the mode suggested by the manufacturer for normal operation or the default mode as defined in the manufacturer's installation and operations manual. If a default mode is not defined in the product literature, DOE proposed that tests be conducted in the mode in which the product operates as shipped from the manufacturer. 86 FR 20053, 20062.

DOE received no comments on its proposal. In this final rule, DOE amends section 2.11 of appendix O, consistent with the proposal in the April 2021 NOPR, to require equipment that has multiple automatic thermostat control modes to be tested in the default mode (or similarly named mode identified for normal operation) as defined by the manufacturer in its installation and operation (''I&O'') manual. If a default mode is not defined in the I&O manual, such equipment must be tested in the mode in which the equipment operates as shipped from the manufacturer.

2. Fuel Supply and Burner Adjustments

Sections 2.3.1 and 2.3.2 of appendix O required that for natural gas-fueled and propane gas-fueled vented heaters, the gas supply be maintained at a normal inlet test pressure immediately ahead of all controls at 7 to 10 inches water column and 11 to 13 inches water column, respectively. In addition, section 2.4.1 of appendix O requires that the fuel flow rate be set to obtain a heat rate of within ±2 percent of the hourly Btu rating specified by the manufacturer, as measured after 15 minutes of operation. Section 2.4.2 of appendix O requires that the burners of oil fueled vented heaters be adjusted to give the CO_2 reading recommended by the manufacturer and an hourly Btu input during steady-state operation within ±2 percent of the heater manufacturer's specified normal hourly Btu input rating. In addition, on units employing a power burner, section 2.4.2 requires that smoke in the flue not exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ASTM D2156. During exploratory testing performed for the development of the April 2021 NOPR, only one tested gas-fired unit was unable to achieve the nameplate input rate within ±2 percent while maintaining a natural gas supply pressure of 7 to 10 inches water column. The manufacturer's recommended gas inlet pressure for this model was 5 to 10.5 inches water column, and the nameplate input rating was achieved at a natural gas supply pressure of 5 inches water column.

In the April 2021 NOPR, DOE proposed several changes to appendix O, as follows. First, DOE proposed to specify that if the heater is equipped with a gas pressure regulator, that the regulator outlet pressure be maintained within the greater of ±0.2 inches water column and ±10 percent of the manufacturer-specified manifold pressure on the nameplate of the unit or in the installation and operation (''I&O'') manual. DOE reasoned that this would ensure consistency in setting the regulator outlet pressure and align with

[11] A vented floor furnace is defined in part as being ''suspended from the floor of the space being heated.'' A vented room heater is defined in part as being ''free-standing, nonrecessed.'' A vented wall furnace is defined in part as ''designed for incorporation in, or permanent attachment to, a wall of a residence.''

DOE test procedures for other gas-fired heating products such as consumer water heaters and commercial water heaters. 86 FR 20053, 20062. Second, DOE proposed to require that the specific gravity be between 0.57 and 0.70 for natural gas and 1.522 and 1.574 for propane gas, instead of ''approximately'' 0.65 and 1.53 for natural gas and propane gas, respectively, in order to better align the test procedure in appendix O with Annex G of ANSI Z21.86–2016. *Id.* Third, DOE proposed to specify that if the burner cannot be adjusted to obtain a heat input rate of within ±2 percent of the hourly Btu rating specified by the manufacturer on the nameplate of the unit or in the I&O manual, as required by section 2.4.1 of appendix O, the gas supply to the unit under test at an inlet test pressure immediately ahead of all controls may be set to any value within the range specified by the manufacturer on the nameplate of the unit or in the I&O manual. DOE reasoned that this change, if adopted, would ensure models are tested at conditions representative of field conditions while still maintaining consistency and repeatability. *Id.* Finally, DOE proposed to remove the word ''normal'' from sections 2.3.1 and 2.3.2 of appendix O (in reference to ''normal inlet test pressure''), and replace the phrase ''normal hourly Btu input rating'' with ''maximum hourly Btu input rating'' within section 2.4.2 of appendix O. In doing so, DOE explained that because the test pressures within section 2.3 of appendix O were proposed to be explicitly stated, the use of the phrase ''normal'' would no longer be necessary, and the proposed change to replace ''normal hourly Btu input rating'' with ''maximum hourly Btu input rating'' would better align the input rate language throughout section 2.4 of appendix O. *Id.* at 20063.

DOE received no comments on its proposals. For the reasons discussed in the preceding paragraphs and in the April 2021 NOPR, in this final rule, DOE amends sections 2.3.1, 2.3.2, 2.4.1, and 2.4.2 of appendix O consistent with the proposals in the April 2021 NOPR.

3. Flue Thermocouples

Section 2.6 of appendix O required installation of nine thermocouples in the vent for measuring flue gas temperature for both gas-fueled and oil-fueled vented heaters. As discussed in the April 2021 NOPR, DOE has conducted testing on one unit for which the exhaust piping was 2 inches in diameter, and the nine thermocouples significantly restricted airflow in the vent, resulting in flue gas temperature readings and carbon monoxide levels above normal operating conditions. 86 FR 20053, 20063.

To ensure that measurements taken during testing of models with smaller flues (*i.e.,* 2 inches diameter or less) are representative of typical use, DOE proposed in the April 2021 NOPR an amendment to section 2.6 of appendix O to allow the test lab to use five thermocouples (consistent with the direction in ASHRAE 103–2017, section 7.6 and figure 10) when the flue size is less than or equal to 2 inches diameter. As explained in the April 2021 NOPR, given that the cross-sectional flue area is smaller for models with small vent diameter, fewer thermocouples may be needed to obtain accurate flue gas temperature measurements. Further, using fewer thermocouples would result in less flue restriction, and could more closely resemble operation in the field, thereby providing more representative flue gas readings. 86 FR 20053, 20063.

DOE received no comments on its proposal. In this final rule, DOE amends section 2.6 of appendix O to allow the test lab to use five thermocouples when the flue diameter is less than or equal to 2 inches.

4. Cyclic Condensate Collection Test

Section 3.8.2 of appendix O specifies the test procedure for collecting condensate under cyclic conditions for condensing vented heaters. During this test, three to six cycles of a 4-minute on-cycle followed by a 13-minute off-cycle are completed. The total mass of condensate and fuel energy input are then used in section 4.0 of appendix O, ''Calculations.'' The cyclic condensate collection test did not specify the input rate at which the burner should fire during the on-cycle times for units with modulating controls.

a. Input Rate

The cyclic condensate collection test was based on Section 9.8 of ANSI/ASHRAE 103–2007, which specifies that regarding the input rate for units with modulating controls, the following applies: (a) For step-modulating units, the test is conducted at the reduced [12] input rate only, which is defined in Section 3 of ANSI/ASHRAE 103–2007; or (b) for two-stage units, the test is conducted at both the maximum and reduced input rates unless the balance-point temperature (T_C) determined is equal to or less than the typical outdoor design temperature of 5 °F (−5 °C), in which case the test is conducted at the reduced input rate only. The required input rate is specified in all other tests within the vented heater test procedure.

In the April 2021 NOPR, DOE proposed to explicitly provide input rate instructions similar to those in ANSI/ASHRAE 103–2007 to section 3.8.2 of appendix O to further align the vented heater test procedure with ANSI/ASHRAE 103. 86 FR 20053, 20063. DOE notes that the input rate instructions for units with modulating controls in Section 9.8 of ASHRAE 103–2007 and ASHRAE 103–2017 are essentially identical.

DOE received no comments on its proposal. In this final rule, DOE amends section 3.8.2 of appendix O to add input rate instructions for the cyclic condensate collection test equivalent to those in ANSI/ASHRAE 103–2017, consistent with the proposal in the April 2021 NOPR.

b. Condensate Mass Measurement Requirements

Section 3.8.2 of appendix O stated that if after three cycles ''the sample standard deviation [of the mass of collected condensate] is within 20 percent of the mean value for three cycles,'' the test can be ended, and the total mass collected in the three cycles can be used. Otherwise, three additional cycles of condensate collection are required, for a total of six cycles. DOE notes that the language for checking whether the variance of the condensate collected during the first three cycles is sufficiently small could be read to require that the standard deviation be ''within 20 percent'' of the mean value of the mass of condensate collected. Such a reading would not be logical because a small standard deviation is desirable for consistent results, and, therefore, the standard deviation value should not be compared directly to the mean and be required to be within 20 percent of the mean value. Rather, the phrase required that the standard deviation be at or below ''20 percent of the mean value'' (*i.e.,* the sample standard deviation should be less than or equal to 20 percent of the mean).

To clarify the wording to avoid confusion that could result from the text, DOE proposed in the April 2021 NOPR to revise section 3.8.2 of appendix O to state that the standard deviation must be less than or equal to 20 percent of the mean rather than ''within 20 percent'' of the mean. 86 FR 20053, 20063.

DOE received no comments on its proposal. In this final rule, DOE amends section 3.8.2 of appendix O, consistent with the proposal in the April 2021

[12] ''Reduced heat input rate'' is defined in section 1 of appendix O as the factory-adjusted lowest reduced heat input rate for vented home heating equipment equipped with either two-stage thermostats or step-modulating thermostats.

NOPR, to clarify that the standard deviation must be less than or equal to 20 percent of the mean as the determining factor for whether the cyclic condensate mass collection must be performed for three cycles or six cycles.

5. Other Vented Heater Topics

a. Determination of Balance Point Temperature, Heating Load Fractions, and Average Outdoor Temperature

In section 4.1.10 of appendix O, titled ''Steady-state efficiency,'' the balance point temperature (T_c) [13] can be determined either with an equation or using the values provided in Table 3 of appendix O. The two options may not yield the exact same result because Table 3 provides a single balance point temperature value for a range of heat output ratios (R), while the equation provides a specific value for each heat output ratio. In other words, to use Table 3, first the heat output ratio is determined, then the corresponding range in Table 3 is selected to identify the balance point temperature for units with heat output ratios in the given range. To use the equation method, however, the heat output ratio is plugged into the equation, and balance point temperature is calculated. Similarly, values for the fraction of the heating load and average outdoor temperature at the reduced and maximum operating modes (variables X_1, X_2, T_{OA}, and T_{OA}*) are determined using either Table 3, or for T_{OA} and T_{OA}*, Figure 1 of appendix O (which provides a graph showing T_{OA} and T_{OA}* variables for any balance point temperature between 16 °F and 62 °F) and, for X_1 and X_2, Figure 2 of appendix O (which provides a graph showing variables X_1 and X_2 for any balance point temperature between 0 °F and 62 °F). In the April 2021 NOPR, DOE noted that Table 3, Figure 1, and Figure 2 may yield different results because Table 3 provides discreet values for X_1, X_2, T_{OA}, and T_{OA}*, whereas Figure 1 and Figure 2 provide continuous graphical curves for determining the relevant variables. 86 FR 20053, 20064. DOE further discussed in the April 2021 NOPR that it had reviewed test data to estimate the impact of the different methods for determining the value of variables on the measured AFUE value and found that the different methods resulted in a difference on the order of hundredths of a percentage point of AFUE, which DOE tentatively concluded would not be likely to affect the measured AFUE in most cases when rounded to a whole number. *Id.* Therefore, in the April 2021 NOPR, DOE did not propose any changes to the test method related to these issues. *Id.*

DOE did not receive any comments on these issues in response to the April 2021 NOPR; therefore, DOE is not adopting any changes regarding them.

b. Default Jacket Loss Value for Vented Floor Furnaces

The test procedure for vented floor furnaces requires the measurement of jacket losses when determining the AFUE. *See* section 3.2, appendix O. In the NOPR published in the **Federal Register** on October 24, 2013 as part of the most recent previous test procedure rulemaking for DHE (resulting in a final rule published on January 6, 2015 (the ''January 2015 final rule''; 80 FR 792), DOE proposed an optional use of a default jacket loss value of 1 percent for vented floor furnaces, as an alternative to performing a jacket loss test. 78 FR 63410, 63415 (Oct. 24, 2013). In the January 2015 final rule, DOE decided not to adopt the 1 percent default jacket loss value for vented floor furnaces after reviewing test data that revealed an average jacket loss of 3.05 percent. 80 FR 792, 794 (Jan. 6, 2015).

In the April 2021 NOPR, DOE did not propose a default jacket loss value, stating its tentative conclusion that a default jacket loss value for vented floor furnaces would provide less representative ratings than the existing test method, which requires measurement of the jacket loss in floor furnaces. 86 FR 20053, 20064

NEEA and the Joint Advocates expressed support for continuing to measure jacket losses, rather than including a default value, stating that this would provide the most accurate representation of energy use and may encourage manufacturers to develop technology that further minimizes jacket losses. (NEEA, No. 16 at p. 2; Joint Advocates, No. 13 at p. 1)

Consistent with the April 2021 NOPR, DOE is not amending section 3.2 of appendix O to allow for a default jacket loss factor for floor furnaces.

c. Radiation Shielding

Sections 2.6.1, 2.6.2, and 2.9 of appendix O require that radiation shields be used to protect thermocouples that could receive direct radiation from the fire. However, no instruction was given on how to determine if a thermocouple could receive direct radiation from the fire, and if so, what type of radiation shielding would be required.

In the April 2021 NOPR, DOE proposed to require that all thermocouples be shielded from the fire if there is a direct line of sight between the fire and the thermocouple. Further, DOE proposed that if radiation shielding is required, then a radiation shield meeting the material and minimum thickness requirements stated in Section 8.14.1 of ANSI Z21.86–2016 shall be used. 86 FR 20053, 20065.

DOE received no comments on its proposal. In this final rule, DOE amends sections 2.6.1, 2.6.2, and 2.9 of appendix O, consistent with the proposal from the April 2021 NOPR, to require that all thermocouples be shielded from the fire if there is a direct line of sight between the fire and the thermocouple; and if radiation shielding is required, then the radiation shield must meet the material and minimum thickness requirements stated in Section 8.14.1 of ANSI Z21.86–2016.

d. Standing Pilot Light Energy

In response to a notice of proposed determination (''NOPD'') not to amend energy conservation standards for DHE published on December 1, 2020 (85 FR 77017), the Joint Advocates urged DOE to address the pilot light energy consumption for both vented and unvented heaters, noted that the test procedures (*i.e.,* appendix G and appendix O) do not require measurement of the pilot light energy input rate for vented heater models that instruct the user on how to turn the pilot light off, and stated that this instruction does little to reduce the operating hours of standing pilot lights in practice. (EERE–2019–BT–STD–0002: Joint Advocates, No. 16 at p. 1) No such comments were submitted on the April 2021 NOPR; however, DOE will respond to the Joint Advocates' comments in this document.

DOE addresses similar comments regarding appendix G received in response to the April 2021 NOPR in section III.C.2 of this document. Regarding appendix O, similar to the requirement for unvented heaters discussed previously, DOE notes that section 3.5 requires measurement of the standing pilot input rate for all vented heaters that are not manually controlled heaters for which the pilot light is designed to be turned off by the user when the heater is not in use (that is, turning the control to the OFF position will shut off the gas supply to burner(s) and to the pilot light). This provision applies only to manually controlled heaters that operate by the consumer physically turning the unit on and off

[13] The ''balance point temperature'' is defined in section 4 of Appendix O and represents a temperature used to apportion the annual heating load between the reduced input cycling mode and either the modulating mode or maximum input cycling mode.

when heating is desired, and does not apply to heaters that operate with a thermostat or other automatic means of control.

DOE did not propose any changes to section 3.5 of appendix O in the April 2021 NOPR. DOE does not have, and has not been presented with, sufficient data to determine whether a significant number of vented heater consumers leave the standing pilot light on during the non-heating season. As a result, DOE lacks data at this time regarding the operational hours of the pilot in off mode and the percentage of consumers that do not turn their pilot lights off during the non-heating seasons, which would be needed for DOE to incorporate a representative measure of off mode energy use in the test procedure. Therefore, DOE is maintaining the existing provisions in appendix O regarding the measurement of the pilot light energy input rate for vented heater models.

e. Draft Factors for Models With No Measurable Airflow

Section 3.6.1 of appendix O specifies that for units with no measurable airflow through the unit when not in heating mode (as determined by a smoke stick test defined in section 3.6.2 of appendix O), a default value of 0.05 may be used for both the off-cycle draft factor for flue gas flow (D_F) and power burner draft factor (D_P).

In the April 2021 NOPR, DOE noted its prior request for information in the February 2019 RFI regarding whether models using condensing or induced draft technology are always capable of meeting the criteria required to use the default draft factors of 0.05 and whether such models should automatically be considered to have no measurable airflow, and, thus, be allowed to use the defined value of 0.05 for D_F and D_P. 86 FR 20053, 20062. However, DOE did not propose the use of the default D_F and D_P values for condensing and induced draft vented heaters without first performing the test in section 3.6.2 of appendix O to confirm that there is no measurable airflow. *Id.* DOE tentatively concluded that the existing provisions in the test procedure for ensuring there is no airflow through the unit when not in heating mode before allowing the default draft factors are appropriate, particularly since the smoke stick test was not identified as overly burdensome by stakeholders or during DOE's testing. Further verification of no airflow ensures that representative draft factors are applied during testing. *Id.*

DOE received no comments in response to its tentative conclusions in the April 2021 NOPR. As such, DOE has concluded that the existing provisions in the test procedure for ensuring there is no airflow through the unit when not in heating mode before allowing the default draft factors are appropriate.

E. Performance and Utility

DHE provides space heating (heated air) directly to the consumer's living space without the use of duct connections. Also relevant to DHE may be the ability to provide ''quiet'' operation, non-heating air circulation, and space humidification.

In the April 2021 NOPR, DOE did not propose any changes to the test procedure related to performance and utility, and tentatively determined that the proposed changes to appendix O would not affect performance or utility. 86 FR 20053, 20065. DOE sought comment and data on whether the DHE test method affects DHE performance or utility, specifically including whether there are impacts on features such as air circulation and space humidification.

DOE received no comments on its proposal. DOE has determined that the amendments adopted in this final rule do not affect performance and utility of DHE.

F. Test Procedure Costs, Harmonization, and Other Topics

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In this final rule, DOE amends the existing test procedures for DHE (including both unvented and vented heaters) by updating definitions regarding unvented and vented heaters, incorporating by reference the most recent versions of several industry standards, explicitly specifying the operational mode for testing units with multiple automatic operational modes, stating the required input rate for the cyclic condensate collection test, allowing the use of manufacturer-specified values for gas supply pressure in certain circumstances, aligning the tolerance on the regulator outlet temperature with other DOE test procedures and the tolerance on the specific gravity of natural gas and propane with industry standards, providing an option to use fewer thermocouples for measuring the flue gas temperature in models with small flues, clarifying instructions for cyclic condensate mass measurements, and clarifying when radiation shielding is necessary. DOE has determined that the amendments adopted in this final rule will not be unduly burdensome for manufacturers to conduct, will not change test burden for manufacturers, and will not increase testing costs.

Specifically, this final rule amends certain definitions of unvented heaters. These definitional changes provide greater consistency and do not affect the applicability of the test procedures or classification of any unvented heaters. As a result, the definitional changes will not require additional testing or impact testing costs.

This final rule updates the industry consensus standards incorporated by reference to the most recent versions of those test methods. All of the updated industry consensus standards, except ANSI/ASHRAE 103–2017, do not contain any significant changes in the sections referenced in the DOE test procedures for DHE. For ANSI/ASHRAE 103, the 2017 version differs from the 2007 version referenced in the DOE test procedure in relation to the oil pressure measurement error allowance and the post-purge time for applying default draft factor values. DOE is adopting the updated standard with modification to retain the oil pressure measurement error allowance and removing mentions of sections 8.8.3 and 9.10 within section 3.6.2.4.2 of appendix O, which refers to the maximum post-purge time for applying default draft factor values from the previously referenced 2007 version of the standard. These two revisions were the only significant differences between the 2007 and 2017 versions that would potentially impact testing of vented heaters. These amendments will not result in any additional burden or costs, as manufacturers are already complying with the oil pressure measurement error allowance provisions under the previous test procedure, and all the information stated in Section 8.8.3 of ANSI/ASHRAE 103–2007 is already stated in sections 3.6.1 and 3.6.2 of appendix O.

DOE is adopting amendments to specify that models with multiple automatic operational modes are to be tested in the default mode (or similarly named mode identified for normal operation). If a default mode is not defined in the product literature, the model shall be tested in the mode that the equipment operates in as shipped from the manufacturer. As discussed, DOE did not identify any models currently on the market that are capable of multiple automatic operation modes. Thus, DOE concludes that this change will not require additional testing, nor will it impact testing costs.

DOE is amending appendix O to explicitly state the required input rate for the cyclic condensate collection test in section 3.8.2. The input rate instruction is identical to the instruction

in Section 9.8 of ANSI/ASHRAE 103–2007, which was the industry test procedure on which the cyclic condensate collection test in section 3.8.2 was based. DOE notes this instruction is also included in the most recent version of ANSI/ASHRAE 103–2017. DOE concludes that because the input rate is not specified in DOE's current test procedure, but is explicitly stated in the industry test method, manufacturers are already testing as instructed by the industry test method. Therefore, this change will not require additional testing, nor would it impact testing costs.

DOE is amending appendix O to allow for use of manufacturer-specified gas inlet pressure ranges when the required input rating (*i.e.,* the nameplate input rating ±2 percent) cannot be achieved at 7–10 inches water column, as previously required in appendix O. Aside from the tested unit that presented this issue, DOE is unaware of this issue more broadly occurring in manufacturer testing. Were this issue to occur, a valid test as prescribed by the test procedure could not be performed, and a manufacturer would need to seek a waiver from the test procedure under 10 CFR 430.27. DOE has not received any such waivers. As such, this amendment will not require retesting of units on the market and is not expected to impact test burden.

DOE is also adding a tolerance on the regulator outlet temperature to be within the greater of ±10 percent of the manufacturer-specified manifold pressure or ±0.2 inches water column. This tolerance is consistent with other DOE test procedures and is not expected to require retesting of units on the market or to impact test burden.

DOE is adding specifications that the specific gravity of natural gas be between 0.57 and 0.70 and of propane gas be between 1.522 and 1.574. These ranges include the previously required values and align with the industry's required ranges as stated in Annex G of ANSI Z21.86–2016. As such, these changes will not require retesting of units on the market and are not expected to impact test burden.

DOE is also allowing the testing agency to determine whether to use nine or five thermocouples when testing models with small (2-inch or less diameter) flues. In models where nine thermocouples restrict the flow to the point of causing the unit to operate outside of the allowable test and/or operational conditions (such as the maximum outlet air temperature), a test meeting all the required test conditions cannot be completed. Therefore, for impacted models, this change will allow testing to the required test conditions to be conducted, which are designed to produce results representative of a typical average use cycle. DOE has determined that performing a test with five thermocouples instead of nine will impose no additional testing costs.

DOE is clarifying the calculation for the allowable variance of the condensate mass measured during the cyclic condensate test when determining whether to conduct three cycles or six. The amended wording does not change the intent of the test or the test requirements, nor will it have an impact on test cost.

Finally, DOE is clarifying when thermocouple radiation shielding is necessary to install and, when shielding is necessary, providing additional specification to ensure that appropriate shielding materials are used. Radiation shielding requirements were already included in the previous test procedure, and the amendments do not change the intent of the test or the test requirements, nor will they have an impact on test cost.

In summary, DOE has determined that manufacturers will be able to rely on data generated under the previous test procedure and that retesting will not be necessary as a result of the amendments adopted by this final rule.

2. Harmonization With Industry Consensus Standards

Appendices G and O incorporate by reference certain provisions of numerous industry standards. Both appendices incorporate by reference IEC 62301 (Edition 2.0, 2011–01), which provides methods for measuring electrical standby mode and off mode power consumption. Appendix O also incorporates by reference ANSI/ASHRAE 103, which is a test method for determining the annual fuel utilization efficiency of residential central furnaces and boilers; ANSI Z21.86, which is a standard for construction and safety performance of vented gas space heating appliance; ASTM D–2156, which is a standard for determining smoke density; and UL 729, UL 730, and UL 896, which are standards pertaining to the installation of oil-fired vented heaters. The only industry standard referenced in appendix G is IEC 62301. As discussed in section III.B of this document, this final rule incorporates by reference the most recent versions of the referenced industry standards.

G. Effective and Compliance Dates

The effective date for the adopted test procedure amendments is 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined this test procedure rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any final rule where the agency was first required by law to publish a proposed rule 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 Executive Order 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 DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification

System (''NAICS''). DHE manufacturers are classified under NAICS code 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' The SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business. DOE used available public information to identify potential small manufacturers of the covered product. DOE accessed the Compliance System Management System's Compliance Certification Database and AHRI's certified product directory to create a list of companies that import or otherwise manufacture DHE covered by this proposal. Using these sources, DOE identified a total of four manufacturers of DHE. Of these manufacturers, two are potential small domestic businesses. In April 2021 NOPR, DOE concluded that the impacts of the proposed test procedure amendments would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an initial regulatory flexibility analysis (''IRFA'') was not warranted. DOE transmitted the certification of its determination 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).

Between the publication of the April 2021 NOPR and this final rule, one small business manufacturer purchased another small business manufacturer's vented heater brand. It is unclear at this time whether the combined business remains below the SBA's headcount threshold of 500 people to be considered a small business. Due to the nature of this final rule, which generally updates the incorporations by reference to the latest version of applicable industry consensus standards (which saw no substantive changes to the relevant provisions) and makes a number of clarifications and minor modifications designed to reduce burden, the Department has determined that this final rule will not impose a significant burden on small manufacturers who produce this specific type of product.

More specifically, in this document, DOE added the following changes to the test procedure for unvented and vented heaters, as well as several associated changes to definitions at 10 CFR 430.2. First, to ensure consistent use and application of the test procedure, DOE: Updates the definitions of ''floor electric heater,'' ''primary heater,'' ''unvented gas heater,'' ''unvented home heating equipment,'' ''unvented oil heater,'' ''vented home heating equipment,'' and ''vented room heater''; updates the terms ''primary heater'' and ''supplementary heater'' to ''primary electric heater'' and ''supplementary electric heater,'' respectively; maintains the existing oil pressure measurement error value in the test procedure; explicitly states the regulator outlet pressure and specific gravity tolerances for the gas supply; and clarifies the wording of the cyclic condensate collection test in the calculation of the allowable variance in condensate mass measurements. Second, to align with the most recent industry consensus standards, DOE: Updates the references to the industry consensus standards to the most recent versions; clarifies the required input rate for the cyclic condensate collection tests; and explicitly states the methods to appropriately shield thermocouples from radiation. Third, to ensure the representativeness of the test procedure, DOE: Explicitly states the operational mode for testing vented heaters with multiple automatic operation modes; allows for use of manufacturer-specified gas inlet pressure range when the required input rating cannot be reached; and provides an option to use five, rather than nine, thermocouples for the thermocouple grid in models with small (2-inch diameter or less) flues.

All changes are either clarifications to ensure consistent use and application (which does not affect the results of the test procedure or how the test procedure is run) or amendments that ensure the representativeness of the test procedure as compared to products installed in the field. These amendments are consistent with the most recent industry consensus standards.

As stated, DOE has reviewed this final rule to amend the test procedures for DHE under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003, and the Department has determined that this rulemaking will not have any cost impact. Therefore, DOE concludes that the impacts of the test procedure amendments in this final rule will not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an FRFA is not warranted. DOE has submitted a 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 of 1995

Manufacturers of DHE must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including DHE. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 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.

D. Review Under the National Environmental Policy Act of 1969

In this document, DOE finalizes test procedures to measure the rated output and implement energy conservation standards for DHE. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on 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 examined this final rule and 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final 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(d)) No further action is required by Executive Order 13132.

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. Section 3(b) of Executive Order 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 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 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. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting 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 small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/;office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will 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

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under 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 final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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 OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated 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 significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, 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.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

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, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for DHE adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: ASNI/ASHRAE 103–2017, ANSI Z21.86–2016, ASTM D2156–09 (R2018), IEC 62301 (Edition 2.0, 2011–01), UL 729–2016, UL 730–2016, and UL 897–2016. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before 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).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the following test standards:

(1) The test standard published by ASHRAE, titled ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' ANSI/ASHRAE 103–2017. ANSI/ASHRAE 103–2017 is an industry-accepted test procedure for determining the annual fuel utilization efficiency of consumer furnaces and boilers. Specifically, the test procedure amendments adopted by this final rule reference sections of that industry consensus standard regarding test set-up for oil-fueled DHE (including instrumentation and measurement descriptions for oil burner adjustments), and instructions on calculating jacket losses in vented floor heaters and calculations for draft factors. Copies of ANSI/ASHRAE 103–2017 can be obtained from ASHRAE, 180 Technology Parkway NW, Peachtree Corners, GA 30092, (800) 527–4723 or (404) 636–8400, or online at: *www.ashrae.org.*

(2) The test standard approved by ANSI, titled ''Vented Gas-fired Space Heating Appliances,'' ANSI Z21.86–2016. ANSI Z21.86 is an industry-accepted test procedure for vented gas-fired space heating appliances. Specifically, the test procedure amendments adopted by this final rule reference sections of that industry consensus standard regarding the set-up specifications for vented wall DHE, instructions for gas usage other than natural gas or propane, instructions for measuring discharge temperatures of forced air, vented, wall DHE, and descriptions of thermocouple installation in gas-fueled, vented DHEs. Copies of ANSI Z21.86–2016 can be obtained from ANSI, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *www.ansi.org.*

(3) The test standard published by ASTM, titled ''Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels,'' ASTM D2156–09 (R2018). ASTM D2156 is an industry-accepted test procedure for measuring smoke density in flue gases from burning distillate fuels. Specifically, the test procedure amendments adopted by this final rule reference sections of that industry consensus standard regarding providing smoke density levels which are measured during for the steady-state test. Copies of ASTM D2156–09 (R2018) can be obtained from ASTM, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 or online at: *www.astm.org.*

(4) The test standard published by IEC, titled ''Household electrical appliances—Measurement of standby power,'' IEC 62301 (Edition 2.0, 2011–01). IEC 62301 is an industry-accepted test procedure for the measurement of standby power modes in household electrical appliances. Specifically, the test procedure amendments adopted by this final rule reference sections of that industry consensus standard regarding measurement of electrical standby mode and off mode power consumption. Copies of IEC 62301 (Second Edition) can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *www.webstore.ansi.org.*

(5)–(7) The test standards published by UL: ''Standard for Safety for Oil-fired Floor Furnaces,'' ''Standard for Safety for Oil-fired Wall Furnaces,'' and ''Standard for Safety for Oil-burning Stoves,'' UL 729–2016, UL 730–2016, and UL 896–2016, respectively. UL 729, UL 730, UL 896 are industry-accepted test procedures for oil-fired floor furnaces, oil-fired wall furnaces, and oil-burning stoves respectively. Specifically, the test procedure amendments adopted by this final rule reference sections of those industry consensus standards regarding vented floor and wall DHE test installation and instructions for flue and thermocouple installation for oil fueled, vented floor DHEs. Copies of UL 729–2016, UL 730–2016, and UL 896–2016 can be obtained from UL at 2600 NW Lake Rd., Camas, WA 98607–8542 or online at: *www.ul.com.*

The Director of the Federal Register previously approved IEC 62301 (Edition 2.0, 2011–01) for incorporation by reference in the locations in which it appears in this rule's regulatory text for 10 CFR part 430.

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, Reporting and recordkeeping requirements, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 10, 2022, 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 May 10, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:

■ a. Revising the definitions for ''Electric heater'', ''Floor electric heater'', ''Primary heater'', ''Supplementary heater'', and ''Unvented gas heater'';

■ b. Removing the definition of ''Unvented home heating equipment'' and adding, in alphabetical order, the definition of ''Unvented home heating equipment or unvented heater''; and

■ c. Revising the definitions of ''Unvented oil heater'', ''Vented home heating equipment or vented heater'', and ''Vented room heater''.

The revisions and addition read as follows:

§ 430.2 Definitions.

* * * * *

Electric heater means an electric appliance which is a class of unvented home heating equipment in which heat is generated from electrical energy and dissipated by convection and radiation and includes baseboard electric heaters, ceiling electric heaters, floor electric heaters, portable electric heaters, and wall electric heaters.

* * * * *

Floor electric heater means an electric heater which is intended to be recessed in a floor, and which transfers heat by radiation and/or convection (either natural or forced).

* * * * *

Primary electric heater means an electric heater that is the principal source of heat for a structure and includes baseboard electric heaters, ceiling electric heaters, floor electric heaters, and wall electric heaters.

* * * * *

Supplementary electric heater means an electric heater that provides heat to a space in addition to that which is supplied by a primary electric heater and includes portable electric heaters.

* * * * *

Unvented gas heater means a class of unvented home heating equipment which is a self-contained, free-standing, nonrecessed gas-burning appliance that furnishes heated air by gravity or fan circulation.

Unvented home heating equipment or unvented heater means a class of home heating equipment, not including furnaces, designed to furnish heated air to a space proximate to such heater, directly from the heater, without inlet duct connections and without exhaust venting, and includes: Electric heater, unvented gas heater, and unvented oil heater.

Unvented oil heater means a class of unvented home heating equipment which is a self-contained, free-standing, nonrecessed oil-burning appliance that furnishes heated air by gravity or fan circulation.

* * * * *

Vented home heating equipment or vented heater means a class of home heating equipment, not including furnaces, designed to furnish heated air to a space proximate to such heater, directly from the heater, without inlet duct connections (except that boots not to exceed 10 inches beyond the casing may be permitted), and with exhaust venting, and includes: Vented wall furnace, vented floor furnace, and vented room heater.

Vented room heater means a self-contained, free standing, nonrecessed, vented heater for furnishing heated air to the space in which it is installed. The vented room heater supplies heated air circulated by gravity or by a fan directly into the space to be heated through openings in the casing.

* * * * *

■ 3. Section 430.3 is amended by:

■ a. Removing and reserving paragraph (e)(25);

■ b. Revising paragraphs (g) introductory text and (g)(16);

■ c. Redesignating paragraphs (g)(17) and (18) as (g)(18) and (19), respectively;

■ d. Adding new paragraph (g)(17);

■ e. Revising paragraph (j)(1) and adding paragraph (j)(3);

■ f. Redesignating paragraphs (k) through (v) as paragraphs (l) through (w) and adding new paragraph (k); and

■ g. Revising newly redesignated paragraphs (w)(1) through (3).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(g) *ASHRAE.* American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 180 Technology Parkway NW, Peachtree Corners, GA 30092; (800) 527–4723 or (404) 636–8400; *www.ashrae.org.*

* * * * *

(16) ANSI/ASHRAE Standard 103–2007 (''ASHRAE 103–2007''), Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers, ANSI-approved March 25, 2008; IBR approved for appendix AA to subpart B.

(17) ANSI/ASHRAE Standard 103–2017 (''ASHRAE 103–2017''), Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers, ANSI-approved July 3, 2017; IBR approved for appendix O to subpart B.

* * * * *

(j) * * *

(1) ASTM D2156–09 (''ASTM D2156''), Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels, ASTM-approved December 1, 2009; IBR approved for appendix E to subpart B.

* * * * *

(3) ASTM D2156–09 (Reapproved 2018) (''ASTM D2156–09 (R2018)''), Standard Test Method for Smoke Density in Flue Gases from Burning Distillate Fuels, approved October 1, 2018; IBR approved for appendix O to subpart B.

(k) *Canadian Standards Association (CSA).* CSA Group, 178 Rexdale Blvd., Toronto, ON, Canada M9W 1R3, 1–800–463–6727 or 416–747–4044, *www.csagroup.org.*

(1) ANSI Z21.86–2016 • CSA 2.32–2016 (''ANSI Z21.86–2016''), Vented gas-fired space heating appliances, ANSI-approved December 21, 2016; IBR approved for appendix O to subpart B.

(2) [Reserved]

* * * * *

(w) * * *

(1) UL 729 (''UL 729–2016''), Standard for Safety for Oil-Fired Floor Furnaces, Sixth Edition, dated August 29, 2003, including revisions through November 22, 2016; IBR approved for appendix O to subpart B.

(2) UL 730 (''UL 730–2016''), Standard for Safety for Oil-Fired Wall Furnaces, Fifth Edition, dated August 29, 2003, including revisions through November 22, 2016; IBR approved for appendix O to subpart B.

(3) UL 896 (''UL 896–2016''), Standard for Safety for Oil-Burning Stoves, Fifth Edition, dated July 29, 1993; including revisions through November 22, 2016, IBR approved for appendix O to subpart B.

■ 4. Appendix O to subpart B of part 430 is amended by:
■ a. Revising the introductory note;
■ b. Adding section 0; and
■ c. Revising sections 2, 3.1.2, 3.2, 3.6.2.4.2, and 3.8.2.

The additions and revisions read as follows:

Appendix O to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

Note: Prior to November 16, 2022, representations with respect to the energy use or efficiency of vented home heating equipment, including compliance certifications, must be based on testing conducted in accordance with either this appendix as it now appears or appendix O as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2021.

On and after November 16, 2022, representations with respect to energy use or efficiency of vented home heating equipment, including compliance certifications, must be based on testing conducted in accordance with this appendix.

0.0 Incorporation by Reference. DOE incorporated by reference in § 430.3: ANSI Z21.86–2016; ASHRAE 103–2017; ASTM D2156–09 (R2018); IEC 62301; UL 729–2016; UL 730–2016; and UL 896–2016 in their entirety. However, only enumerated provisions of ANSI Z21.86–2016; ASHRAE 103–2017, UL 729–2016, UL 730–2016, and UL 896–2016 are applicable to this appendix, as follows:

0.1 ANSI Z21.86–2016
- (i) Section 5.2—Test gases
- (ii) Section 9.1.3
- (iii) Section 11.1.3
- (iv) Section 11.7—Temperature at discharge air opening and surface temperatures

0.2 ASHRAE 103–2017
- (i) Section 6—INSTRUMENTS
- (ii) Section 8.2.2.3.1—Oil Supply
- (iii) Section 8.6—Jacket Loss Measurement
- (iv) Section 8.8.3—Additional Optional Method of Testing for Determining DP and DF for Furnaces and Boilers
- (v) Section 9.10—Optional Test Procedures for Condensing Furnaces and Boilers that Have no OFF-Period Flue Losses

0.3 UL 729–2016
- (i) Section 38.1—Enclosure
- (ii) Section 38.2—Chimney connector

0.4 UL 730–2016
- (i) Section 36.1—Enclosure
- (ii) Section 36.2—Chimney connector
- (iii) Sections 37.5.8 through 37.5.180.5 UL 896–2016
- (i) Section 37.1.2
- (ii) Section 37.1.3

* * * * *

2.0 Testing conditions.

2.1 Installation of test unit.

2.1.1 Vented wall furnaces (including direct vent systems). Install non-direct vent gas fueled vented wall furnaces as specified in Section 11.1.3 of ANSI Z21.86–2016. Install direct vent gas fueled vented wall furnaces as specified in Section 9.1.3 of ANSI Z21.86–2016. Install oil-fueled vented wall furnaces as specified in Section 36.1 of UL 730–2016.

2.1.2 Vented floor furnaces. Install vented floor furnaces for test as specified in Section 38.1 of UL 729–2016.

2.1.3 Vented room heaters. Install vented room heaters for test in accordance with the manufacturer's installation and operations (I&O) manual provided with the unit.

2.2 Flue and stack requirements.

2.2.1 Gas fueled vented home heating equipment employing integral draft diverters and draft hoods (excluding direct vent systems). Attach to, and vertically above the outlet of gas-fueled vented home heating equipment employing draft diverters or draft hoods with vertically discharging outlets, a five (5) foot long test stack having a cross-sectional area the same size as the draft diverter outlet.

Attach to the outlet of vented heaters having a horizontally discharging draft diverter or draft hood outlet a 90-degree elbow, and a five (5) foot long vertical test stack. A horizontal section of pipe may be used on the floor furnace between the diverter and the elbow, if necessary, to clear any framing used in the installation. Use the minimum length of pipe possible for this section. Use stack, elbow, and horizontal section with same cross-sectional area as the diverter outlet.

2.2 Oil-fueled vented home heating equipment (excluding direct vent systems). Use flue connections for oil-fueled vented floor furnaces as specified in Section 38.2 of UL 729–2016, Section 36.2 of UL 730–2016 for oil-fueled vented wall furnaces, and Sections 37.1.2 and 37.1.3 of UL 896–2016 for oil-fueled vented room heaters.

2.2.3 Direct vent systems. Have the exhaust/air intake system supplied by the manufacturer in place during all tests. Test units intended for installation with a variety of vent pipe lengths with the minimum length recommended by the manufacturer in the I&O manual. Do not connect a heater employing a direct vent system to a chimney or induced draft source. Vent the gas solely on the provision for venting incorporated in the heater and the vent/air intake system supplied with it.

2.2.4 Condensing vented heater, additional flue requirements. The flue pipe installation must not allow condensate formed in the flue pipe to flow back into the unit. An initial downward slope from the unit's exit, an offset with a drip leg, annular collection rings, or drain holes must be included in the flue pipe installation without disturbing normal flue gas flow. Flue gases should not flow out of the drain with the condensate. For condensing vented heaters that do not include means for collection of condensate, a means to collect condensate must be supplied by the test lab for the purposes of testing.

2.3 Fuel supply.

2.3.1 Natural gas. For a gas-fueled vented heater, maintain the gas supply to the unit under test at an inlet test pressure immediately ahead of all controls at 7 to 10 inches water column. If the heater is equipped with a gas pressure regulator, maintain the regulator outlet pressure within the greater of ±0.2 inches water column, or ±10 percent, of the manufacturer-specified manifold pressure on the nameplate of the unit or in the I&O manual. Use natural gas having a specific gravity between 0.57 and 0.70 and a higher heating value within ±5 percent of 1,025 Btu per standard cubic foot. Determine the actual higher heating value in Btu per standard cubic foot for the natural gas to be used in the test with an error no greater than one percent. If the burner cannot be adjusted to obtain a heat input rate of within ±2 percent of the hourly Btu rating specified by the manufacturer on the nameplate of the unit or in the I&O manual, as required by section 2.4.1 of this appendix, maintain the gas supply to the unit under test at an inlet test pressure immediately ahead of all controls at any value within the range specified on the nameplate of the unit or in the I&O manual that results in a heat input rate of within ±2 percent of the hourly Btu rating specified by the manufacturer on the nameplate of the unit or in the I&O manual.

2.3.2 Propane gas. For a propane-gas-fueled vented heater, maintain the gas supply to the unit under test at an inlet pressure of 11 to 13 inches water column. If the heater is equipped with a gas pressure regulator, maintain the regulator outlet pressure within the greater of ±0.2 inches water column, or ±10 percent, of the manufacturer's specified manifold pressure on the nameplate of the unit or in the I&O manual. Use propane having a specific gravity between 1.522 and 1.574 and a higher heating value within ±5 percent of 2,500 Btu per standard cubic foot. Determine the actual higher heating value in Btu per standard cubic foot for the propane to be used in the test. If the burner cannot be adjusted to obtain a heat input rate of within ±2 percent of the hourly Btu rating specified by the manufacturer on the nameplate of the unit or in the I&O manual, as required by section 2.4.1 of this appendix, maintain the gas supply to the unit under test at an inlet test pressure immediately ahead of all controls at any value within the range specified on the nameplate of the unit or in the I&O manual that results in a heat input rate of within ±2 percent of the hourly Btu rating specified by the manufacturer on the nameplate of the unit or in the I&O manual.

2.3.3 Other test gas. For vented heaters fueled by other test gases, use test gases with characteristics as described in Table 3 of Section 5.2 of ANSI Z21.86–2016. Use gases with a measured higher heating value within ±5 percent of the values specified in Table 3 of Section 5.2 of ANSI Z21.86–2016. Determine the actual higher heating value of the gas used in the test with an error no greater than one percent.

2.3.4 Oil supply. For an oil-fueled vented heater, use No. 1 fuel oil (kerosene) for vaporizing-type burners and either No. 1 or No. 2 fuel oil, as specified by the manufacturer in the I&O manual provided with the unit, for mechanical atomizing type burners. Use test fuel conforming to the specifications given in Tables 2 and 3 of Section 8.2.2.3.1 of ASHRAE 103–2017. Measure the higher heating value of the test fuel within ±1 percent.

2.3.5 Electrical supply. For auxiliary electric components of a vented heater,

maintain the electrical supply to the test unit within ±1 percent of the nameplate voltage for the entire test cycle. If a voltage range is used for nameplate voltage, maintain the electrical supply within ±1 percent of the mid-point of the nameplate voltage range.

2.4 Burner adjustments.

2.4.1 Gas burner adjustments. Adjust the burners of gas-fueled vented heaters to their maximum Btu ratings at the test pressure specified in section 2.3 of this appendix. Correct the burner volumetric flow rate to 60 °F (15.6 °C) and 30 inches of mercury barometric pressure, set the fuel flow rate to obtain a heat rate of within ±2 percent of the hourly Btu rating specified by the manufacturer on the nameplate of the unit or in the I&O manual, as measured after 15 minutes of operation, starting with all parts of the vented heater at room temperature. Set the primary air shutters in accordance with the manufacturer's recommendations on the nameplate of the unit or in the I&O manual to give a good flame at this adjustment. Do not allow the deposit of carbon during any test specified herein. If a vent limiting means is provided on a gas pressure regulator, have it in place during all tests.

For gas-fueled heaters with modulating controls, adjust the controls to operate the heater at the maximum fuel input rate. Set the thermostat control to the maximum setting. Start the heater by turning the safety control valve to the ''on'' position. In order to prevent modulation of the burner at maximum input, place the thermostat sensing element in a temperature control bath which is held at a temperature below the maximum set point temperature of the control.

For gas-fueled heaters with modulating controls, adjust the controls to operate the heater at the reduced fuel input rate. Set the thermostat control to the minimum setting. Start the heater by turning the safety control valve to the ''on'' position. If ambient test room temperature is above the lowest control set point temperature, initiate burner operation by placing the thermostat sensing element in a temperature control bath that is held at a temperature below the minimum set point temperature of the control.

2.4.2 Oil burner adjustments. Adjust the burners of oil-fueled vented heaters to give the CO_2 reading recommended by the manufacturer and an hourly Btu input, during the steady-state performance test described below, which is within ±2 percent of the heater manufacturer's specified hourly Btu input rating on the nameplate of the unit or in the I&O manual. On units employing a power burner, do not allow smoke in the flue to exceed a No. 1 smoke during the steady-state performance test as measured by the procedure in ASTM D2156–09 (R2018). If, on units employing a power burner, the smoke in the flue exceeds a No. 1 smoke during the steady-state test, readjust the burner to give a lower smoke reading, and, if necessary, a lower CO_2 reading, and start all tests over. Maintain the average draft over the fire and in the flue during the steady-state performance test at that recommended by the manufacturer within ±0.005 inches of water gauge. Do not make additional adjustments to the burner during the required series of performance tests. The instruments and measuring apparatus for this test are described in Section 6 and shown in Figure 8 of ASHRAE 103–2017. Calibrate instruments for measuring oil pressure so that the error is no greater than ±0.5 psi.

2.5 Circulating air adjustments.

2.5.1 Forced-air vented wall furnaces (including direct vent systems). During testing, maintain the air flow through the heater as specified by the manufacturer in the I&O manual provided with the unit and operate the vented heater with the outlet air temperature between 80 °F and 130 °F above room temperature. If adjustable air discharge registers are provided, adjust them so as to provide the maximum possible air restriction. Measure air discharge temperature as specified in Section 11.7.2 of ANSI Z21.86–2016.

2.5.2 Fan-type vented room heaters and floor furnaces. During tests on fan-type furnaces and heaters, adjust the air flow through the heater as specified by the manufacturer. If adjustable air discharge registers are provided, adjust them to provide the maximum possible air restriction.

2.6 Location of temperature measuring instrumentation.

2.6.1 Gas-fueled vented home heating equipment (including direct vent systems). Install thermocouples for measuring the heated air temperature as described in Section 11.7.5 of ANSI Z21.86–2016. Establish the temperature of the inlet air by means of a single No. 24 AWG bead-type thermocouple located in the center of the plane of each inlet air opening. Use bead-type thermocouples having wire size not greater than No. 24 American Wire Gauge (AWG). If a thermocouple has a direct line of sight with the fire, install a radiation shield, meeting the material and minimum thickness requirements from Section 8.14.1 of ANSI Z21.86–2016, on the fire side of the thermocouple only, and position the shield so that it does not touch the thermocouple junction.

2.6.1.1 Integral draft diverter. For units employing an integral draft diverter, install nine thermocouples, wired in parallel, in a horizontal plane in the five-foot test stack located one foot from the test stack inlet. Equalize the length of all thermocouple leads before paralleling. Locate one thermocouple in the center of the stack. Locate eight thermocouples along imaginary lines intersecting at right angles in this horizontal plane at points one third and two thirds of the distance between the center of the stack and the stack wall.

For units with a stack diameter 2 inches or less, five thermocouples may be installed instead of nine. Locate one thermocouple in the center of the stack. Locate four thermocouples along imaginary lines intersecting at right angles in this horizontal plane at points halfway between the center of the stack and the stack wall.

2.6.1.2 Direct vent system. For units which employ a direct vent system, locate at least one thermocouple at the center of each flue way exiting the heat exchanger. Provide radiation shields if the thermocouples are exposed to burner radiation.

2.6.1.3 Draft hood or direct vent system which does not intentionally preheat incoming air. For units which employ a draft hood or units which employ a direct vent system which does not intentionally preheat the incoming combustion air, such as a non-concentric direct vent system, install nine thermocouples, wired in parallel, in a horizontal plane located within 12 inches (304.8 mm) of the heater outlet and upstream of the draft hood on units so equipped. Locate one thermocouple in the center of the pipe and eight thermocouples along imaginary lines intersecting at right angles in this horizontal plane at points one third and two thirds of the distance between the center of the pipe and the pipe wall.

For units with a flue pipe diameter of 2 inches or less, five thermocouples may be installed instead of nine. Locate one thermocouple in the center of the pipe and four thermocouples along imaginary lines intersecting at right angles in this horizontal plane at points halfway between the center of the pipe and the pipe wall.

2.6.1.4 Direct vent system which intentionally preheat incoming air. For units which employ direct vent systems that intentionally preheat the incoming combustion air, such as a concentric direct vent system, install nine thermocouples, wired in parallel, in a plane parallel to and located within 6 inches (152.4 mm) of the vent/air intake terminal. Equalize the length of all thermocouple leads before paralleling. Locate one thermocouple in the center of the flue pipe and eight thermocouples along imaginary lines intersecting at right angles in this plane at points one third and two thirds of the distance between the center of the flue pipe and the pipe wall.

For units with a flue pipe diameter of 2 inches or less, five thermocouples may be installed instead of nine. Locate one thermocouple in the center of the flue pipe and four thermocouples along imaginary lines intersecting at right angles in this plane at points halfway between the center of the flue pipe and the pipe wall.

2.6.2 Oil-fueled vented home heating equipment (including direct vent systems).

Install thermocouples for measuring the heated air temperature as described in Sections 37.5.8 through 37.5.18 of UL 730–2016. Establish the temperature of the inlet air by means of a single No. 24 AWG bead-type thermocouple located in the center of the plane of each inlet air opening. Use bead-type thermocouples having a wire size not greater than No. 24 AWG. If there is a thermocouple that has a direct line of sight with the fire, install a radiation shield, meeting the material and minimum thickness requirements from Section 8.14.1 of ANSI Z21.86–2016, on the fire side of the thermocouple only, and position the shield so that it does not touch the thermocouple junction.

Install nine thermocouples, wired in parallel and having equal length leads, in a plane perpendicular to the axis of the flue pipe. Locate this plane at the position shown in Figure 36.4 of UL 730–2016, or Figure 38.1 and 38.2 of UL 729–2016 for a single thermocouple, except that on direct vent systems which intentionally preheat the incoming combustion air, locate this plane within 6 inches (152.5 mm) of the outlet of

the vent/air intake terminal. Locate one thermocouple in the center of the flue pipe and eight thermocouples along imaginary lines intersecting at right angles in this plane at points one third and two thirds of the distance between the center of the pipe and pipe wall.

For units with a flue pipe diameter of 2 inches or less, five thermocouples may be installed instead of nine. Wire the thermocouples in parallel with equal length leads, in a plane perpendicular to the axis of the flue pipe. Locate this plane at the position shown in Figure 36.4 of UL 730–2016, or Figure 38.1 and 38.2 of UL 729–2016 for a single thermocouple, except that on direct vent systems which intentionally preheat the incoming combustion air, locate this plane within 6 inches (152.5 mm) of the outlet of the vent/air intake terminal. Locate one thermocouple in the center of the flue pipe and four thermocouples along imaginary lines intersecting at right angles in this plane at points halfway between the center of the pipe and pipe wall.

2.7 Combustion measurement instrumentation. Analyze the samples of stack and flue gases for vented heaters to determine the concentration by volume of carbon dioxide present in the dry gas with instrumentation which will result in a reading having an accuracy of ±0.1 percentage point.

2.8 Energy flow instrumentation. Install one or more instruments, which measure the rate of gas flow or fuel oil supplied to the vented heater, and if appropriate, the electrical energy with an error no greater than one percent.

2.9 Room ambient temperature. The room ambient temperature shall be the arithmetic average temperature of the test area, determined by measurement with four No. 24 AWG bead-type thermocouples with junctions shielded against radiation using shielding meeting the material and minimum thickness requirements from Section 8.14.1 of ANSI Z21.86–2016, located approximately at 90-degree positions on a circle circumscribing the heater or heater enclosure under test, in a horizontal plane approximately at the vertical midpoint of the appliance or test enclosure, and with the junctions approximately 24 inches from sides of the heater or test enclosure and located so as not to be affected by other than room air.

The value T_{RA} is the room ambient temperature measured at the last of the three successive readings taken 15 minutes apart described in section 3.1.1 or 3.1.2 of this appendix as applicable. During the time period required to perform all the testing and measurement procedures specified in section 3.0 of this appendix, maintain the room ambient temperature within ±5 °F (±2.8 °C) of the value T_{RA}. At no time during these tests shall the room ambient temperature exceed 100 °F (37.8 °C) or fall below 65 °F (18.3 °C).

Locate a thermocouple at each elevation of draft relief inlet opening and combustion air inlet opening at a distance of approximately 24 inches from the inlet openings. The temperature of the air for combustion and the air for draft relief shall not differ more than ±5 °F from the room ambient temperature as measured above at any point in time. This requirement for combustion air inlet temperature does not need to be met once the burner is shut off during the testing described in sections 3.3 and 3.6 of this appendix.

2.10 Equipment used to measure mass flow rate in flue and stack. The tracer gas chosen for this task should have a density which is less than or approximately equal to the density of air. Use a gas unreactive with the environment to be encountered. Using instrumentation of either the batch or continuous type, measure the concentration of tracer gas with an error no greater than 2 percent of the value of the concentration measured.

2.11 Equipment with multiple control modes.

2.11.1 For equipment that has both manual and automatic thermostat control modes, test the unit according to the procedure for its automatic control mode, *i.e.,* single-stage, two-stage, or step-modulating.

2.11.2 For equipment that has multiple automatic thermostat control modes, test in the default mode (or similarly named mode identified for normal operation) as defined by the manufacturer in its I&O manual. If a default mode is not defined in the I&O manual, test in the mode in which the equipment operates as shipped from the manufacturer.

* * * * *

3.1.2 Oil-fueled vented home heating equipment (including direct vent systems). Set up and adjust the vented heater as specified in sections 2.1, 2.2, and 2.3.4 of this appendix. Begin the steady-state performance test by operating the burner and the circulating air blower, on units so equipped, with the adjustments specified by sections 2.4.2 and 2.5 of this appendix, until steady-state conditions are attained as indicated by a temperature variation of not more than ±5 °F (2.8 °C) in the flue gas temperature in three successive readings taken 15 minutes apart. The measurements described in this section are to coincide with the last of these 15 minutes readings.

For units equipped with power burners, do not allow smoke in the flue to exceed a No. 1 smoke during the steady-state performance test as measured by the procedure described in ASTM D2156–09 (R2018). Maintain the average draft over the fire and in the breeching during the steady-state performance test at that recommended by the manufacturer ±0.005 inches of water gauge.

Measure the room temperature (T_{RA}) as described in section 2.9 of this appendix. Measure the steady-state flue gas temperature ($T_{F,SS}$) using nine thermocouples (or five, as applicable) located in the flue pipe as described in section 2.6.2 of this appendix. From the plane where $T_{F,SS}$ was measured, collect a sample of the flue gas and determine the concentration by volume of CO_2 (X_{CO2F}) present in dry flue gas. Measure and record the steady-state heat input rate (Q_{in}).

For manually controlled oil fueled vented heaters, determine the steady-state efficiency at a fuel input rate that is within ±5 percent of 50 percent of the maximum fuel input rate; or, if the design of the heater is such that the fuel input rate cannot be set to ±5 percent of 50 percent of the maximum rated fuel input rate, determine the steady-state efficiency at the minimum rated fuel input rate as measured in section 3.1.2 of this appendix for manually controlled oil fueled vented heaters.

* * * * *

3.2 Jacket loss measurement. Conduct a jacket loss test for vented floor furnaces. Measure the jacket loss (L_j) in accordance with ASHRAE 103–2017 Section 8.6, applying the provisions for furnaces and not the provisions for boilers.

* * * * *

3.6.2.4.2 If absolutely no smoke is drawn into the combustion air intake, the vented heater meets the requirements to allow use of the default draft factor of 0.05.

* * * * *

3.8.2 Cyclic condensate collection tests. If existing controls do not allow for cyclical operation of the tested unit, install control devices to allow cyclical operation of the vented heater. Run three consecutive test cycles. For each cycle, operate the unit until flue gas temperatures at the end of each on-cycle, rounded to the nearest whole number, are within 5 °F of each other for two consecutive cycles. On-cycle and off-cycle times are 4 minutes and 13 minutes respectively. Control of ON and OFF operation actions shall be within ±6 seconds of the scheduled time. For fan-type vented heaters, maintain circulating air adjustments as specified in section 2.5 of this appendix. Begin condensate collection at one minute before the on-cycle period of the first test cycle. Remove the container one minute before the end of each off-cycle period. Measure condensate mass for each test-cycle. The error associated with the mass measurement instruments shall not exceed ±0.5 percent of the quantity measured.

Record fuel input during the entire test period starting at the beginning of the on-time period of the first cycle to the beginning of the on-time period of the second cycle, from the beginning of the on-time period of the second cycle to the beginning of the on-time period of the third cycle, etc., for each of the test cycles. Record fuel HHV, temperature, and pressure necessary for determining fuel energy input, Q_C. Determine the mass of condensate for each cycle, M_C, in pounds. If at the end of three cycles, the sample standard deviation is less than or equal to 20 percent of the mean value for three cycles, use total condensate collected in the three cycles as M_C; if not, continue collection for an additional three cycles and use the total condensate collected for the six cycles as M_C. Determine the fuel energy input, Q_C, during the three or six test cycles, expressed in Btu.

For units with step-modulating controls, conduct the cyclic condensate collection test at reduced input rate only. For units with two-stage controls, conduct the cyclic condensate collection test at both maximum and reduced input rates unless the balance-point temperature (T_C) as determined in section 4.1.10 of this appendix O is equal to or less than the typical outdoor design temperature of 5 °F (–5 °C), in which case,

conduct testing at the reduced input rate only.

* * * * *

[FR Doc. 2022–10373 Filed 5–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1167; Project Identifier AD–2021–00823–E; Amendment 39–22034; AD 2022–09–14]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–22–05, which applied to all General Electric Company (GE) CF34–8C model turbofan engines. AD 2019–22–05 required initial and repetitive inspections of the operability bleed valve (OBV) fuel tubes, OBV bleed air manifold link rod assemblies, and the OBV fuel fittings. AD 2019–22–05 also required replacement of OBVs or related OBV link rod hardware that fail inspection. This AD was prompted by multiple reports of fuel leaks, some leading to engine fires, which have occurred as a result of malfunctions related to the OBV. Additionally, the manufacturer has redesigned the OBV, which terminates the need for the repetitive inspections. This AD requires initial and repetitive inspections of the OBV fuel tubes, OBV bleed air manifold link rod assemblies, and the OBV fuel fittings installed on GE CF34–8C model turbofan engines. This AD requires replacement of OBVs or related OBV link rod hardware that fail inspection. As a terminating action to the repetitive inspections, this AD requires replacement of certain OBVs installed on GE CF34–8C model turbofan engines. This AD also requires replacement of certain OBVs installed on GE CF34–8E model turbofan engines. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 24, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 24, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 23, 2019 (84 FR 63569, November 18, 2019).

ADDRESSES: For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *https://www.ge.com.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1167.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1167; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; fax: (781) 238–7199; email: *Scott.M.Stevenson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–22–05, Amendment 39–19784 (84 FR 63569, November 18, 2019), (AD 2019–22–05). AD 2019–22–05 applied to all GE CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–8C5A2, and CF34–8C5A3 (CF34–8C) model turbofan engines. The NPRM published in the **Federal Register** on December 29, 2021 (86 FR 73997). The NPRM was prompted by multiple reports of fuel leaks, some leading to engine fires, which have occurred as a result of malfunctions related to the OBV. Since the FAA issued AD 2019–22–05, the manufacturer redesigned the OBV, which terminates the need for the repetitive inspections of the OBV fuel tubes, OBV bleed air manifold link rod assemblies, and the OBV fuel fittings. Additionally, the FAA determined that GE CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 (CF34–8E) model turbofan engines are susceptible to the same unsafe condition as the CF34–8C model turbofan engines, and therefore, added the GE CF34–8E model turbofan engines to the applicability of this AD. GE published service information specifying procedures to replace certain OBVs installed on GE CF34–8C and CF34–8E model turbofan engines. In the NPRM, the FAA proposed to continue to require initial and repetitive inspections of the OBV fuel tubes, OBV bleed air manifold link rod assemblies, the OBV fuel fittings installed on GE CF34–8C model turbofan engines, and replacement of OBVs or related OBV link rod hardware that fail inspection. In the NPRM, the FAA proposed to require replacement of certain OBVs installed on GE CF34–8C model turbofan engines as a terminating action to the repetitive inspections. In the NPRM, the FAA also proposed to require replacement of certain OBVs installed on GE CF34–8E model turbofan engines. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from four commenters. The commenters were Air Line Pilots Association, International (ALPA), Horizon Air, Japan Airlines (JAL), and SkyWest Airlines, Inc. (SkyWest). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Add Guidance for OBVs With Unknown Flight Hours (FHs) Since New

Horizon Air requested that the FAA provide guidance for compliance with the Required Actions, paragraphs (g)(4) and (5), in the event the FHs since new of the OBV is unknown. Horizon Air commented that paragraphs (g)(4) and (5) of the NPRM would require replacement of the OBV with a part eligible for installation within prescribed periods, which are predicated on the FHs since new of the OBV. Horizon Air reasoned that the NPRM does not include guidance for replacing an OBV if the FHs since new of the OBV is unknown.

In response to this comment, the FAA has added paragraph (g)(6) to this AD, allowing use of the FHs since new of the engine if the accumulated FHs since new of the OBV is unknown.

Request To Clarify the Reference Date for OBV FHs Since New

JAL requested that the FAA update paragraph (g)(4) of this AD to include a reference date for OBV FHs since new. JAL noted that although paragraph (g)(4) of the NPRM has the OBV FHs since new, it does not provide a reference date.

The FAA revised paragraphs (g)(4)(i) through (iii) of this AD to identify the reference date as requested by the commenter.

Request To Add Service Information Note to the Required Actions

JAL requested that the FAA add a note referenced in GE CF34–8E Service Bulletin (SB) 75–0021 R00 to the Required Actions, which states, ''For all OBVs, if the OBV was upgraded per S/B 75–0018 or the OBV cap was replaced per GEK 117619, CF34–8E Component Maintenance Manual (CMM), 80–12–41, Revision 03 or higher, the flight hours since upgrade or flight hours since the cap was replaced, as applicable, can be used instead of flight hours since new.''

In response to JAL's request, the FAA added paragraph (g)(7) to this AD.

Comments on the Costs of Compliance

SkyWest commented that they have found the costs to convert part number (P/N) 4123T71P02 or P/N 4123T71P03 are closer to $25,000 to $30,000 than the estimated $17,000 stated in the NPRM. SkyWest also commented that replacing the OBV on CF34–8E engines would take more than the 2 hours estimated in the NPRM. SkyWest reasoned that in their experience, it could take 8 hours to replace the OBV on CF34–8E engines.

In response to SkyWest's comment regarding the estimated costs to replace the OBV, the FAA updated the estimated parts costs from $17,230 to $20,330 in the Costs of Compliance section of this AD. The FAA disagrees with revising the estimated labor cost to replace the OBV. The cost analysis in AD rulemaking actions typically includes only the costs associated with complying with the AD and does not include secondary costs. The FAA's cost estimate includes the estimated work hours and parts costs to perform the required actions.

Comments on Part Supply Shortages

SkyWest noted concerns with OBVs modified to P/N 4123T71P06 since only the original equipment manufacturer (OEM) could modify the OBVs. SkyWest also commented that the OEM is currently having parts supply shortages that could jeopardize modifying the OBVs in the required timeline as proposed in paragraphs (g)(3) and (4) of the NPRM.

In response to SkyWest's comments, GE has communicated with the supplier and confirmed there is sufficient capacity and margin to meet the compliance times required by this AD. GE has also requested that the supplier plan improvements for engagement and logistics with the operators.

Support for the AD

ALPA expressed support for the AD as written.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE CF34–8C SB 75–0020 R04, dated May 10, 2019 (GE SB 75–0020). This SB specifies procedures for inspecting the bleed air manifold link rod assemblies; the supply, return, and drain fuel fittings; and the fuel tubes on the OBV. This SB also specifies procedures for performing corrective actions and replacing any OBVs or related OBV link rod hardware that fail the inspection criteria. The Director of the Federal Register approved the incorporation by reference of GE SB 75–0020 as of December 23, 2019 (84 FR 63569, November 18, 2019).

The FAA reviewed GE CF34–8C SB 75–0025 R01, dated August 1, 2019. This SB specifies procedures for replacing and upgrading the suspect population of OBVs VIN 5000728–104 (P/N 4123T71P02), VIN 5000728–106 (P/N 4123T71P03), and VIN 5080046–101 (P/N 4123T71P04).

The FAA reviewed GE CF34–8E SB 75–0019 R01, dated August 1, 2019. This SB specifies procedures for replacing and upgrading the suspect population of OBVs VIN 5000728–104 (P/N 4123T71P02), VIN 5000728–106 (P/N 4123T71P03), and VIN 5080046–101 (P/N 4123T71P04).

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 GE CF34–8C SB 75–0026 R00, dated February 21, 2020. This SB introduces OBV VIN 5080046–103 (P/N 4123T71P06).

The FAA also reviewed GE CF34–8E SB 75–0021 R00, dated February 21, 2020. This SB introduces OBV VIN 5080046–103 (P/N 4123T71P06).

Costs of Compliance

The FAA estimates that this AD affects 1,172 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace OBV	2 work-hours × $85 per hour = $170	$20,330	$20,500	$24,026,000
Inspect OBV fuel tubes, assemblies, and fittings.	1 work-hour × $85 per hour = $85	0	85	99,620

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace OBV tubes, clamps, and link rod hardware ...	2.25 work-hours × $85 per hour = $191.25	$3,786.25	$3,977.50

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive 2019–22–05, Amendment 39–19784 (84 FR 63569, November 18, 2019); and
■ b. Adding the following new airworthiness directive:

2022–09–14 General Electric Company: Amendment 39–22034; Docket No. FAA–2021–1167; Project Identifier AD–2021–00823–E.

(a) Effective Date

This airworthiness directive (AD) is effective June 24, 2022.

(b) Affected ADs

This AD replaces AD 2019–22–05, Amendment 39–19784 (84 FR 63569, November 18, 2019).

(c) Applicability

This AD applies to General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–8C5A2, CF34–8C5A3, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7532, Compressor Bleed Valve.

(e) Unsafe Condition

This AD was prompted by multiple reports of fuel leaks, some leading to engine fires, which have occurred as a result of malfunctions related to the operability bleed valve (OBV). The FAA is issuing this AD to prevent failure of the OBV. The unsafe condition, if not addressed, could result in an engine fire and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For CF34–8C1, CF34–8C5, CF34–8C5A1, and CF34–8C5B1 model turbofan engines with serial numbers (S/Ns): 965101 through 965670 inclusive; 194101 through 194999 inclusive; and 195101 through 195653 inclusive:

(i) Within 880 flight hours (FHs) since the previous inspection, 500 FHs after December 23, 2019 (the effective date of AD 2019–22–05), or 6,880 FHs since new, whichever occurs later, inspect the OBV bleed air manifold link rod assemblies, the OBV fuel fittings, and the OBV fuel tubes.

(ii) Thereafter, within every 880 FHs since the previous inspection, perform additional repeat inspections of the OBV bleed air manifold link rod assemblies, the OBV fuel fittings, and the OBV fuel tubes.

(iii) Use the Accomplishment Instructions, paragraph 3.B., of GE CF34–8C Service Bulletin (SB) 75–0020 R04, dated May 10, 2019 (GE SB 75–0020), to perform inspections required by paragraphs (g)(1)(i) and (ii) of this AD and, per the inspection criteria in paragraph 3.B., of GE SB 75–0020 (the inspection criteria), do the following:

(A) Before further flight, if fuel leakage is observed at the OBV fuel fittings or the OBV fuel fittings are loose, replace the OBV with a part eligible for installation.

(B) Before further flight, if any OBV fuel tube clamp is found to be outside the inspection criteria, re-torque the OBV fuel tube clamp or replace the OBV fuel tube clamp.

(C) Within 50 flight cycles (FCs) after the inspections required by paragraphs (g)(1)(i) and (ii) of this AD, replace any link rod hardware found to be outside the inspection criteria. Until the worn link rod hardware is replaced, the OBV fuel fittings must be inspected before the first flight of each day for leakage and looseness in accordance with the inspection criteria. If the OBV fuel fittings fail to meet the inspection criteria, before further flight, replace the OBV and worn link rod hardware.

(2) For CF34–8C5B1 model turbofan engines with S/Ns not listed in paragraph (g)(1) of this AD and for all CF34–8C5A2 and CF34–8C5A3 model turbofan engines, perform the following:

(i) Within 880 FHs after the effective date of this AD or prior to accumulating 6,880 FHs since new, whichever occurs later, perform an initial inspection of the OBV bleed air manifold link rod assemblies, OBV fuel fittings, and OBV fuel tubes.

(ii) Thereafter, within every 880 FHs since the last inspection, repeat the inspection of the OBV bleed air manifold link rod assemblies, OBV fuel fittings, and OBV fuel tubes.

(iii) Use the Accomplishment Instructions, paragraph 3.B., of GE SB 75–0020, to perform the inspections in paragraph (g)(2)(i) and (ii) of this AD and, per the inspection criteria in paragraph 3.B., of GE SB 75–0020, do the following:

(A) Before further flight, if fuel leakage is observed at the OBV fuel fittings or the OBV fuel fittings are loose, replace the OBV with a part eligible for installation.

(B) Before further flight, if any OBV fuel tube clamp is found to be outside the inspection criteria, re-torque the OBV fuel tube clamp or replace the OBV fuel tube clamp.

(C) Within 50 FCs after the inspections required by paragraphs (g)(2)(i) and (ii) of this AD, replace any link rod hardware found to be outside the inspection criteria. Until the worn link rod hardware is replaced, the OBV fuel fittings must be inspected before the first flight of each day for leakage and looseness in accordance with the inspection criteria. If the OBV fuel fittings fail to meet the inspection criteria, before further flight, replace the OBV and worn link rod hardware.

(3) For all affected engines with an installed OBV, VIN 5000728–104 part number (P/N) (P/N 4123T71P02), VIN 5000728–106 (P/N 4123T71P03), or VIN 5080046–101 (P/N 4123T71P04), having an OBV S/N listed in Appendix A, paragraph 4., of GE CF34–8C SB 75–0025 R01, dated August 1, 2019 (GE SB 75–0025), or Appendix A, paragraph 4., of GE CF34–8E SB 75–0019 R01, dated August 1, 2019 (GE SB 75–0019), respectively, within 180 days after the effective date of this AD, remove the OBV and replace with a part eligible for installation.

(4) For all affected engines with an installed OBV, VIN 5000728–104 (P/N 4123T71P02), VIN 5000728–106 (P/N 4123T71P03), or VIN 5080046–101 (P/N 4123T71P04), having an OBV S/N not listed in Appendix A, paragraph 4., of GE SB 75–0025 or Appendix A, paragraph 4., of GE SB 75–0019, respectively, remove the OBV and replace with a part eligible for installation within the following compliance times:

(i) For an OBV that has accumulated more than 25,000 FHs since new as of the effective date of this AD, remove and replace the OBV within 16 months of the effective date of this AD.

(ii) For an OBV that has accumulated between 12,500 to 25,000 FHs since new, inclusive, as of the effective date of this AD, remove and replace the OBV within 32 months of the effective date of this AD.

(iii) For an OBV with fewer than 12,500 FHs since new as of the effective date of this AD, remove and replace the OBV within 48 months of the effective date of this AD.

(5) For all affected engines with an installed OBV, VIN 5080046–102 (P/N 4123T71P05), before the OBV accumulates 25,000 FHs since new or within 10 years of the effective date of this AD, whichever occurs first, remove the OBV and replace with a part eligible for installation.

(6) For all affected engines with an installed OBV, if the accumulated FHs since new of the OBV is unknown, use the FHs since new of the engine.

(7) If the OBV was upgraded or the OBV cap was replaced using the service information identified in paragraph 1., Planning Information, paragraph C., Compliance, of GE CF34–8E SB 75–0021 R00, dated February 21, 2020, the accumulated FHs since the OBV was upgraded or accumulated FHs since the OBV cap was replaced, as applicable, may be used instead of accumulated FHs since new of the OBV.

(h) Terminating Action

Installation of an OBV that meets the definition of a part eligible for installation in paragraph (i) of this AD constitutes terminating action for the inspections required by paragraphs (g)(1) and (2) of this AD.

(i) Definition

For the purpose of this AD, a ''part eligible for installation'' is an OBV VIN 5080046–103 (P/N 4123T71P06) or an OBV reworked to VIN 5080046–103 (P/N 4123T71P06).

(j) No Reporting Requirement

The reporting instructions specified in GE SB 75–0020 are not required by this AD.

(k) Credit for Previous Actions

You may take credit for the initial inspection required by paragraph (g)(1)(i) or (2)(i) of this AD if you performed this initial inspection before the effective of this AD using GE CF34–8C SB 75–0019 R01, dated October 24, 2017, or R00, dated August 4, 2017; or GE CF34–8C–AL S/B 75–0020, Revision 03, dated December 14, 2018, as applicable.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

For more information about this AD, contact Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; fax: (781) 238–7199; email: *Scott.M.Stevenson@faa.gov.*

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 24, 2022.

(i) GE CF34–8C Service Bulletin (SB) 75–0025 R01, dated August 1, 2019.

(ii) GE CF34–8E SB 75–0019 R01, dated August 1, 2019.

(4) The following service information was approved for IBR on December 23, 2019 (84 FR 63569, November 18, 2019).

(i) GE CF34–8C SB 75–0020 R04, dated May 10, 2019.

(ii) [Reserved]

(5) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *https://www.ge.com.*

(6) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(7) 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 May 16, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–10782 Filed 5–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0092; Project Identifier MCAI–2020–01428–A; Amendment 39–22039; AD 2022–10–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–12/47E airplanes. This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as a batch of incorrectly sized fuel transfer ejector nozzles that were installed on Model PC–12/47E airplanes during production. This AD requires removing the affected fuel transfer ejectors from service and prohibits installation of the affected fuel transfer ejectors. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 24, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 24, 2022.

ADDRESSES: For service information identified in this final rule, contact Pilatus Aircraft Ltd., Customer Support

General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* website: *https://www.pilatus-aircraft.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0092.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0092; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Pilatus Model PC–12/47E airplanes. The NPRM published in the **Federal Register** on February 10, 2022 (87 FR 7774). The NPRM was prompted by MCAI from the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020–0229, dated October 20, 2020 (referred to after this as ''the MCAI''), to correct an unsafe condition on Pilatus Model PC–12/47E airplanes with serial number 2001 and larger. The MCAI states:

> An occurrence was reported where, on the production line, a batch of fuel transfer ejectors with an incorrect (too small) nozzle diameter were installed on some PC–12/47E aeroplanes. Such fuel transfer ejectors are not in compliance with the latest approved design data.
>
> This condition, if not corrected, could result in a restriction of the motive fuel flow due to ice accumulation, possibly resulting in a reduction of safety margins in the fuel system.
>
> To address this potential unsafe condition, Pilatus issued the SB [Service Bulletin] to provide replacement instructions.
>
> For the reason described above, this [EASA] AD requires replacement of the affected parts with serviceable parts, as defined in the [EASA] AD. This [EASA] AD also prohibits (re-)installation of affected parts.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0092.

In the NPRM, the FAA proposed to require removing the affected fuel transfer ejectors from service and proposed to prohibit installation of an affected fuel transfer ejector. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Pilatus and the Airline Pilots Association, International (ALPA). The following presents the comments received on the NPRM and the FAA's response to each comment.

ALPA supported the NPRM without change.

Pilatus requested the FAA clarify the unsafe condition statement in paragraph (e) of the proposed AD. Pilatus disagreed with the conclusion that reduction in safety margins in the fuel system could result in loss of control of the airplane. Pilatus explained that a reduction in safety margins would not lead to loss of control of the airplane; in the event the engine is starved of fuel, it will shut down but not necessarily lead to a loss of control because the airplane could glide controllably for a period of time.

The FAA agrees and has revised paragraph (e) of this AD to state that the unsafe condition could lead to ''loss of engine power or engine shutdown.''

Conclusion

This model has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that, except for the changes described previously, air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for any changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus PC–12 Service Bulletin No. 28–014, dated August 12, 2020. This service information contains the serial numbers of the affected fuel transfer ejectors and specifies procedures for replacing the affected fuel transfer ejectors. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 10 airplanes of U.S. Registry. Although there are 54 affected fuel transfer ejectors worldwide, the FAA has no way of knowing how many affected parts may be installed on airplanes of U.S. Registry. The estimated cost on U.S. operators reflects the maximum possible cost based on the 10 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Replace fuel transfer ejector	5.5 work-hours × $85 per hour = $467.50	$2,109	$2,576.50	$25,765

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 this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–10–01 Pilatus Aircraft Ltd.: Amendment 39–22039; Docket No. FAA–2022–0092; Project Identifier MCAI–2020–01428–A.

(a) Effective Date

This airworthiness directive (AD) is effective June 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–12/47E airplanes, serial numbers 2001 and larger, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2800, Aircraft Fuel System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a batch of incorrectly sized fuel transfer ejector nozzles that were installed on Model PC–12/47E airplanes during production. The FAA is issuing this AD to correct the installation of incorrectly sized fuel transfer ejectors nozzles. If not addressed, this unsafe condition could result in a restriction of motive fuel flow due to ice accumulation and lead to a reduction of safety margins in the fuel system with loss of engine power or engine shutdown.

(f) Compliance

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

(g) Definitions

(1) For purposes of this AD, an ''affected fuel transfer ejector'' is a fuel transfer ejector part number (P/N) 968.84.71.112 with a serial number listed in the table on page 1 in section 1.C. of Pilatus PC–12 Service Bulletin No. 28–014, dated August 12, 2020 (Pilatus SB 28–014).

(2) For purposes of this AD, a ''Group 1 airplane'' is an airplane with an affected fuel transfer ejector installed.

(3) For purposes of this AD, a ''Group 2 airplane'' is an airplane without an affected fuel transfer ejector installed.

(h) Required Actions

For Group 1 airplanes: Within 4 months after the effective date of this AD, remove each fuel transfer ejector from service and install a serviceable part in accordance with Paragraph 3.B.(1) of the Accomplishment Instructions in Pilatus SB 28–014.

(i) Parts Installation Prohibition

As of the applicable time specified in paragraph (i)(1) or (2) of this AD, do not install an affected fuel transfer ejector on any airplane.

(1) *For Group 1 airplanes:* After replacing the fuel transfer ejector as required by paragraph (h) of this AD.

(2) *For Group 2 airplanes:* As of the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0229, dated October 20, 2020, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0092.

(l) 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) Pilatus PC–12 Service Bulletin No. 28–014, dated August 12, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Support General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* website: *https://www.pilatus-aircraft.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (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 April 30, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–10761 Filed 5–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2021–0904]

RIN 1625–AA08

Special Local Regulation; 2022 Horsepower on the Hudson, Hudson River, Castleton, NY

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations on certain waters of the Hudson River in the vicinity of Castleton-on-the-Hudson, New York, in support of the Horsepower on the Hudson event on August 6, 2022. This action is necessary to ensure the safety of participants, participant vessels, spectators, and mariners transiting the area from the dangers associated with vessels operating at high-speeds during the Horsepower on the Hudson event. This rulemaking will allow the Coast Guard to enforce vessel movements within three regulated areas and temporarily restrict vessel traffic in a portion of the Hudson River between Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910).

DATES: This rule is effective from 10 a.m. through 4 p.m. on August 6, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0904 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email For information about this document call or email MST2 T. Whitley, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4356, email *D01-SMB-SecNY-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On October 10, 2021, the Coast Guard received an Application for Marine Event from the Castleton Boat Club for the Horsepower on the Hudson event. In response, on March 16, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; 2022 Horsepower on the Hudson, Hudson River, Castleton, NY'' (87 FR 14814). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high speed boating event. During the comment period that ended April 15, 2022, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is establishing a special local regulation for the Horsepower on the Hudson event from 10 a.m. to 4 p.m. on August 6, 2022. The special local regulation will cover all navigable waters of the Hudson River between Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910).

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port New York/New Jersey (COTP) has determined that to ensure the safety of participants, vessels, and the navigable waters in the vicinity of the high speed race route and the spectator zone before, during, and after the scheduled event on August 06, 2022. The purpose of this rule is to protect all waterway users, including event participants and spectators, during the event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published March 16, 2022. The comment was solely in favor of the rule. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special local regulation from 10 a.m. to 4 p.m. on August 6, 2022. The special local regulation will cover all navigable waters of the Hudson River between Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910). The duration of the special local regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 a.m. to 4 p.m. high speed event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation.

Marine traffic will continue to be able to transit via the main navigable channel. The special local regulation is limited in duration and to a narrowly tailored geographic area with designated and adequate space for transiting vessels to pass via the main navigation channel when permitted by the COTP or designated representative. In addition, although this rule restricts access to the waters encompassed by the local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via public Broadcast Notice to Mariners. To ensure the special local regulation will result in minimum impact the main navigation channel will be maintained allowing vessels to transit the Hudson River outside of the high speed area or the spectator area. Mariners will therefore be able to plan ahead and either transit through the available transit area or outside the periods of enforcement of the special local regulation. Moreover, mariners may be able to transit the high speed area or spectator areas with approval from the COTP.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated area lasting 6 hours that would limit persons or vessels from transiting certain regulated areas during the scheduled event. It is categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T01–0904 to read as follows:

§ 100.T01–0904 Special Local Regulation; 2022 Horsepower on the Hudson, Hudson River, Castleton, NY.

(a) *Regulated areas.* The regulations in this section apply to the following regulated areas:

(1) *High speed area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910) east of the navigable channel shoreward.

(2) *Transit area.* All navigable waters of the main navigation channel of the Hudson River from Hudson River Lighted Buoy 202 (LLNR 38905) to Hudson River Light 204 (LLNR 38910).

(3) *Spectator area.* All navigable waters of the Hudson River from Hudson River Lighted Buoy 201 (LLNR 38903) to Hudson River Lighted Buoy 205 (LLNR 38915) west of the navigable channel shoreward.

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

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

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

Spectator means any vessel in the vicinity of the event with the primary purpose of witnessing the event. Spectator vessels can observe the marine event from the designated spectator area.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the designated representative via VHF–FM Marine Channel 16 or by contacting the Coast

Guard Sector New York command center at (718) 354–4356 or on VHF 16 to obtain permission. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(d) *Enforcement period.* This section will be enforced from 10 a.m. through 4 p.m. on August 6, 2022.

(e) *Information broadcasts.* The COTP or the designated representative will inform the public through Broadcast Notice to Mariners of any changes in the planned schedule.

Dated: May 16, 2022.

Z. Merchant,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2022–10845 Filed 5–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0026]

RIN 1625–AA00

Safety Zone; Lady Liberty Sharkfest Swim, Upper New York Harbor, Liberty Island NY

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 100-yard radius of each swimmer during the Lady Liberty Sharkfest Swim on July 16, 2022. The safety zone is needed to protect the maritime public and event participants from the hazards associated with swim events taking place in a high vessel traffic area. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port New York or a designated representative.

DATES: This rule is effective from 7 a.m. until 10 a.m. on July 16, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0026 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 L. Gutierrez, Waterways Management Division, U.S. Coast Guard; telephone 718–354–4352, email *D01-SMB-SecNY-Waterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The event sponsor notified the Coast Guard that it will be conducting the Lady Liberty Sharkfest Swim on July 16, 2022, from 7:30 a.m. to 8:30 a.m. with approximately 200 participants and several support vessels. Participants will swim between Liberty Island, New York and Morris Canal, New Jersey. In response, on March 1, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Lady Liberty Sharkfest Swim, Upper New York Harbor, Liberty Island, NY'' (87 FR 11371). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this marine event. During the comment period that ended March 31, 2022, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that potential hazards associated with swim events occurring in high traffic areas of the Upper New York Harbor on July 16, 2022, will be a safety concern for anyone within a 100-yard radius of swimmers. The purpose of this rule is to protect maritime public and event participants from the hazards associated with the swim event until the conclusion of the event.

IV. Discussion of the Rule

As noted above, we received one comment on our NPRM published March 1, 2022. This comment was in support of the rule. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone within 100 yards of each participant for the swim event on the navigable waters of the Upper New York Bay located between Liberty Island, New York, and Morris Canal, New Jersey. A portion of the navigable waters will be closed during the effective period to all vessel traffic except patrol crafts. The swim event will occur from approximately 7:30 a.m. until approximately 8:30 a.m. on July 16, 2022. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the swim event, this zone will be effective from approximately 7 a.m. until approximately 10 a.m. on July 16, 2022.

Vessels will still be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission from the COTP or the designated representative. The COTP does not anticipate any negative impact on vessel traffic due to this safety zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Upper New York Harbor in vicinity of Ellis and Liberty Islands for 3 hours and during a time of day when vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations

that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 3 hours that will prohibit entry within 100 yards of participating swimmers for the Lady Liberty Sharkfest Swim. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration for Categorically Excluded Actions is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T01–0026 to read as follows:

§ 165.T01–0026 Safety Zone; Lady Liberty Sharkfest Swim, Upper New York Harbor, Liberty Island NY.

(a) *Location.* The following area is a safety zone: All waters of the Upper New York Harbor, from surface to bottom, within a 100 yard radius of each participating swimmer during the Lady Liberty Sharkfest Swim.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port New York (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF channel 16 or by phone at (718) 354–4353 (Sector New York Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. through 10 a.m. on July 16, 2022.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notice to Mariners of any changes in the planned schedule.

Dated: May 16, 2022.

Z. Merchant,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 2022–10846 Filed 5–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0386]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone located in federal regulations for a recurring marine event. This action is necessary and intended for the safety of life and property on navigable waters during this event. During the enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo or a designated representative.

DATES: The regulations listed in 33 CFR 165.939 as listed in Table 165.939(c)(1) will be enforced from 7:15 a.m. through 1:15 p.m. on August 13, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT Jared Stevens, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Cleveland; telephone (216) 937–0124, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939, Table 165.939(c)(1) for the Whiskey Island Paddlefest in Cleveland, OH. on all U.S. waters of Lake Erie; Cleveland Harbor, from 41°29′59.5″ N and 081°42′59.3″ W to 41°30′4.4″ N and 081°42′44.5″ W to 41°30′17.3″ N and 081°43′0.6″ W to 41°30′9.4″ N and 081°43′2.0″ W to 41°29′54.9″ N and 081°43′34.4″ W to 41°30′0.1″ N and 081°43′3.1″ W and back to 41°29′59.5″ N and 081°42′59.3″ W (NAD 83) from 7:15 a.m. through 1:15 p.m. on August 13, 2022. The scheduled date of zone enforcement differs from that published in 33 CFR 165.939 in order to accommodate the sponsoring organization's priority to better align their event schedule with co-occurring special local events, other paddle races taking place in the Great Lakes region, and to ensure availability of the personnel and material resources required.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or a designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of the Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: May 10, 2022.

M.I. Kuperman,

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

[FR Doc. 2022–10908 Filed 5–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0140]

RIN 1625–AA00

Safety Zone; Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Columbia River. This action is necessary to provide for the safety of life on these navigable waters near Vancouver, WA during a high-speed hydroplane boat testing event on May 20, 2022. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative.

DATES: This rule is effective from 8:30 a.m. to 3:30 p.m. on May 20, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0140 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Columbia River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On January 19, 2022, the H1 Unlimited notified the Coast Guard that it will be conducting a hydroplane testing event from 9 a.m. to 3 p.m. on May 20, 2022. The hydroplane event will consist of individual testing of 10 hydroplane vessels in between the I–5 and I–205 bridges on the Columbia River. The Captain of the Port Columbia (COTP) has determined that potential hazards associated with the high-speed hydroplane boat testing would be a safety concern for anyone within the regulated area.

In response, on March 30, 2022 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Columbia River, Vancouver, WA (87 FR 18757). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment

period that ended May 2, 2022, we received two comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the high-speed hydroplane boat testing. The Coast Guard's limited notice of the parameters of the high-speed boat testing makes it necessary to expedite the effective date of this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Columbia River (COTP) has determined that the potential hazards associated with high-speed hydroplane boat testing would be a safety concern for anyone within the regulated area. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published May 30, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

One comment expressed concern that the waterway would be completely taken over for use by a private company. However, the safety zone only covers a specific duration of 7 hours for a single day. Vessels that need or want to enter the safety zone may seek permission from the COTP to do so. Another comment raises concerns about the environmental impact of the boat racing event itself, conflating the event and the safety zone. Due to the size and length of time the zone will be in effect, the safety zone will have a miminal expected impact on the environment.

This rule establishes a safety zone from 8:30 a.m. to 3:30 p.m. on May 20, 2022. The safety zone covers all navigable waters of the Columbia River, from surface to bottom, starting approximately 700 yards east of the I–5 bridge from shoreline to shoreline heading east for approximately 1.2 miles; specifically beginning at the shoreline at 45°36′40.7″ N, 122°40′11.2″ W, northeast to 45°37′08.7″ N, 122°39′53.8″ W, southeast to 45°36′41.3″ N, 122°38′32.0″ W, thence southwest to 45°36′15.8″ N, 122°38′53.0″ W, and along the shoreline back to the beginning point. The duration of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 a.m. to 3 p.m. high-speed hydroplane boat testing. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and the duration of the safety zone. The safety zone will impact a 1.2 mile stretch of the Columbia River during the hydroplane boat testing for 7 hours and thus is limited in scope. The Coast Guard will issue a Broadcase Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 7 hours that would prohibit entry within an approximate 1.2 miles of the Columbia River for the duration of a high-speed hydroplane testing event. It is categorically excluded from further review under L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T13–0140 to read as follows:

§ 165.T13–0140 Safety Zone; Columbia River, Vancouver, WA

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, from surface to bottom, starting approximately 700 yards east of the I–5 bridge from shoreline to shoreline heading east for approximately 1.2 miles; specifically beginning at the shoreline at 45°36′40.7″ N, 122°40′11.2″ W, northeast to 45°37′08.7″ N, 122°39′53.8″ W, southeast to 45°36′41.3″ N, 122°38′32.0″ W, thence southwest to 45°36′15.8″ N, 122°38′53.0″ W, and along the shoreline back to the beginning point.

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

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

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

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. until 3:30 p.m. on May 20, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: May 13, 2022.

G.M. Bailey,

Captain, U.S. Coast Guard, Alternate Captain of the Port Sector Columbia River.

[FR Doc. 2022–10835 Filed 5–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2021–0006]

RIN 0651–AD53

Standard for Presentation of Nucleotide and Amino Acid Sequence Listings Using eXtensible Markup Language (XML) in Patent Applications To Implement WIPO Standard ST.26; Incorporation by Reference

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is amending the rules of practice for submitting biological sequence data associated with disclosures of nucleotide and amino acid sequences in patent applications by incorporating by reference certain provisions of World Intellectual Property Office Standard ST.26 (WIPO Standard ST.26) into the USPTO rules of practice. Other conforming changes to accommodate the new rules of practice based on the new standard are also included. In addition to simplifying the process for applicants filing in multiple countries, the requirement to submit a single sequence listing in eXtensible Markup Language (XML) format, or ''Sequence Listing XML,'' will result in better preservation, accessibility, and sorting of the submitted sequence data for the public.

DATES: *Effective date:* This final rule is effective on July 1, 2022. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 1, 2022.

Applicability date: Patent applications filed on or after July 1, 2022, having disclosures of nucleotide and/or amino acid sequences as defined in 37 CFR 1.831(b) must comply with new rules for submission of a ''Sequence Listing XML'' in accordance with 37 CFR 1.831 through 1.835. All other provisions of this final rule apply to all patent applications filed before, on, or after July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Mary.Till@uspto.gov* or 571–272–7755; or Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy

Commissioner for Patents, at *Ali.Salimi@uspto.gov* or 571–272–0909.

SUPPLEMENTARY INFORMATION:

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I. Background

a. Summary of Changes

WIPO Standard ST.26 is the new international standard developed and adopted by WIPO and member states for purposes of presenting biotechnology information in patent applications. It will apply to international and national applications filed on or after July 1, 2022. New provisions in 37 CFR 1.831 through 1.835 implement WIPO Standard ST.26. Applications pending prior to July 1, 2022, will not have to comply with WIPO Standard ST.26; rather, such applications will require the submission of a ''Sequence Listing,'' as defined in 37 CFR 1.821(a), in compliance with 37 CFR 1.8211.825.

Under WIPO Standard ST.26 (as implemented by 37 CFR 1.831 through 1.835), patent applications that contain disclosures of nucleotide and/or amino acid sequences must present the associated biological sequence data in a standardized electronic format (a ''Sequence Listing XML'') as a separate part of the specification. In particular, WIPO Standard ST.26 permits applicants to submit a single, internationally acceptable sequence listing in a language-neutral format using specified International Nucleotide Sequence Database Collaboration (INSDC) identifiers in international applications filed under the Patent Cooperation Treaty (PCT) and in national and regional applications in the intellectual property offices (IPOs) of WIPO member states. As a result, a single sequence listing in compliance with WIPO Standard ST.26 can be prepared for use in the IPOs of WIPO member states.

For applications filed on or after July 1, 2022, the changes in this final rule include the: (1) Creation of new rules (37 CFR 1.831 through 1.839) that incorporate by reference WIPO Standard ST.26; (2) use of INSDC sequence data elements to replace numeric identifiers used in the previous Standard ST.25 for the submission of nucleotide and/or amino acid sequences; (3) modification of rules of practice to include reference to a ''Sequence Listing XML''; (4) elimination of the ability to file a paper or Portable Document Format (PDF) copy of nucleotide and/or amino acid sequences; (5) elimination of the option to include within a ''Sequence Listing XML,'' sequences with fewer than 4 specifically defined amino acids and fewer than 10 specifically defined nucleotides; and (6) clarification and simplification of the rules to aid in understanding the requirements set forth.

b. Introduction

In an effort to streamline and reduce existing procedural requirements and to implement WIPO Standard ST.26, the USPTO is amending its rules of practice (by adding 37 CFR 1.831 through 1.839) for submitting biological sequence data associated with disclosures of nucleotide and/or amino acid sequences in patent applications filed on or after July 1, 2022. These changes also respond to the needs of our customers to comply with WIPO Standard ST.26.

To decrease the burden on applicants who file patent applications containing nucleotide and/or amino acid sequences internationally, the USPTO has worked with other WIPO member states as part of the Committee on WIPO Standards (CWS) to develop a single, internationally acceptable sequence listing standard for use in patent applications filed in those member states. Beginning in October of 2010, the CWS established a task force to propose a revised standard for the filing of nucleotide and/or amino acid sequence listings in XML file format. To obtain public input on the content of WIPO Standard ST.26, the USPTO issued requests for comments in 2012 and 2016. *See* Request for Comments on the Recommendation for the Disclosure of Sequence Listings Using XML (Proposed ST.26), 77 FR 28541 (May 15, 2012); and Standard ST.26—Request for Comments on the Recommended Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings Using XML (eXtensible Markup Language), 81 FR 74775 (October 27, 2016). The adopted version of WIPO Standard ST.26 takes those comments into account. To achieve the goals WIPO and its member states (including the United States) set out by developing the sequence listing standard for presenting data consistently across all IPOs, all WIPO member states agreed to implement WIPO Standard ST.26 for international and national applications filed on or after July 1, 2022. Therefore, in view of this final rule, applications filed in the United States on or after July 1, 2022, will need to conform to WIPO Standard ST.26 as implemented in 37 CFR 1.831 through 1.839, which requires submitting sequence listings in XML format.

Under the final rule, applications that claim benefit or priority to an earlier application, where the earlier application contained a sequence listing that complied with the requirements of Standard ST.25 or other earlier requirements, must comply with the new rules that incorporate by reference WIPO Standard ST.26. To facilitate compliance, WIPO, with input from WIPO member states, developed WIPO Sequence, a sequence listing authoring and validating tool that applicants can use to prepare and validate their sequence listings in XML format, as discussed below. The USPTO is adding to the patent rules (37 CFR part 1) by incorporating by reference WIPO Standard ST.26, and providing conforming amendments to the current rules.

To ensure that biological sequence data associated with the disclosures of nucleotide and/or amino acid sequences in patent applications can be widely disseminated and searchable by the public and IPOs, the USPTO works with the National Center for Biotechnology Information (NCBI) on the inclusion of patent sequence data in the GenBank searchable database. For the NCBI to include all sequence data from the USPTO, the data must be provided in INSDC format so it is compatible with GenBank. The Standard ST.25 format sequence listings cannot be readily converted to INSDC format, resulting in only a fraction of patent sequence information appearing in GenBank. This data loss limits the sequence information available to the public and exchanged with other sequence database providers (*e.g.,* the National Institute of Genetics (NIG) in Japan, the DNA Data Bank of Japan (DDBJ), and the European Molecular Biology Laboratory, European Bioinformatics Institute (EMBL–EBI). WIPO has been working with the WIPO member states to create, adopt, and implement WIPO Standard ST.26 for sequence listing submissions in XML file format, which has the INSDC data elements to address the data loss. WIPO Standard ST.26 aims to enhance the accuracy and quality of biological sequence data that is publicly disseminated. With the adoption and implementation of WIPO Standard ST.26, more complete biological sequence data from patents and patent applications will be included in GenBank and thus be accessible by the

public. The change from American Standard Code for Information Interchange (ASCII) plain text format to XML format will result in sequence data having computer tags that facilitate sorting and retrieving and will permit ease of access to the data. Additionally, the NCBI plans to stop accepting data in Standard ST.25 format for inclusion in GenBank approximately three to five years after the WIPO Standard ST.26 transition date (July 1, 2022).

c. Incorporation by Reference of WIPO Standard ST.26

The WIPO ''Handbook on Industrial Property Information and Documentation'' sets forth standards for the presentation of data in many contexts. WIPO Standard ST.26 is titled ''RECOMMENDED STANDARD FOR THE PRESENTATION OF NUCLEOTIDE AND AMINO ACID SEQUENCE LISTINGS USING XML (EXTENSIBLE MARKUP LANGUAGE).'' The CWS adopted the current version (version 1.5) in November of 2021. In October of 2021, at the Assemblies of Member States of WIPO, the member states agreed on July 1, 2022, as the implementation date of WIPO Standard ST.26. This final rule incorporates by reference WIPO Standard ST.26. The standard is available from WIPO, 34 chemin des Colombettes, 1211 Geneva 20 Switzerland, *www.wipo.int.* and also as provided for in 37 CFR 1.839.

WIPO Standard ST.26 is composed of eight documents, namely, the main body of the standard, a first annex (Annex I) setting forth the controlled vocabulary for use with the main body, a second annex (Annex II) setting forth the Document Type Definition (DTD) for the Sequence Listing, a third annex (Annex III) containing a sequence listing specimen (XML file), a fourth annex (Annex IV) setting forth the character subset from the Unicode Basic Latin Code Table, a fifth annex (Annex V) setting forth additional data exchange requirements for IPOs, a sixth annex (Annex VI) containing a guidance document with illustrated examples, and a seventh annex (Annex VII) setting forth recommendations for the transformation of a sequence listing from Standard ST.25 format to WIPO Standard ST.26 format, including guidance on how to avoid adding or deleting subject matter.

The main body of WIPO Standard ST.26 defines the disclosures of nucleotide and/or amino acid sequences in patent applications that must be presented in a sequence listing in XML format in the manner specified in the standard. As detailed in paragraph eight of the main body, a sequence listing in XML format must not include any sequences having fewer than 10 specifically defined nucleotides, or fewer than 4 specifically defined amino acids. If such sequences are included in the disclosure, they must not be assigned a sequence identification number. The main body establishes the requirements for the representation of nucleotide and/or amino acid sequences and the requirements for the XML file format for a sequence listing. Annex I contains controlled vocabulary that provides nucleotide base codes, lists of modified nucleotides and their abbreviations, amino acid codes, and a list of modified amino acids and their abbreviations. In addition, Annex I provides defined feature keys and qualifiers used for nucleotide and/or amino acid sequences in the XML file for a sequence listing. Annex I specifically identifies qualifiers with language-dependent ''free text'' values that may require translation for national and regional procedures. Annex II provides the DTD setting forth the technical specifications to which a submitted Sequence Listing XML must conform. Annex III provides a link to a specimen of a sequence listing that is compliant with WIPO Standard ST.26 and that shows a representation of an entire sequence listing in XML format. Annex IV provides a table of the character subset from the Unicode Basic Latin Code that will be used in the XML file for the sequence listing. Annex V provides guidance to WIPO member states on how certain sequence elements should be populated when data is exchanged with database providers. Annex VI, containing the guidance document, ensures that all applicants and WIPO member states understand the requirements for inclusion and representation of sequence disclosures. This guidance document was developed, in part, to address concerns raised in response to the USPTO's requests for comments in 2012 and 2016, mentioned above. The guidance document illustrates the requirements of selected paragraphs in the main body of WIPO Standard ST.26 through specific examples of nucleotide and amino acid biological sequence data. Additionally, the document provides guidance on the manner in which biological sequence data is represented in a sequence listing in XML format that is compliant with WIPO Standard ST.26. Annex VII addresses the mandatory requirements of WIPO Standard ST.26, and the potential consequence of these requirements when transforming a compliant Standard ST.25 sequence listing into a WIPO Standard ST.26 sequence listing. Annex VII also provides detailed guidance on how to avoid adding or deleting subject matter due to the additional requirements of WIPO Standard ST.26.

d. Benefits

Transitioning from rules based on WIPO Standard ST.25 (*i.e.,* the basis for USPTO rules 37 CFR 1.821 through 1.825, regarding ''Sequence Listings'') to rules based on WIPO Standard ST.26 will be beneficial to both patent applicants filing sequence listings and IPOs receiving applications containing disclosures of nucleotide and/or amino acid sequences requiring sequence listings. WIPO Standard ST.26 provides clear requirements for what must be included in a sequence listing and how sequences must be represented. For example, it standardizes the representation of modified nucleotide sequences and amino acid sequences as well as variants derived from primary sequences. Since WIPO Standard ST.26 contains a guidance document that illustrates the requirements for the inclusion and representation of biological sequence data, patent applicants will have a better understanding of the requirements for the presentation of biological sequence data in a compliant sequence listing under WIPO Standard ST.26 (as implemented by 37 CFR 1.831 through 1.839). Additionally, since WIPO Standard ST.26 only allows XML format (an electronic computer readable format), this final rule eliminates the potential for differences between a sequence listing filed in paper/PDF format and the required electronic computer readable format (CRF). As a further benefit, the IPOs of WIPO member states will no longer need to expend resources to process paper sequence listings and perform necessary checks on the contents of paper documents.

Unlike rules based on Standard ST.25, rules based on WIPO Standard ST.26 will allow patent applicants to file a single sequence listing with the USPTO (with the exception of changes to comply with national language requirements) that will be acceptable to the IPOs of all WIPO member states. Under Standard ST.25, IPOs have interpreted and enforced rules differently due to the imprecise language in that standard. This has resulted in the frustrating situation in which applicants generate sequence listings that may be accepted in one IPO but not another.

WIPO Standard ST.26 was drafted to precisely define what must and must not be included in a sequence listing

and how sequences must be represented in a sequence listing. The ''Guidance document with illustrated examples'' in Annex VI of WIPO Standard ST.26 demonstrates the application of the rules to real-world sequence disclosure examples, reducing the possibility of misinterpretation by IPOs or applicants.

Due to the improved data structure of XML, transitioning to rules based on WIPO Standard ST.26 will increase the quality of the examination of patent applications containing biological sequence data since a more comprehensive search will be possible. Sequence listings submitted in accordance with WIPO Standard ST.26 allow for targeted searching of both sequence annotation and newly required sequence types, such as D-amino acids, nucleotide analogues, and linear portions of branched sequences. Finally, sequence listing submissions under rules based on WIPO Standard ST.26 will enhance public database content, as they include the sequence annotations (*e.g.,* feature keys and qualifiers) used by database providers to describe biological sequence data. WIPO Standard ST.26 standardizes sequence variant presentation, the annotation of modified and unusual residues, feature location descriptors, the use of feature keys and qualifiers, organism names, and the presentation of coding regions. Incorporation by reference of WIPO Standard ST.26 into USPTO rules promotes data exchange between the USPTO and the NCBI due to the use of INSDC identifiers required by database providers. The presence of additional data, as well as the enhanced compatibility to facilitate the exchange of data, will increase the value of database searches that relate to nucleotide and amino acid sequences for biotechnology stakeholders.

Requiring compliance with WIPO Standard ST.26 for an application filed on or after July 1, 2022, will reduce the complexity and cost of the long-term maintenance of information technology (IT) systems for accepting sequence listings in multiple formats, provide a clear implementation date, and facilitate the transition to the format requirements of database providers. In addition, a requirement to submit a single sequence listing in XML format will result in better preservation, accessibility, and sorting of the submitted sequence data for the public.

e. WIPO Authoring and Validation Tool (WIPO Sequence)

To comply with rules based on WIPO Standard ST.26, patent applicants will be able to generate a sequence listing compliant with WIPO Standard ST.26 using WIPO Sequence, a desktop application developed by WIPO and adopted by WIPO member states. WIPO Sequence has two functions: An authoring function and a validation function. Patent applicants will be able to author and validate their sequence listing using WIPO Sequence to comply with the requirements of WIPO Standard ST.26. Such a sequence listing will be accepted by all the IPOs of the WIPO member states. Thus, the burden of generating a sequence listing that is acceptable across all WIPO member states will be significantly decreased for patent applicants under WIPO Standard ST.26. This tool is downloadable, free of charge, from the WIPO website. The current version of WIPO Sequence is accessible at *www.wipo.int/standards/en/sequence/index.html.* This version, subject to updates, will allow the public to become familiar with the tool and its dual functionalities.

WIPO Sequence will allow a user to create and save (author) patent application data and biological sequence data in a project, validate the project to ensure all required information is present, and generate a sequence listing in WIPO Standard ST.26 XML format. Information can be entered into a project manually, or data can be imported from a source file in one of a number of file types. WIPO Sequence can import data from other WIPO Standard ST.26 projects, WIPO Standard ST.26 XML sequence listings, Standard ST.25 sequence listing text files, raw files, multi-sequence format files, and FASTA (FAST-All-a DNA and protein sequence alignment software package) files. Feature keys, qualifiers, and organism names are available to select from drop-down lists, simplifying the creation of sequence listings. Applicant and inventor names, as well as custom organism names, can be stored in WIPO Sequence for easy access. To facilitate the review of data entered into a project, WIPO Sequence can generate a ''human-readable'' version (a text version of the sequence data) of the sequence listing in addition to the XML sequence listing.

WIPO Sequence includes an integrated validation function that will alert users to most errors in a project or sequence listing data. The validation function generates a report that clearly lists every detected error, the location of the error, and the detected value of the error, along with a link to the sequence in question, thereby ensuring users can correct errors before generating a final sequence listing. While the validation function will alert a user to most errors in a project or sequence listing, there are a small number of errors that can be detected only by human review (for example, an inappropriate organism name). In those cases, the integrated validation function will list a ''warning'' in the validation report, reminding users of the applicable/relevant rule and urging them to check their input values before generating a final sequence listing.

A sequence listing in Standard ST.25 format cannot automatically be converted into WIPO Standard ST.26 format because certain data elements required for a sequence listing compliant with WIPO Standard ST.26 are not present in Standard ST.25. Therefore, conversion of a sequence listing in Standard ST.25 format to Standard ST.26 format necessarily requires additional input from the applicant. WIPO Sequence, supplemented by significant guidance from WIPO and the USPTO (in Annex VI and Annex VII of WIPO Standard ST.26), will help applicants accomplish this task. Users can import a Standard ST.25 sequence listing into a project, and WIPO Sequence automatically performs many of the necessary conversions. An Import Report is generated that alerts the user to all data conversions and lists all sequence entries that require additional input. In response to concerns raised regarding the USPTO's requests for comments in 2012 and 2016, the USPTO, in conjunction with WIPO, developed Annex VII to provide detailed guidance to help applicants avoid added or deleted subject matter when converting a sequence listing from Standard ST.25 format into Standard ST.26 format.

To ensure that IPOs can validate and accept sequence listing projects from applicants generated with WIPO Sequence, WIPO is developing a Standard ST.26 sequence listing validation tool, WIPO Sequence Validator. WIPO Sequence Validator will be for use by IPOs. WIPO Sequence Validator will be synchronized with the validation function in the WIPO Sequence tool. The USPTO is integrating WIPO Sequence Validator into its internal IT systems. The WIPO Sequence Validator will apply the same validation rules as WIPO Sequence. Therefore, filers will have a greater level of confidence that a sequence listing authored and validated by WIPO Sequence will comply with the USPTO rules for a ''Sequence Listing XML'' (37 CFR 1.831 through 1.835) and be accepted, given that the WIPO Sequence Validator that the USPTO will use is based on WIPO Standard ST.26.

f. Applicability

In accordance with this final rule, an application that has a filing date on or after July 1, 2022, will be required to provide a ''Sequence Listing XML'' in accordance with 37 CFR 1.831 through 1.835 for disclosures of any nucleotide and/or amino acid sequences that meet the definitions of 37 CFR 1.831(a) and (b). This includes applications having an international filing date on or after July 1, 2022, that claim benefit or priority to applications with filing dates before July 1, 2022. Such applications include, but are not limited to, applications having one or more benefit or priority claims under 35 U.S.C. 119(e) (claiming the benefit of a provisional), 35 U.S.C. 120 (claiming the benefit as a continuation and/or continuation-in-part), 35 U.S.C. 121 (claiming the benefit as a divisional), 35 U.S.C. 365(c) (claiming the benefit as a continuing application to a PCT application), or 35 U.S.C. 119(a)–(d) or 35 U.S.C. 365(a) (claiming the priority to a foreign filed application or a prior filed PCT). If a prior application to which benefit or priority is claimed contains a ''Sequence Listing'' in Standard ST.25 format (in compliance with 37 CFR 1.821 through 1.825), the applicant will be required to convert that ''Sequence Listing'' to WIPO Standard ST.26 format (a ''Sequence Listing XML'' in compliance with 37 CFR 1.831 through 1.835) for inclusion in the new application filed on or after July 1, 2022.

As provided in 35 U.S.C. 363, the filing date of an international stage application is also the filing date for the national stage application filed under 35 U.S.C. 371. Accordingly, for applications submitted under 35 U.S.C. 371, WIPO Standard ST.26 will apply to such applications based on the international filing date of the corresponding international application, rather than the date of submission of the national stage application in the USPTO.

Compliance with 37 CFR 1.831 through 1.835 (rules based on WIPO Standard ST.26) is also applicable to any reissue application filed on or after July 1, 2022, where the disclosure or claims contain nucleotide and/or amino acid sequences as defined in 37 CFR 1.831(a) or (b). The filing date of the originally granted patent for which reissue is sought is not relevant in determining the applicability date of this final rule.

Relying on the actual filing date of an application to determine whether sequence information must conform to 37 CFR 1.821 through 1.825 (rules based on Standard ST.25) or 37 CFR 1.831 through 1.835 (rules based on WIPO Standard ST.26) will simplify the application of the sequence rules, both for the USPTO and the applicant. Though 37 CFR 1.821 through 1.825 are not revised by this final rule, note that 37 CFR 1.821 through 1.825 will not be applicable to applications filed on or after July 1, 2022, as a result of this final rule.

For applications filed on or after July 1, 2022, the USPTO patent electronic filing system will prohibit an applicant from submitting both a ''Sequence Listing XML'' (a sequence listing that conforms to WIPO Standard ST.26 as implemented in 37 CFR 1.831 through 1.835) and a ''Sequence Listing'' (a sequence listing that conforms to ST.25 as implemented in 37 CFR 1.821 through 1.825) in the same submission. Filing a ''Sequence Listing'' in an application filed on or after July 1, 2022, will result in a notice informing applicant that the submission fails to comply with 37 CFR 1.831 through 1.834 and will require submission of a ''Sequence Listing XML.''

While implementing regulations and procedures for ST.26, the USPTO recognized that an applicant might erroneously provide a ''Sequence Listing'' (one in ASCII plain text file format) even though a ''Sequence Listing XML'' is required. Therefore, in the rare circumstance in which a ''Sequence Listing'' is submitted in an application filed on or after July 1, 2022, the ''Sequence Listing'' present in the Office file wrapper of the application at issue may be used to provide support for the submission of a compliant ''Sequence Listing XML.'' The applicant's reliance on the ''Sequence Listing'' to support the compliant ''Sequence Listing XML'' would be by way of the safeguard under 37 CFR 1.57(b), if an earlier filed application contains a proper ''Sequence Listing'' in .txt file format, or via a grantable petition under 37 CFR 1.182, only if the application does not have a proper benefit or priority claim present on the filing date to an earlier filed application.

An applicant may rely on the provisions in 37 CFR 1.57(b), as described in the Manual of Patent Examining Procedure at section 217, to support the required ''Sequence Listing XML'' as an ''inadvertently omitted portion of the specification or drawing(s).'' To rely on 37 CFR 1.57(b), a compliant ''Sequence Listing'' must have been submitted in an earlier filed application to which the present application makes a proper benefit or priority claim, and the ''Sequence Listing'' was present on the filing date of the earlier filed application (*i.e.,* the earlier filed application contains a compliant ''Sequence Listing'' submitted under 37 CFR 1.821(c)(1) as an ASCII plain text file (with a proper incorporation by reference statement in the specification), 37 CFR 1.821(c)(2) as a PDF copy, or 37 CF 1.821(c)(3) on physical sheets of paper). An applicant would be required to submit: (1) A compliant ''Sequence Listing XML'' under 37 CFR 1.835(a)(1); (2) a statement identifying where the inadvertently omitted portion of the specification can be found (*e.g.,* identifying the nucleotide and/or amino acid sequence information in the compliant ''Sequence Listing'' from the earlier filed application that forms the basis for the ''Sequence Listing XML''), *see* 37 CFR 1.835(a)(3); (3) a statement identifying the nucleotide and/or amino acid sequences of the ''Sequence Listing,'' submitted (in the earlier filed application) under 37 CFR 1.821(c)(1) as an ASCII plain text file (with a proper incorporation by reference statement in the specification), 37 CFR 1.821(c)(2) as a PDF copy, or 37 CFR 1.821(c)(3) as physical sheets of paper, which forms the basis for the compliant ''Sequence Listing XML''; (4) a statement that the ''Sequence Listing XML'' does not introduce new matter into the application, *see* 37 CFR 1.835(a)(4); and (5) a statement that all or a portion of the specification or drawings, as found in the ''Sequence Listing XML,'' were inadvertently omitted from the application. The availability of relief under 37 CFR 1.57(b) precludes the filing of a grantable petition under 37 CFR 1.182 seeking the same relief.

A petition under 37 CFR 1.182 would require: (1) A compliant ''Sequence Listing XML'' under 37 CFR 1.835(a)(1); (2) a statement identifying the nucleotide and/or amino acid sequence information of the ''Sequence Listing'' submitted as an ASCII plain text file that forms the basis for the ''Sequence Listing XML'' (*i.e.,* identifying the nucleotide and/or amino acid sequence information found in the ''Sequence Listing'' from the earlier submitted ASCII ''Sequence Listing'') that is relied on for submission of a compliant ''Sequence Listing XML,'' *see* 37 CFR 1.835(a)(3); and (3) a statement that the ''Sequence Listing XML'' does not introduce new matter into the application, as required by 37 CFR 1.835(a)(4). In such circumstances, for record retention purposes, any ''Sequence Listing'' submitted as an ASCII plain text file will be retained in the official record for the application.

II. Discussion of Specific Rules

Section 1.52: Section 1.52 (e)(1)(ii) is amended to include reference to a ''Sequence Listing XML'' submitted under § 1.831(a) in compliance with §§ 1.832 through 1.834.

Section 1.52(e)(3)(iii) is amended to more explicitly indicate that the contents of each read-only optical disc must be in ASCII plain text and if compressed, must be compressed in accordance with § 1.58 for ''Large Tables,'' § 1.96 for a ''Computer Program Listing Appendix,'' or § 1.824 for a ''Sequence Listing'' or CRF of the ''Sequence Listing,'' as applicable.

Section 1.52(e)(3)(iv) is added to require that the contents of each read-only optical disc for a ''Sequence Listing XML'' must be in XML file format and, if compressed, must be compressed in accordance with § 1.834.

Section 1.52(e)(7) is amended to add that any amendment to the information on a read-only optical disc previously submitted in relation to a ''Sequence Listing XML'' must be made by way of a replacement read-only optical disc in accordance with § 1.835(b).

Section 1.52(f)(1) is amended to add that any XML file submitted on a read-only optical disc is excluded from the application size fee determination if the read-only optical disc contains a ''Sequence Listing XML'' in compliance with § 1.831(a). The provision at 35 U.S.C. 41(a)(1)(G) provides the basis for excluding ''any sequence listing,'' when filed in electronic medium, from the application size fee determination. A ''Sequence Listing XML'' is considered as ''any sequence listing.''

Section 1.52(f)(1)(i) is amended to reference any ''Sequence Listing XML'' in compliance with § 1.831(a).

Section 1.52(f)(2) is amended to indicate that any XML file, submitted via the USPTO patent electronic filing system for a ''Sequence Listing XML'' in compliance with § 1.831(a) is excluded from the application size fee determination. The provision at 35 U.S.C. 41(a)(1)(G) provides the basis for excluding ''any sequence listing,'' when filed in an electronic medium, from the application size fee determination. A ''Sequence Listing XML'' is considered as ''any sequence listing.''

Section 1.52(f)(2)(i) is amended to add a reference to any ''Sequence Listing XML'' in compliance with § 1.831(a).

Section 1.52(f)(3) is amended to add that any ''Sequence Listing XML'' of 300 MB–800 MB is subject to the surcharge set forth in § 1.21(o)(1) and also add that any ''Sequence Listing XML'' over 800 MB is subject to the surcharge set forth in § 1.21(o)(2).

Section 1.53: Section 1.53(c)(4) is revised to indicate that a separate sequence listing in a provisional application disclosing nucleotide and/or amino acid sequences is not required, but any biological sequence data submitted in a provisional application filed on or after July 1, 2022, must be a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.834. This change does not apply to provisional applications filed before July 1, 2022.

Section 1.77: Section 1.77(b)(5) is amended to reorganize the provisions to § 1.77(b)(5)(i) for an incorporation by reference statement for ASCII plain text files submitted for a ''Computer Program Listing Appendix'' (§ 1.77(b)(5)(i)(A)), a ''Sequence Listing'' (§ 1.77(b)(5)(i)(B)), and ''Large Tables'' (§ 1.77(b)(5)(i)(C)). Section 1.77(b)(5)(ii) is added to provide for the provisions for an incorporation by reference statement for a ''Sequence Listing XML'' submitted via the USPTO patent electronic filing system or on one or more read-only optical discs.

Section 1.121: Section 1.121(b) is amended to revise the reference for a ''Sequence Listing'' and eliminate the reference to a CRF of a ''Sequence Listing,'' since a separate CRF (under § 1.821(e)(1) or (2)) is not part of the specification. The amendment also adds an exception to amendment practice for a ''Sequence Listing XML'' (§ 1.831(a)).

Section 1.121(b)(6) is amended to require that changes to a ''Sequence Listing XML'' be made in accordance with § 1.835.

Section 1.173: The heading of § 1.173(b)(1) is amended to include '' 'Sequence Listing XML' (§ 1.831(a)).''

Section 1.173(b)(1)(i) is amended to add an exception to reissue amendment practice for a '' 'Sequence Listing XML' (§ 1.831(a)).''

Section 1.173(b)(1)(ii) is amended to provide that changes to a ''Sequence Listing XML'' must be made in accordance with § 1.835.

Section 1.173(d) is amended to add a ''Sequence Listing XML'' (§ 1.831(a)) among the items that are excluded from the manner of making amendments in a reissue application. Reference to specific CFR provisions for ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), and a ''Sequence Listing'' (§ 1.821(c)) were added.

Section 1.211: Section 1.211(c) is amended to add a ''Sequence Listing'' in compliance with §§ 1.821 through 1.825 (if applicable) for an application filed before July 1, 2022, and a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.835 (if applicable) for an application filed on or after July 1, 2022, to the currently listed items that may delay application publication if not present.

Section 1.495: Section 1.495(c)(5) is amended to delineate between translations needed for a sequence listing in international applications entering the national stage in the United States and having an international filing date before July 1, 2022, and a sequence listing in XML format for international applications entering the national stage in the United States and having an international filing date on or after July 1, 2022. Specifically, the amendment indicates that a sequence listing need not be translated for national stage entry if it complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b) for applications having an international filing date before July 1, 2022. However, the amendment indicates that a sequence listing in XML format must be translated for national stage entry if it was submitted in an international application having an international filing date on or after July 1, 2022, with non-English language values for any language-dependent free text qualifiers. Note that an invention title is not considered a ''language-dependent free text qualifier'' for purposes of this rule, and translation of the invention title is not required.

Section 1.495(c)(5), as well as §§ 1.833(b)(3) and 1.835(d)(2) as discussed below, were proposed to require that the ''Sequence Listing XML'' contain at least one invention title in English. This proposal has not been adopted in this final rule. The proposed requirement for a translation of the title into English was not adopted in the final rule because applicants in the international phase need only provide a title in the language of filing, which can be in a language other than English.

Section 1.530: The heading of § 1.530(d)(1) is amended to include '' 'Sequence Listing XML' (§ 1.831(a)).''

Section 1.530(d)(1)(i) is amended to add an exception to reexamination amendment practice for a '' 'Sequence Listing XML' (§ 1.831(a)).''

Section 1.530(d)(1)(ii) is amended to provide that changes to a ''Sequence Listing XML'' must be made in accordance with § 1.835.

Section 1.704: Section 1.704(f) is amended to add a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.835 (if applicable) to the list of items required for an application filed under 35 U.S.C. 111(a) to be in condition for examination for purposes of calculating a reduction in patent term adjustment. The amendment also adds a ''Sequence Listing XML'' in compliance

with §§ 1.831 through 1.835 (if applicable) to the list of items that must be submitted in an international application for such an application to be in condition for examination when the application has entered the national stage as defined in § 1.491(b). Lastly, the rule is also amended to add a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.835 (if applicable) to the current list of items required for an application to be considered compliant, for purposes of determining a patent term adjustment reduction, on the filing date of the latest reply (if any) correcting the papers, drawings, or ''Sequence Listing'' that is prior to the date of the mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first. Lastly, the term ''Sequence Listing'' replaces ''sequence listing,'' since §§ 1.821 through 1.825 specifically define a ''Sequence Listing.''

Section 1.831: Section 1.831 is added to provide the heading of ''requirements for patent applications filed on or after July 1, 2022, having disclosures of nucleotide and/or amino acid sequences.''

Section 1.831(a) is added to specify that patent applications disclosing nucleotide and/or amino acid sequences by enumeration of their residues, as defined in paragraph (b) of the section, must contain, as a separate part of the disclosure, a ''Sequence Listing XML''. Disclosed nucleotide and/or amino acid sequences that do not meet the definition in paragraph (b) of the section must not be included in the ''Sequence Listing XML.'' The ''Sequence Listing XML'' contains information of the nucleotide and/or amino acid sequences disclosed in the patent application using the symbols and format in accordance with the requirements of §§ 1.832 through 1.834.

Section 1.831(b)(1) and (2) are added to define the nucleotide and amino acid sequences for which a ''Sequence Listing XML'' is required. Specifically, nucleotide and/or amino acid sequences, as used in these rules, encompass: an unbranched sequence or linear region of a branched sequence containing 4 or more specifically defined amino acids, wherein the amino acids form a single peptide backbone or an unbranched sequence or linear region of a branched sequence of 10 or more specifically defined nucleotides, wherein adjacent nucleotides are joined by a 3′ to 5′ (or 5′ to 3′) phosphodiester linkage or, for nucleotide analogs, any chemical bond that results in an arrangement of adjacent nucleobases that mimics the arrangement of nucleobases in naturally occurring nucleic acids.

Section 1.831(c) is added to state that, where the description or claims of a patent application discuss a nucleotide and/or amino acid sequence that is set forth in the ''Sequence Listing XML'' in accordance with paragraph (a) of the section, reference must be made to the sequence by use of the sequence identifier, preceded by ''SEQ ID NO:'' or the like, in the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application. Where a sequence is presented in a drawing, reference must be made to the sequence by use of the sequence identifier (§ 1.832(a)), either in the drawing or in the Brief Description of the Drawings, where the correlation between multiple sequences in the drawing and their sequence identifiers (§ 1.832(a)) in the Brief Description is clear. The use of SEQ ID NO: Is preferred, but including ''or the like'' is intended to ensure that a formalities notice is not sent when an application uses, for example, ''SEQ NO.'' or ''Seq. Id. No.'' or any similar identification of an amino acid or nucleotide sequence in the description or claims where it is clear that a sequence from the ''Sequence Listing XML'' is shown in the description, claims, or drawings. When identifying the sequence in the description, claims, or drawings, the numeric sequence identifier from the ''Sequence Listing XML'' must identify the same sequence.

Section 1.831(d) is added to define the expression ''enumeration of its residues,'' consistent with the definition in paragraph 3(c)(i) or (ii) of WIPO Standard ST.26 (incorporated by reference, *see* 37 CFR 1.839).

Section 1.831(e) is added to define the expression ''specifically defined,'' consistent with the definition in paragraph 3(k) of WIPO Standard ST.26.

Section 1.831(f) is added to define the expression ''amino acid,'' consistent with the definition in paragraph 3(a) of WIPO Standard ST.26.

Section 1.831(g) is added to define the expression ''modified amino acid,'' consistent with the definition in paragraph 3(e) of WIPO Standard ST.26.

Section 1.831(h) is added to define the expression ''nucleotide,'' consistent with paragraphs 3(f) and 3(g) of WIPO Standard ST.26.

Section 1.831(i) is added to define the expression ''modified nucleotide,'' consistent with paragraph 3(f) of WIPO Standard ST.26.

Section 1.831(j) is added to indicate that a ''Sequence Listing XML'' must not include any sequences having fewer than 10 specifically defined nucleotides, or fewer than 4 specifically defined amino acids. Even though § 1.831(a) states that ''[d]isclosed nucleotide or amino acid sequences that do not meet the definition in paragraph (b) of this section must not be included in the ''Sequence Listing XML,'' '' adding § 1.831(j) makes explicit the prohibition of including such sequences in the ''Sequence Listing XML.''

Section 1.832: Section 1.832 is added to provide the manner in which a nucleotide and/or amino acid sequence is represented in the ''Sequence Listing XML'' part of a patent application having a filing date on or after July 1, 2022.

Section 1.832(a) is added to define the requirements for the representation of sequences in the ''Sequence Listing XML'' part of the application. Specifically, each nucleotide and/or amino acid sequence represented in the ''Sequence Listing XML'' must be assigned a separate sequence identifier, and sequence identifiers must begin with the number 1 and increase sequentially by integers, as defined in paragraph 10 of WIPO Standard ST.26 (incorporated by reference, *see* 37 CFR 1.839).

Section 1.832(b)(1) through (4) are added to define the requirements for the representation of nucleotide sequence data in the ''Sequence Listing XML.'' Specifically, a nucleotide sequence must be represented in the manner described in paragraphs 11–12 of WIPO Standard ST.26. All nucleotides, including nucleotide analogs, modified nucleotides, and ''unknown'' nucleotides, within a nucleotide sequence must be represented and described using symbols in the manner described in paragraphs 13–19 and 21 of WIPO Standard ST.26. For a region containing a known number of contiguous ''a,'' ''c,'' ''g,'' ''t,'' or ''n'' residues for which the same description applies, the entire region may be jointly described as provided in paragraph 22 of WIPO Standard ST.26.

Section 1.832(c)(1) through (4) are added to define the requirements for the representation of amino acid sequence data in the ''Sequence Listing XML.'' Specifically, an amino acid sequence must be represented in the manner described in paragraphs 24 and 25 of WIPO Standard ST.26. All amino acids, including modified amino acids and ''unknown'' amino acids, within an amino acid sequence must be represented and described using symbols in the manner described in paragraphs 26–30 and 32 of WIPO Standard ST.26. For a region containing a known number of contiguous ''X''

residues for which the same description applies, the entire region may be jointly described as provided in paragraph 34 of WIPO Standard ST.26.

Section 1.832(d) is added to define the manner in which a single continuous sequence, derived from one or more non-contiguous segments of a larger sequence, or of segments from different sequences, must be represented in the ''Sequence Listing XML,'' as described in paragraph 35 of WIPO Standard ST.26.

Section 1.832(e) is added to define the manner in which a nucleotide and/or amino acid sequence that contains regions of specifically defined residues separated by one or more regions of contiguous ''n'' or ''X'' residues of specified length must be represented in the ''Sequence Listing XML,'' as described in paragraph 36 of WIPO Standard ST.26.

Section 1.832(f) is added to define the manner in which a nucleotide and/or amino acid sequence that contains regions of specifically defined residues separated by one or more gaps of an unknown or undisclosed number of residues must be represented in the ''Sequence Listing XML,'' as described in paragraph 37 of WIPO Standard ST.26.

Section 1.833: Section 1.833 is added to describe the requirements for a ''Sequence Listing XML,'' which is required by § 1.831(a) for disclosures of nucleotides and/or amino acid sequences in patent applications with a filing date on or after July 1, 2022, to comply with WIPO Standard ST.26 (incorporated by reference, *see* 37 CFR 1.839).

Section 1.833(a) is added to require that the ''Sequence Listing XML'' must be presented as a single XML 1.0 file and encoded using Unicode UTF–8. Section 1.833(a) also incorporates by reference paragraphs 40 and 41, and Annex IV of WIPO Standard ST.26 for character sets.

Section 1.833(b)(1) is added to require that the ''Sequence Listing XML'' presented in accordance with § 1.833(a) must further be valid according to the DTD as presented in Annex II of WIPO Standard ST.26.

Section 1.833(b)(2) is added to recite that a ''Sequence Listing XML'' must comply with the requirements of WIPO Standard ST.26, to include the items enumerated in § 1.833(b)(2)(i) through (v) as discussed in the following paragraphs.

Section 1.833(b)(2)(i) is added to require that the ''Sequence Listing XML'' contain an XML declaration as defined in paragraph 39(a) of WIPO Standard ST.26.

Section 1.833(b)(2)(ii) is added to require that the ''Sequence Listing XML'' contain a document type declaration as defined in paragraph 39(b) of WIPO Standard ST.26.

Section 1.833(b)(2)(iii) is added to require that the ''Sequence Listing XML'' contain a root element as defined in paragraph 43 of WIPO Standard ST.26.

Section 1.833(b)(2)(iv) is added to require that the ''Sequence Listing XML'' contain a general information part that complies with paragraphs 45, 47, and 48 of WIPO Standard ST.26, as applicable.

Section 1.833(b)(2)(v) is added to require that the ''Sequence Listing XML'' contain a sequence data part that complies with paragraphs 50–55, 57, 58, 60–69, 71–78, 80–87, 89–98, and 100 of WIPO Standard ST.26, as applicable.

Section 1.833(b)(3) is added to require that an INSDQualifier_value element includes a value for that element in English for each language-dependent free text qualifier in the ''Sequence Listing XML,'' as required by § 1.52(b)(1)(ii), and where an INSDQualifier_value element is defined in paragraphs 76 and 85–87 of WIPO Standard ST.26. The proposed requirement for a translation of the title into English was not adopted in the final rule because applicants in the international phase need only provide a title in the language of filing, which can be in a language other than English.

Section 1.834: Section 1.834 is added to provide details on the form and format for nucleotide and/or amino acid sequence submissions as the ''Sequence Listing XML'' in patent applications filed on or after July 1, 2022.

Section 1.834(a) is added to indicate that a ''Sequence Listing XML'' in Unicode UTF–8 created by any means (*e.g.,* text editors, nucleotide/amino acid sequence editors, or other custom computer programs) in accordance with §§ 1.831 through 1.833 must: (1) Be compatible with a PC or Mac® and with MS–DOS®, MS-Windows®, Mac OS®, or Unix®/Linux® operating systems; (2) be in XML format, where all permitted printable characters (including the space character) and non-printable (control) characters are defined in paragraph 40 of WIPO Standard ST.26 (incorporated by reference, *see* 37 CFR 1.839); and (3) be named as *.xml, where ''*'' is one character or a combination of characters limited to upper- or lowercase letters, numbers, hyphens, and underscores and the name does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name.

Section 1.834(b) is added to require that the ''Sequence Listing XML'' must be in a single file containing the sequence information and be submitted either: (1) Electronically via the USPTO patent electronic filing system, where the file size must not exceed 100 MB and file compression is not permitted; or (2) on read-only optical disc(s) in compliance with § 1.52(e), where (i) a file that is not compressed must be contained on a single read-only optical disc, (ii) the file may be compressed using WinZip®, 7-Zip, or Unix®/Linux® Zip, (iii) a compressed file must not be self-extracting, and (iv) a compressed XML file that does not fit on a single read-only optical disc may be split into multiple file parts in accordance with the target read-only optical disc size and labeled in compliance with § 1.52(e)(5)(vi).

Section 1.834(c)(1) is added to require that when a ''Sequence Listing XML'' required by § 1.831(a) is submitted in XML file format via the USPTO patent electronic filing system or on a read-only optical disc (in compliance with § 1.52(e)), the specification must contain a statement in a separate paragraph (*see* § 1.77(b)(5)) that incorporates by reference the material in the XML file identifying: (1) The name of the file, (2) the date of creation, and (3) the size of the file in bytes, so long as § 1.834(c)(2) does not apply. This provision was added in the final rule to expressly require an incorporation by reference statement in the specification to the ''Sequence Listing XML,'' which was only implicitly required by § 1.835(c).

Section 1.834(c)(2) is added to indicate that if the ''Sequence Listing XML'' required by § 1.831(a) is submitted in XML file format via the USPTO patent electronic filing system or on a read-only optical disc (in compliance with § 1.52(e)) for an international application during the international stage, then an incorporation by reference statement of the material in the XML file is not required. This provision was added in the final rule to specifically exempt the requirement for an incorporation by reference statement in the specification to the ''Sequence Listing XML'' (as in § 1.834(c)(1)) for a national stage application when the ''Sequence Listing XML'' constituted part of the international application during the international stage.

Section 1.835: Section 1.835 is added to provide the requirements for submission of an amendment to add or replace a ''Sequence Listing XML'' for applications filed on or after July 1, 2022.

Section 1.835(a) is added to require that any amendment to a patent application adding an initial submission of a ''Sequence Listing XML'' as required by § 1.831(a) after the application filing date must include: (1) A ''Sequence Listing XML'' file submitted either (i) via the USPTO patent electronic filing system, or (ii) on a read-only optical disc in compliance with § 1.52(e); (2) a request to amend the specification to include an incorporation by reference statement of the material in the ''Sequence Listing XML'' file, identifying the name of the file, the date of creation, and the size of the file in bytes (*see* § 1.77(b)(5)(ii)), except when submitted to the United States International Preliminary Examining Authority for an international application; (3) a statement that indicates the basis for the amendment, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all sequence data in the ''Sequence Listing XML''; and (4) a statement that the ''Sequence Listing XML'' includes no new matter.

Section 1.835(b) is added to require that any amendment adding to, deleting from, or replacing sequence information in a ''Sequence Listing XML'' submitted as required by § 1.831(a) must include: (1) A replacement ''Sequence Listing XML'' containing the entire ''Sequence Listing XML,'' including any additions, deletions, or replacements of sequence information, and shall be submitted either (i) via the USPTO patent electronic filing system, or (ii) on a read-only optical disc, in compliance with § 1.52(e) labeled as ''REPLACEMENT MM/DD/YYYY'' (with the month, day, and year of creation indicated); (2) an instruction to amend the specification to include an incorporation by reference statement of the material in the replacement ''Sequence Listing XML'' file that identifies the name of the file, the date of creation, and the size of the file in bytes (*see* § 1.77(b)(5)(ii)), except when the replacement ''Sequence Listing XML'' is submitted to the United States International Preliminary Examining Authority for an international application; (3) a statement that identifies the location of all additions, deletions, or replacements of sequence information relative to the replaced ''Sequence Listing XML''; (4) a statement that indicates the support for the additions, deletions, or replacements of the sequence information, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all amended sequence data in the replacement ''Sequence Listing XML''; and (5) a statement that the replacement ''Sequence Listing XML'' includes no new matter.

Section 1.835(c) is added to require that the specification of a complete application with a ''Sequence Listing XML'' as required under § 1.831(a), present on the application filing date but without an incorporation by reference of the material contained in the ''Sequence Listing XML'' file, must be amended to contain a separate paragraph incorporating by reference the material contained in the ''Sequence Listing XML'' file, in accordance with § 1.77(b)(5)(ii), except for international applications.

Section 1.835(d)(1) is added to provide that, when any of the requirements of §§ 1.831 through 1.834 are not satisfied in an application under 35 U.S.C. 111(a) or in a national stage application under 35 U.S.C. 371, the applicant will be notified and given a period of time in which to comply with such requirements to prevent the abandonment of the application. This final rule indicates that, subject to § 1.835(d)(2), any amendment to add or replace a ''Sequence Listing XML'' in response to a requirement under this paragraph must be submitted in accordance with the requirements of § 1.835(a) through (c).

Section 1.835(d)(2) is added to explicitly provide that compliance with § 1.835(a) through (c) is not required for the submission of a ''Sequence Listing XML'' that is solely an English translation of a previously submitted ''Sequence Listing XML'' that contains non-English values for any language-dependent free text elements (as per § 1.833(b)(3)). The required submission will be a translated ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.834. Updated values for attributes in the root element (§ 1.833(b)(2)(iii)) or elements of the general information part (§ 1.833(b)(2)(iv)) are not considered amendments for purposes of complying with § 1.835(a) through (c). Even though §§ 1.52(b)(1)(ii) and 1.495(c)(1)(i) require a translation for applications filed under 35 U.S.C. 111(a) and for those entering the national stage, respectively, this rule makes explicit that when a translated ''Sequence Listing XML'' is provided as a reply to a notice that the ''Sequence Listing XML'' contains non-English values for any language-dependent free text elements, and the translation does not include the deletion, addition, or replacement of sequence information, the translated ''Sequence Listing XML'' need not comply with the requirements for an amended ''Sequence Listing XML'' as set forth in § 1.835(a) through (c). The proposed requirement for a translation of the title into English was not adopted in the final rule because applicants in the international phase need only provide a title in the language of filing, which can be in a language other than English.

Section 1.835(e) is added to provide that, when any of the requirements of §§ 1.831 through 1.834 are not satisfied at the time of filing an international application under the PCT, where the application is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority, the applicant may be sent a notice calling for compliance with the requirements within a prescribed time period. Under PCT Rule 13*ter,* the applicant may provide, in response to such a requirement or otherwise, a sequence listing that is a ''Sequence Listing XML'' in accordance with § 1.831(a). The ''Sequence Listing XML'' must be accompanied by a statement that the information recorded does not go beyond the disclosure in the international application as filed. In response to such a requirement, the late furnishing fee set forth in § 1.445(a)(5) is also required. If the applicant fails to timely provide the required ''Sequence Listing XML,'' the United States International Searching Authority shall search only to the extent that a meaningful search can be performed without the ''Sequence Listing XML,'' and the United States International Preliminary Examining Authority shall examine only to the extent that a meaningful examination can be performed without the ''Sequence Listing XML.''

Section 1.835(f) is added to provide that any appropriate amendments to the ''Sequence Listing XML'' in a patent (*e.g.,* by reason of reissue, reexamination, or certificate of correction) must comply with the requirements of paragraph (b) of this section.

Section 1.839: Section 1.839 is added to provide the location of WIPO Standard ST.26 that is being incorporated by reference.

III. Comments and Responses and Changes From Proposed Rule

The USPTO published a proposed rule on July 6, 2021, at 86 FR 35432, soliciting public comments on the proposed amendments to 37 CFR part 1 being adopted in this final rule. The USPTO received no comments from the public on the proposed rule. Even though no comments were received, the

proposed changes to §§ 1.495(c)(5), 1.833(b)(3) and 1.835(d)(2) to require a title in English in the ''Sequence Listing XML'' were not adopted in the final rule. The proposed requirement for a translation of the title into English was not adopted since applicants in the international phase need only provide a title in the language of filing, which can be in a language other than English. Additionally, even though § 1.831(a) states that ''[d]isclosed nucleotide or amino acid sequences that do not meet the definition in paragraph (b) of this section must not be included in the ''Sequence Listing XML,'' '' § 1.831(j) was added to make explicit the prohibition of including such sequences in the ''Sequence Listing XML.'' Section 1.834(c)(1) was added to expressly require an incorporation by reference statement in the specification to the ''Sequence Listing XML,'' which was only implicitly required by § 1.835(c). Lastly, § 1.834(c)(2) was added to specifically exempt the requirement for an incorporation by reference statement in the specification to the ''Sequence Listing XML'' (as in § 1.834(c)(1)) for a national stage application when the ''Sequence Listing XML'' constituted part of the international application during the international stage.

IV. Rulemaking Considerations

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (changes to procedural rules are not subject to notice and comment review under the Administrative Procedure Act (APA)); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 349 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Substantive rules ''effect a change in existing law or policy or which affect individual rights and obligations,'' whereas interpretative rules ''clarify or explain existing law or regulation and are exempt from notice and comment'' review under the APA.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking were not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the USPTO chose to seek public comment before implementing the rule to benefit from the public's input.

B. Regulatory Flexibility Act: For the reasons set forth in this notice, the Senior Counsel for Regulatory and Legislative Affairs of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The USPTO amends the rules of practice to require the submission of biological sequence data in XML where the rules of practice incorporate by reference WIPO Standard ST.26, ''Recommended Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings Using XML (eXtensible Markup Language),'' including Annexes I–VII, version 1.5, approved November 5, 2021, as disclosed in the WIPO Handbook on Industrial Property Information and Documentation.

This rulemaking makes more technical data associated with biotechnology inventions available to the public because the new rules of practice based on WIPO Standard ST.26 provide for enhanced biological sequence data related to disclosures of nucleotide and/or amino acid sequences in patent applications. WIPO Standard ST.26 provides clear rules as to what must be included in a sequence listing and how sequences must be represented (*e.g.,* standardization of the representation of modified nucleic acids and amino acids as well as variants derived from primary sequences). WIPO Standard ST.26 contains a guidance document that demonstrates the requirement for inclusion and representation of biological sequence data. As a result, patent applicants will have a clearer understanding as to the requirements and presentation of biological sequence data in a compliant sequence listing under WIPO Standard ST.26. Additionally, since WIPO Standard ST.26 only allows XML format, applicants will not be burdened with or confused by the requirements of filing a sequence listing in paper or PDF format, and IPOs will not be burdened with processing paper sequence listings and performing necessary checks on the contents of the paper documents. The changes in this rulemaking are largely procedural in nature, and do not impose any additional requirements or fees on applicants. For the foregoing reasons, the changes in this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, to the extent feasible and applicable, the USPTO has: (1) Reasonably determined that the benefits of the rule justify its costs; (2) tailored the rule to impose the least burden on society consistent with obtaining the agency's regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens while maintaining flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize

litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the majority of the paperwork and other information collection burdens discussed in this rule have already been approved under the following Office of Management and Budget (OMB) Control Numbers: 0651–0024 (Sequence Listing), 0651–0031 (Patent Processing), 0651–0032 (Initial Patent Applications), and 0651–0064 (Patent Reexaminations and Supplemental Examinations).

Modifications to 0651–0024 because of this rulemaking will be submitted to OMB for approval. Modifications include the removal of the Sequence Listing in Application (paper), which will result in an estimated reduction in the burden associated with this information collection by 5,000 responses and 30,000 burden hours. These burden estimates are based on the current OMB approved burdens (response volumes) associated with this information collection, which may be different from any forecasts mentioned in other parts of this rule.

The changes discussed in this rule do not affect the information collection requirements or burdens associated with 0651–0031, 0651–0032, and 0651–0064 listed above; therefore, the USPTO does not plan to take any additional actions on these information collections as a result of this rulemaking. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Incorporation by reference, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble and under the authority contained in 35 U.S.C. 2, as amended, the USPTO amends 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.52 is amended by:
■ a. Revising paragraphs (e)(1)(ii) and (e)(3)(ii) and (iii);
■ b. Adding paragraph (e)(3)(iv); and
■ c. Revising paragraphs (e)(7), (f)(1) introductory text, (f)(1)(i), (f)(2) introductory text, (f)(2)(i), and (f)(3).

The revisions and addition read as follows:

§ 1.52 Language, paper, writing, margins, read-only optical disc specifications.

* * * * *

(e) * * *

(1) * * *

(ii) A ''Sequence Listing'' (submitted under § 1.821(c) in compliance with §§ 1.822 through 1.824) or a ''Sequence Listing XML'' (submitted under § 1.831(a) in compliance with §§ 1.832 through 1.834); or

* * * * *

(3) * * *

(ii) Operating system compatibility: MS–DOS®, MS-Windows®, MacOS®, or Unix®/Linux®;

(iii) The contents of each read-only optical disc must be in American Standard Code for Information Interchange (ASCII) plain text and if compressed, must be compressed in accordance with § 1.58 for ''Large Tables,'' with § 1.96 for a ''Computer Program Listing Appendix,'' or § 1.824 for a ''Sequence Listing'' or Computer Readable Form (CRF) of the ''Sequence Listing,'' as applicable; and

(iv) The contents of each read-only optical disc for a ''Sequence Listing XML'' must be in eXtensible Markup Language (XML) file format, and if compressed, must be compressed in accordance with § 1.834.

* * * * *

(7) Any amendment to the information on a read-only optical disc must be by way of a replacement read-only optical disc, in compliance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' § 1.825(b) for a ''Sequence Listing'' or CRF of a ''Sequence Listing,'' and § 1.835(b) for a ''Sequence Listing XML.''

* * * * *

(f) * * *

(1) *Submission on read-only optical discs.* The application size fee required by § 1.16(s) or § 1.492(j), for an application component submitted in part on a read-only optical disc in compliance with paragraph (e) of this section, shall be determined such that each three kilobytes of content submitted on a read-only optical disc shall be counted as a sheet of paper. Excluded from this determination is any ASCII plain text file or any XML file (as applicable) submitted on a read-only optical disc under paragraph (e) of this section containing:

(i) Any ''Sequence Listing'' or CRF of a ''Sequence Listing'' in compliance with § 1.821(c) or (e), or any ''Sequence Listing XML'' in compliance with § 1.831(a); or

* * * * *

(2) *Submission via the USPTO patent electronic filing system.* The application size fee required by § 1.16(s) or § 1.492(j), for an application submitted in whole or in part via the USPTO patent electronic filing system, shall be determined such that the paper size equivalent will be considered to be 75% of the number of sheets of paper present in the specification and drawings for the application when entered into the Office records after being rendered by the USPTO patent electronic filing system. Excluded from this determination is any ASCII plain text file or any XML file (as applicable) submitted via the USPTO patent electronic filing system containing:

(i) Any ''Sequence Listing'' or CRF of a ''Sequence Listing'' in compliance with § 1.821(c)(1) or (e), or any ''Sequence Listing XML'' in compliance with § 1.831(a); or

* * * * *

(3) *Oversized submission.* Any submission of a ''Sequence Listing'' in electronic form or a ''Sequence Listing XML'' of 300 MB–800 MB filed in an application under 35 U.S.C. 111 or 371 will be subject to the fee set forth in § 1.21(o)(1). Any submission of a ''Sequence Listing'' in electronic form or a ''Sequence Listing XML'' that exceeds 800 MB filed in an application under 35 U.S.C. 111 or 371 will be subject to the fee set forth in § 1.21(o)(2).

■ 3. Section 1.53 is amended by revising paragraph (c)(4) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(4) A provisional application is not entitled to the right of priority under 35 U.S.C. 119, 365(a), or 386(a) or § 1.55, or to the benefit of an earlier filing date under 35 U.S.C. 120, 121, 365(c), or 386(c) or § 1.78 of any other application. No claim for priority under 35 U.S.C. 119(e) or § 1.78(a) may be made in a design application based on a provisional application. A provisional application disclosing nucleotide and/or amino acid sequences is not required to include a separate sequence listing; however, if submitted in a provisional application filed on or after July 1, 2022, any submission of nucleotide and/or amino acid sequence data must be by way of a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.834.

* * * * *

■ 4. Section 1.77 is amended by revising paragraph (b)(5) to read as follows:

§ 1.77 Arrangement of application elements.

* * * * *

(b) * * *

(5) An incorporation by reference statement regarding the material in:

(i) One or more ASCII plain text files, submitted via the USPTO patent electronic filing system or on one or more read-only optical discs (*see* § 1.52(e)(8)), identifying the names of each file, the date of creation of each file, and the size of each file in bytes, for the following document types:

(A) A ''Computer Program Listing Appendix'' (*see* § 1.96(c));

(B) A ''Sequence Listing'' (*see* § 1.821(c)); or

(C) ''Large Tables'' (*see* § 1.58(c)).

(ii) An XML file for a ''Sequence Listing XML'' (*see* § 1.831(a)), submitted via the USPTO patent electronic filing system or on one or more read-only optical discs (*see* § 1.52(e)(8)), identifying the names of each file, the date of creation of each file, and the size of each file in bytes.

* * * * *

■ 5. Section 1.121 is amended by revising paragraphs (b) introductory text and (b)(6) to read as follows:

§ 1.121 Manner of making amendments in applications.

* * * * *

(b) *Specification.* Amendments to the specification, other than the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)(5) and (7)), a ''Sequence Listing'' (§ 1.825), or a ''Sequence Listing XML'' (§ 1.835), must be made by adding, deleting, or replacing a paragraph; by replacing a section; or by providing a substitute specification, in the manner specified in this section.

* * * * *

(6) *Amendments to ''Large Tables,'' a ''Computer Program Listing Appendix,'' a ''Sequence Listing,'' or a ''Sequence Listing XML.''* Changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' a ''Sequence Listing,'' or a ''Sequence Listing XML'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' § 1.825 for a ''Sequence Listing,'' or § 1.835 for a ''Sequence Listing XML.''

* * * * *

■ 6. Section 1.173 is amended by revising paragraphs (b)(1) and (d) introductory text to read as follows:

§ 1.173 Reissue specification, drawings, and amendments.

* * * * *

(b) * * *

(1) *Specification other than the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), a ''Sequence Listing'' (§ 1.821(c)), or a ''Sequence Listing XML'' (§ 1.831(a)).* (i) Changes to the specification, other than to the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), a ''Sequence Listing'' (§ 1.821(c)), or a ''Sequence Listing XML'' (§ 1.831(a)), must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (d) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph, without presentation of the text of the paragraph. The precise point in the specification where any added or rewritten paragraph is located must be identified.

(ii) Changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' a ''Sequence Listing,'' or a ''Sequence Listing XML'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' § 1.825 for a ''Sequence Listing,'' and § 1.835 for a ''Sequence Listing XML.''

* * * * *

(d) *Changes shown by markings.* Any changes relative to the patent being reissued that are made to the specification, including the claims but excluding ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), a ''Sequence Listing'' (§ 1.821(c)), and a ''Sequence Listing XML'' (§ 1.831(a)) upon filing or by an amendment paper in the reissue application, must include the following markings:

* * * * *

■ 7. Section 1.211 is amended by revising paragraph (c) to read as follows:

§ 1.211 Publication of applications.

* * * * *

(c) An application filed under 35 U.S.C. 111(a) will not be published until it includes the basic filing fee (§ 1.16(a) or (c)) and any English translation required by § 1.52(d). The Office may delay publishing any application until it includes any application size fee required by the Office under § 1.16(s) or § 1.492(j), a specification having papers in compliance with § 1.52 and an abstract (§ 1.72(b)), drawings in compliance with § 1.84, a ''Sequence Listing'' in compliance with §§ 1.821 through 1.825 (if applicable) for an application filed before July 1, 2022, a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.835 (if applicable) for an application filed on or after July 1, 2022, and the inventor's oath or declaration or application data sheet containing the information specified in § 1.63(b).

* * * * *

■ 8. Section 1.495 is amended by revising paragraph (c)(5) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c) * * *

(5) For international applications having an international filing date before July 1, 2022, a sequence listing need not be translated if the sequence listing complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b). For international applications having an international filing date on or after July 1, 2022, for purposes of paragraph (c)(1)(i) of this section, an English translation is required for any sequence listing in XML format (''Sequence Listing XML'') containing non-English language values for any language-dependent free text qualifiers in accordance with §§ 1.831 through 1.834.

* * * * *

■ 9. Section 1.530 is amended by revising paragraph (d)(1) to read as follows:

§ 1.530 Statement by patent owner in ex parte reexamination; amendment by patent owner in ex parte or inter partes reexamination; inventorship change in ex parte or inter partes reexamination.

* * * * *

(d) * * *

(1) *Specification other than the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), a ''Sequence Listing'' (§ 1.821(c)), or a ''Sequence Listing XML (§ 1.831(a)).* (i) Changes to the specification, other than to the claims, ''Large Tables'' (§ 1.58(c)), a ''Computer Program Listing Appendix'' (§ 1.96(c)), a ''Sequence Listing'' (§ 1.821(c)), or a ''Sequence Listing XML'' (§ 1.831(a)), must be made by submission of the entire text of an added or rewritten paragraph, including markings pursuant to paragraph (f) of this section, except that an entire paragraph may be deleted by a statement deleting the paragraph, without presentation of the text of the paragraph. The precise point in the specification where any added or rewritten paragraph is located must be identified.

(ii) Changes to ''Large Tables,'' a ''Computer Program Listing Appendix,'' a ''Sequence Listing,'' or a ''Sequence Listing XML'' must be made in accordance with § 1.58(g) for ''Large Tables,'' § 1.96(c)(5) for a ''Computer Program Listing Appendix,'' § 1.825 for a ''Sequence Listing,'' or § 1.835 for a ''Sequence Listing XML.''

* * * * *

■ 10. Section 1.704 is amended by revising paragraph (f) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(f) An application filed under 35 U.S.C. 111(a) is in condition for examination when it includes a specification, including at least one claim and an abstract (§ 1.72(b)), and has papers in compliance with § 1.52, drawings (if any) in compliance with § 1.84, any English translation required by § 1.52(d) or § 1.57(a), a ''Sequence Listing'' in compliance with §§ 1.821 through 1.825 (if applicable), a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.835 (if applicable), an inventor's oath or declaration or an application data sheet containing the information specified in § 1.63(b), the basic filing fee (§ 1.16(a) or (c)), the search fee (§ 1.16(k) or (m)), the examination fee (§ 1.16(o) or (q)), any certified copy of the previously filed application required by § 1.57(a), and any application size fee required by the Office under § 1.16(s). An international application is in condition for examination when it has entered the national stage as defined in § 1.491(b), and includes a specification, including at least one claim and an abstract (§ 1.72(b)), and has papers in compliance with § 1.52, drawings (if any) in compliance with § 1.84, a ''Sequence Listing'' in compliance with §§ 1.821 through 1.825 (if applicable), a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.835 (if applicable), an inventor's oath or declaration or an application data sheet containing the information specified in § 1.63(b), the search fee (§ 1.492(b)), the examination fee (§ 1.492(c)), and any application size fee required by the Office under § 1.492(j). An application shall be considered as having papers in compliance with § 1.52, drawings (if any) in compliance with § 1.84, and a ''Sequence Listing'' in compliance with §§ 1.821 through 1.825 (if applicable), or a ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.835 (if applicable), for purposes of this paragraph (f) on the filing date of the latest reply (if any) correcting the papers, drawings, ''Sequence Listing,'' or ''Sequence Listing XML'' that is prior to the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

■ 11. Sections 1.831 through 1.835 and 1.839 are added to read as follows:

Sec.

* * * * *

1.831 Requirements for patent applications filed on or after July 1, 2022, having nucleotide and/or amino acid sequence disclosures.

1.832 Representation of nucleotide and/or amino acid sequence data in the ''Sequence Listing XML'' part of a patent application filed on or after July 1, 2022.

1.833 Requirements for a ''Sequence Listing XML'' for nucleotide and/or amino acid sequences as part of a patent application filed on or after July 1, 2022.

1.834 Form and format for nucleotide and/or amino acid sequence submissions as the ''Sequence Listing XML'' in patent applications filed on or after July 1, 2022.

1.835 Amendment to add or replace a ''Sequence Listing XML'' in patent applications filed on or after July 1, 2022.

1.839 Incorporation by reference.

* * * * *

§ 1.831 Requirements for patent applications filed on or after July 1, 2022, having nucleotide and/or amino acid sequence disclosures.

(a) Patent applications disclosing nucleotide and/or amino acid sequences by enumeration of their residues, as defined in paragraph (b) of this section, must contain, as a separate part of the disclosure, a computer readable Sequence Listing in XML format (a ''Sequence Listing XML''). Disclosed nucleotide or amino acid sequences that do not meet the definition in paragraph (b) of this section must not be included in the ''Sequence Listing XML.'' The ''Sequence Listing XML'' contains the information of the nucleotide and/or amino acid sequences disclosed in the patent application using the symbols and format in accordance with the requirements of §§ 1.832 through 1.834.

(b) Nucleotide and/or amino acid sequences, as used in this section and §§ 1.832 through 1.835, encompass:

(1) An unbranched sequence or linear region of a branched sequence containing 4 or more specifically defined amino acids, wherein the amino acids form a single peptide backbone; or

(2) An unbranched sequence or linear region of a branched sequence of 10 or more specifically defined nucleotides, wherein adjacent nucleotides are joined by:

(i) A 3′ to 5′ (or 5′ to 3′) phosphodiester linkage; or

(ii) Any chemical bond that results in an arrangement of adjacent nucleobases that mimics the arrangement of nucleobases in naturally occurring nucleic acids (*i.e.,* nucleotide analogs).

(c) Where the description or claims of a patent application discuss a sequence that is set forth in the ''Sequence Listing XML'' in accordance with paragraph (a) of this section, reference must be made to the sequence by use of the sequence identifier, preceded by ''SEQ ID NO:'' or the like in the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application. Where a sequence is presented in a drawing, reference must be made to the sequence by use of the sequence identifier (§ 1.832(a)), either in the drawing or in the Brief Description of the Drawings, where the correlation between multiple sequences in the drawing and their sequence identifiers (§ 1.832(a)) in the Brief Description is clear.

(d) ''Enumeration of its residues'' means disclosure of a nucleotide or amino acid sequence in a patent application by listing, in order, each residue of the sequence, where the residues are represented in the manner as defined in paragraph 3(c)(i) or (ii) of WIPO Standard ST.26 (incorporated by reference, *see* § 1.839).

(e) ''Specifically defined'' means any amino acid or nucleotide as defined in paragraph 3(k) of WIPO Standard ST.26.

(f) ''Amino acid'' includes any D- or L-amino acid or modified amino acid as defined in paragraph 3(a) of WIPO Standard ST.26.

(g) ''Modified amino acid'' includes any amino acid as described in paragraph 3(e) of WIPO Standard ST.26.

(h) ''Nucleotide'' includes any nucleotide, nucleotide analog, or modified nucleotide as defined in paragraphs 3(f) and 3(g) of WIPO Standard ST.26.

(i) ''Modified nucleotide'' includes any nucleotide as described in paragraph 3(f) of WIPO Standard ST.26.

(j) A ''Sequence listing XML'' must not include any sequences having fewer than 10 specifically defined nucleotides, or fewer than 4 specifically defined amino acids.

§ 1.832 Representation of nucleotide and/or amino acid sequence data in the "Sequence Listing XML" part of a patent application filed on or after July 1, 2022.

(a) Each disclosed nucleotide or amino acid sequence that meets the requirements of § 1.831(b) must appear separately in the ''Sequence Listing XML.'' Each sequence set forth in the ''Sequence Listing XML'' must be assigned a separate sequence identifier. The sequence identifiers must begin with 1 and increase sequentially by integers as defined in paragraph 10 of WIPO Standard ST.26 (incorporated by reference, *see* § 1.839).

(b) The representation and symbols for nucleotide sequence data shall conform to the requirements of paragraphs (b)(1) through (4) of this section.

(1) A nucleotide sequence must be represented in the manner described in paragraphs 11–12 of WIPO Standard ST.26.

(2) All nucleotides, including nucleotide analogs, modified nucleotides, and ''unknown'' nucleotides, within a nucleotide sequence must be represented using the symbols set forth in paragraphs 13–16, 19, and 21 of WIPO Standard ST.26.

(3) Modified nucleotides within a nucleotide sequence must be described in the manner discussed in paragraphs 17, 18, and 19 of WIPO Standard ST.26.

(4) A region containing a known number of contiguous ''a,'' ''c,'' ''g,'' ''t,'' or ''n'' residues for which the same description applies may be jointly described in the manner described in paragraph 22 of WIPO Standard ST.26.

(c) The representation and symbols for amino acid sequence data shall conform to the requirements of paragraphs (c)(1) through (4) of this section.

(1) The amino acids in an amino acid sequence must be represented in the manner described in paragraphs 24 and 25 of WIPO Standard ST.26.

(2) All amino acids, including modified amino acids and ''unknown'' amino acids, within an amino acid sequence must be represented using the symbols set forth in paragraphs 26–29 and 32 of WIPO Standard ST.26.

(3) Modified amino acids within an amino acid sequence must be described in the manner discussed in paragraphs 29 and 30 of WIPO Standard ST.26.

(4) A region containing a known number of contiguous ''X'' residues for which the same description applies may be jointly described in the manner described in paragraph 34 of WIPO Standard ST.26.

(d) A nucleotide and/or amino acid sequence that is constructed as a single continuous sequence derived from one or more non-contiguous segments of a larger sequence or of segments from different sequences must be listed in the ''Sequence Listing XML'' in the manner described in paragraph 35 of WIPO Standard ST.26.

(e) A nucleotide and/or amino acid sequence that contains regions of specifically defined residues separated by one or more regions of contiguous ''n'' or ''X'' residues, wherein the exact number of ''n'' or ''X'' residues in each region is disclosed, must be listed in the ''Sequence Listing XML'' in the manner described in paragraph 36 of WIPO Standard ST.26.

(f) A nucleotide and/or amino acid sequence that contains regions of specifically defined residues separated by one or more gaps of an unknown or undisclosed number of residues must be listed in the ''Sequence Listing XML'' in the manner described in paragraph 37 of WIPO Standard ST.26.

§ 1.833 Requirements for a "Sequence Listing XML" for nucleotide and/or amino acid sequences as part of a patent application filed on or after July 1, 2022.

(a) The ''Sequence Listing XML'' as required by § 1.831(a) must be presented as a single file in XML 1.0 encoded using Unicode UTF–8, where the character set complies with paragraphs 40 and 41 and Annex IV of WIPO Standard ST.26 (incorporated by reference, *see* § 1.839).

(b) The ''Sequence Listing XML'' presented in accordance with paragraph (a) of this section must further:

(1) Be valid according to the Document Type Definition (DTD) as presented in WIPO Standard ST.26, Annex II.

(2) Comply with the requirements of WIPO Standard ST.26 to include:

(i) An XML declaration as defined in paragraph 39(a) of WIPO Standard ST.26;

(ii) A document type (DOCTYPE) declaration as defined in paragraph 39(b) of WIPO Standard ST.26;

(iii) A root element as defined in paragraph 43 of WIPO Standard ST.26;

(iv) A general information part that complies with the requirements of paragraphs 45, 47, and 48, as applicable, of WIPO Standard ST.26; and

(v) A sequence data part that complies with the requirements of paragraphs 50–55, 57, 58, 60–69, 71–78, 80–87, 89–98, and 100, as applicable, of WIPO

Standard ST.26 representing the nucleotide and/or amino acid sequences according to § 1.832.

(3) Include an INSDQualifier_value element with a value in English for any language-dependent free text qualifier as defined by paragraphs 76 and 85–87 of WIPO Standard ST.26, and as required by § 1.52(b)(1)(ii).

§ 1.834 Form and format for nucleotide and/or amino acid sequence submissions as the "Sequence Listing XML" in patent applications filed on or after July 1, 2022.

(a) A ''Sequence Listing XML'' encoded using Unicode UTF–8, created by any means (*e.g.,* text editors, nucleotide/amino acid sequence editors, or other custom computer programs) in accordance with §§ 1.831 through 1.833, must:

(1) Have the following compatibilities:

(i) Computer compatibility: PC or Mac®; and

(ii) Operating system compatibility: MS–DOS®, MS-Windows®, Mac OS®, or Unix®/Linux®.

(2) Be in XML format, where all permitted printable characters (including the space character) and non-printable (control) characters are defined in paragraph 40 of WIPO Standard ST.26 (incorporated by reference, *see* § 1.839).

(3) Be named as *.xml, where ''*'' is one character or a combination of characters limited to upper- or lowercase letters, numbers, hyphens, and underscores, and the name does not exceed 60 characters in total, excluding the extension. No spaces or other types of characters are permitted in the file name.

(b) The ''Sequence Listing XML'' must be in a single file containing the sequence information and be submitted either:

(1) Electronically via the USPTO patent electronic filing system, where the file size must not exceed 100 MB, and file compression is not permitted; or

(2) On read-only optical disc(s) in compliance with § 1.52(e), where:

(i) A file that is not compressed must be contained on a single read-only optical disc;

(ii) The file may be compressed using WinZip®, 7-Zip, or Unix®/Linux® Zip;

(iii) A compressed file must not be self-extracting; or

(iv) A compressed XML file that does not fit on a single read-only optical disc may be split into multiple file parts, in accordance with the target read-only optical disc size, and labeled in compliance with § 1.52(e)(5)(vi);

(c)(1) Unless paragraph (c)(2) of this section applies, when the ''Sequence Listing XML'' required by § 1.831(a) is submitted in XML file format via the USPTO patent electronic filing system or on a read-only optical disc (in compliance with § 1.52(e)), then the specification must contain a statement in a separate paragraph (*see* § 1.77(b)(5)) that incorporates by reference the material in the XML file identifying:

(i) The name of the file;

(ii) The date of creation; and

(iii) The size of the file in bytes; or

(2) If the ''Sequence Listing XML'' required by § 1.831(a) is submitted in XML file format via the USPTO patent electronic filing system or on a read-only optical disc (in compliance with § 1.52(e)) for an international application during the international stage, then an incorporation by reference statement of the material in the XML file is not required.

§ 1.835 Amendment to add or replace a "Sequence Listing XML" in patent applications filed on or after July 1, 2022.

(a) Any amendment to a patent application adding an initial submission of a ''Sequence Listing XML'' as required by § 1.831(a) after the application filing date must include:

(1) A ''Sequence Listing XML'' in accordance with §§ 1.831 through 1.834, submitted as an XML file:

(i) Via the USPTO patent electronic filing system; or

(ii) On a read-only optical disc, in compliance with § 1.52(e);

(2) A request to amend the specification to include an incorporation by reference statement of the material in the ''Sequence Listing XML'' file, identifying the name of the file, the date of creation, and the size of the file in bytes (*see* § 1.77(b)(5)(ii)), except when submitted to the United States International Preliminary Examining Authority for an international application;

(3) A statement that indicates the basis for the amendment, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all sequence data in the ''Sequence Listing XML''; and

(4) A statement that the ''Sequence Listing XML'' includes no new matter.

(b) Any amendment adding to, deleting from, or replacing sequence information in a ''Sequence Listing XML'' submitted as required by § 1.831(a) must include:

(1) A replacement ''Sequence Listing XML'' in accordance with the requirements of §§ 1.831 through 1.834 containing the entire ''Sequence Listing XML,'' including any additions, deletions, or replacements of sequence information, which shall be submitted:

(i) Via the USPTO patent electronic filing system; or

(ii) On a read-only optical disc, in compliance with § 1.52(e), labeled as ''REPLACEMENT MM/DD/YYYY'' (with the month, day, and year of creation indicated);

(2) A request to amend the specification to include an incorporation by reference statement of the material in the replacement ''Sequence Listing XML'' file that identifies the name of the file, the date of creation, and the size of the file in bytes (*see* § 1.77(b)(5)(ii)), except when the replacement ''Sequence Listing XML'' is submitted to the United States International Preliminary Examining Authority for an international application;

(3) A statement that identifies the location of all additions, deletions, or replacements of sequence information relative to the replaced ''Sequence Listing XML'';

(4) A statement that indicates the support for the additions, deletions, or replacements of the sequence information, with specific references to particular parts of the application as originally filed (specification, claims, drawings) for all amended sequence data in the replacement ''Sequence Listing XML''; and

(5) A statement that the replacement ''Sequence Listing XML'' includes no new matter.

(c) The specification of a complete application, filed on the application filing date, with a ''Sequence Listing XML'' as required under § 1.831(a), without an incorporation by reference of the material contained in the ''Sequence Listing XML'' file, must be amended to include a separate paragraph incorporating by reference the material contained in the ''Sequence Listing XML'' file, in accordance with § 1.77(b)(5)(ii), except for international applications.

(d)(1) If any of the requirements of §§ 1.831 through 1.834 are not satisfied in an application under 35 U.S.C. 111(a) or in a national stage application under 35 U.S.C. 371, the applicant will be notified and given a period of time within which to comply with such requirements in order to prevent abandonment of the application. Subject to paragraph (d)(2) of this section, any amendment to add or replace a ''Sequence Listing XML'' or add an incorporation by reference of the material contained in the ''Sequence Listing XML'' in response to a requirement under this paragraph (d)(1) must be submitted in accordance with the requirements of paragraphs (a) through (c) of this section.

(2) Compliance with paragraphs (a) through (c) of this section is not required for submission of a ''Sequence Listing XML'' that is solely an English translation of a previously submitted ''Sequence Listing XML'' that contains non-English values for any language-dependent free text elements (as per § 1.833(b)(3)). The required submission will be a translated ''Sequence Listing XML'' in compliance with §§ 1.831 through 1.834. Updated values for attributes in the root element (§ 1.833(b)(2)(iii)) or elements of the general information part (§ 1.833(b)(2)(iv)) are not considered amendments for purposes of complying with paragraphs (a) through (c) of this section.

(e) If any of the requirements of §§ 1.831 through 1.834 are not satisfied at the time of filing an international application under the PCT, where the application is to be searched by the United States International Searching Authority or examined by the United States International Preliminary Examining Authority, the applicant may be sent a notice necessitating compliance with the requirements within a prescribed time period. Under PCT Rule 13*ter,* the applicant can provide, in response to such a requirement or otherwise, a sequence listing that is a ''Sequence Listing XML'' in accordance with § 1.831(a). The ''Sequence Listing XML'' must be accompanied by a statement that the information recorded does not go beyond the disclosure in the international application as filed. In response to such a requirement, the late furnishing fee set forth in § 1.445(a)(5) is also required. If the applicant fails to timely provide the required ''Sequence Listing XML,'' the United States International Searching Authority shall search only to the extent that a meaningful search can be performed without the ''Sequence Listing XML,'' and the United States International Preliminary Examining Authority shall examine only to the extent that a meaningful examination can be performed without the ''Sequence Listing XML.''

(f) Any appropriate amendments to the ''Sequence Listing XML'' in a patent (*e.g.,* by reason of reissue, reexamination, or certificate of correction) must comply with the requirements of paragraph (b) of this section.

§ 1.839 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the USPTO and at the National Archives and Records Administration (NARA). Contact the USPTO's Office of Patent Legal Administration at 571–272–7701. For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in paragraph (b) of this section.

(b) World Intellectual Property Organization (WIPO), 34 chemin des Colombettes, 1211 Geneva 20 Switzerland, *www.wipo.int.*

(1) WIPO Standard ST.26. WIPO Handbook on Industrial Property Information and Documentation, Standard ST.26: Recommended Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings Using XML (eXtensible Markup Language) including Annexes I–VII, version 1.5, approved November 5, 2021; IBR approved for §§ 1.831 through 1.834.

(2) [Reserved]

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–10343 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Discontinuance of USPS-Operated Retail Facilities

Correction

■ In rule document 2022–10283, appearing on page 29673 in the issue of Monday, May 16, 2022, make the following correction:

§ 241.3 Discontinuance of USPS-operated retail facilities. [corrected]

On page 29673, in the second column, in the second instruction, on the second and third lines, ''(b)(2) and (d)(3) introductory text'' should read, ''(b)(2) introductory text and (d)(3) introductory text''.

[FR Doc. C1–2022–10283 Filed 5–19–22; 8:45 am]

BILLING CODE 0099–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2020–0743; EPA–R05–OAR–2021–0886; EPA–R05–OAR–2022–0123; FRL–9567–01–R5]

Air Plan Approval; Indiana; Redesignation of the Indiana Portion of the Chicago-Naperville Area to Attainment of the 2008 Ozone Standard, NO_X RACT Waiver, and Serious Plan Elements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Indiana portion of the Chicago-Naperville, IL–IN–WI area (Chicago area) is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard). In addition, in response to a December 6, 2021, request from the Indiana Department of Environmental Management (Indiana or the State), EPA is redesignating the Indiana portion of the Chicago area to attainment for the 2008 ozone NAAQS, because the State has met the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is approving, as a revision to the Indiana State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2035 for the Indiana portion of the Chicago area. EPA is also approving a waiver, for the Indiana portion of the Chicago area, from the oxides of nitrogen (NO_X) requirements of the CAA. EPA finds adequate and is approving Indiana's 2030 and 2035 volatile organic compound (VOC) and NO_X motor vehicle emission budgets (budgets) for the Indiana portion of the Chicago area. Finally, EPA is approving the VOC reasonably available control technology (RACT), clean-fuel vehicle programs (CFVP), enhanced monitoring of ozone and ozone precursors (EMP), and enhanced motor vehicle Inspection/Maintenance (I/M) SIP revisions. These SIP revisions satisfy the above requirements for a nonattainment area that is classified as a ''Serious area'' for the Indiana portion of the Chicago area under the 2008 ozone NAAQS. EPA proposed to approve this action on March 3, 2022, and received adverse comments from one commentor.

DATES: This final rule is effective on May 20, 2022.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–R05–OAR–2020–0743 (regarding the serious area elements), EPA–R05–

OAR–2021–0886 (regarding the redesignation), or EPA–R05–OAR–2022–0123 (regarding the NO_X RACT waiver). All documents in the dockets are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Katie Mullen, Environmental Engineer, at (312) 312–353–3490 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Katie Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, *Mullen.Kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background Information

On March 3, 2022 (87 FR 12033), EPA proposed to determine that the Indiana portion of the Chicago-Naperville, IL–IN–WI area is attaining the 2008 ozone NAAQS, and that the State has met the statutory requirements for redesignation under the CAA. EPA proposed to approve, as a revision to the Indiana SIP, the State's plan for maintaining the 2008 ozone NAAQS through 2035 for the Indiana portion. EPA also proposed to approve a waiver, for the Indiana portion of the Chicago area, from the NO_X requirements of section 182(f) of the CAA. EPA proposed to approve and find adequate Indiana's 2030 and 2035 VOC and NO_X motor vehicle emissions budgets for the Indiana portion of the Chicago area. EPA proposed to approve the VOC RACT, the CFVP, and the EMP. Finally, EPA proposed to approve the State's enhanced I/M certification, because it satisfies the enhanced I/M requirements for ''serious areas'' for the Indiana portion of the Chicago area. The public comment period for this proposed rule ended on April 4, 2022. EPA received one supportive comment on the proposed redesignation. EPA also received adverse comments on the proposal from the Wisconsin Department of Natural Resources (WDNR). These comments will be addressed below.

On April 8, 2022, Indiana submitted new on-road emissions inventory information, which the State generated using EPA's MOVES3 model. Indiana requested that the new MOVES3 inventory information should replace the MOVES2014 emissions inventory, motor vehicle emissions budgets, and I/M performance standard modeling analysis that were included in the State's December 6, 2021 submission. MOVES3 is the latest MOVES version and is EPA's state-of-the-art model for estimating emissions from on-road mobile sources.[1] Consistent with our proposal based on the MOVES2014 modeling, the projected emissions inventory for 2035 incorporating the updated MOVES3 budgets demonstrates maintenance of the 2008 ozone NAAQS through the 2035 maintenance period. The MOVES3 I/M performance standard demonstration is consistent with the findings in EPA's proposal and supports Indiana's certification that its current I/M program in Lake and Porter counties meets the applicable Enhanced I/M performance standard requirements in 40 CFR part 51, subpart S for the 2008 ozone NAAQS. With this additional MOVES3 information, EPA has determined that the Indiana portion of the Chicago area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA.

Below are the revised emissions data tables that contain the new on-road emissions inventory information from MOVES3. Tables 1 and 2 contain emissions with changes in VOC and NO_X emissions from 2011 to 2019 for the Indiana portion of the Chicago area.

TABLE 1—EMISSIONS REDUCTION OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019

[Tons/day]

Sector	2011 non-attainment year	2019 Attainment year	Emissions reduction
Illinois:			
EGU Point	67.41	35.23	32.18
Non-EGU	52.58	47.55	5.03
Area	32.03	34.63	−2.6
On-Road	285.34	134.38	150.96
Non-road	176.60	121.63	54.97
Total	613.96	373.42	240.54
Indiana:			
EGU Point	24.04	4.29	19.75
Non-EGU	70.77	59.91	10.86
Area	9.39	0.91	8.48
On-road	31.55	9.48	22.07
Non-road	15.84	13.43	2.41
Total	151.59	88.02	63.57
Wisconsin:			
EGU Point	8.71	0.00	8.71
Non-EGU	0.09	0.08	0.01
Area	1.20	1.13	0.07
On-Road	4.82	1.81	3.01

[1] *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1010LXH.pdf.*

TABLE 1—EMISSIONS REDUCTION OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019—Continued

[Tons/day]

Sector	2011 non-attainment year	2019 Attainment year	Emissions reduction
Non-road	2.25	1.64	0.61
Total	17.07	4.66	12.41
Chicago-Naperville, IL–IN–WI 2008 ozone area:			
Illinois	613.96	373.42	240.54
Indiana	151.59	88.02	63.57
Wisconsin	17.07	4.66	12.41
Total	782.62	466.1	316.52

TABLE 2—EMISSIONS REDUCTION OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2011–2019

[Tons/day]

Sector	2011	2019	Emissions reduction
Illinois:			
EGU Point	0.62	0.97	−0.35
Non-EGU	47.63	45.35	2.28
Area	215.14	232.00	−16.86
On-Road	72.43	66.45	5.98
Non-road	101.83	67.67	34.16
Total	437.65	412.44	25.21
Indiana:			
EGU Point	0.54	0.47	0.07
Non-EGU	17.22	10.83	6.39
Area	18.26	17.00	1.26
On-road	7.60	3.51	4.09
Non-road	21.43	5.53	15.90
Total	65.05	37.34	27.71
Wisconsin:			
EGU Point	0.38	0.00	0.38
Non-EGU	0.24	0.19	0.05
Area	4.10	3.58	0.52
On-Road	1.90	0.89	1.01
Non-road	1.14	0.70	0.44
Total	7.76	5.36	2.40
Chicago-Naperville, IL–IN–WI 2008 ozone area:			
Illinois	437.65	412.44	25.21
Indiana	65.05	37.34	27.71
Wisconsin	7.76	5.36	2.40
Total	510.46	455.14	55.32

As shown in Tables 1 and 2, NO_X and VOC emissions in the Indiana portion of the Chicago area declined by 63.57 tons/day and 27.71 tons/day, respectively, between 2011 and 2019. NO_X and VOC emissions throughout the entire Chicago area declined by 316.52 tons/day and 55.32 tons/day, respectively, between 2011 and 2019.

Projected emissions data are shown in Tables 3 and 4 below.

TABLE 3—PROJECTED EMISSIONS OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035

[Tons/day]

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Illinois:				
EGU Point	35.23	43.59	40.97	−5.74
Non-EGU	47.55	48.56	49.28	−1.73
Area	34.63	34.97	35.04	−0.41
On-Road	134.38	55.94	48.81	85.57
Non-road	121.63	106.80	108.27	13.36
Total	373.42	289.86	282.37	91.05
Indiana:				

TABLE 3—PROJECTED EMISSIONS OF NO_X EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035—Continued

[Tons/day]

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
EGU Point	4.29	1.44	0.42	3.87
Non-EGU	59.91	60.79	61.51	−1.60
Area	0.91	0.88	0.87	0.04
On-road	9.48	4.55	4.77	4.71
Non-road	13.43	10.25	8.49	4.94
Total	88.02	77.91	76.06	11.96
Wisconsin:				
EGU Point	0.00	0.00	0.00	0.00
Non-EGU	0.08	0.12	0.12	−0.04
Area	1.13	0.95	0.96	0.17
On-Road	1.81	0.85	0.75	1.06
Non-road	1.64	1.21	1.21	0.43
Total	4.66	3.13	3.04	1.62
Chicago-Naperville, IL–IN–WI 2008 ozone area:				
Illinois	373.42	289.86	282.37	91.05
Indiana	88.02	77.91	76.06	11.96
Wisconsin	4.66	3.13	3.04	1.62
Total	466.1	370.9	361.47	104.63

TABLE 4—PROJECTED EMISSIONS OF VOC EMISSIONS FOR THE ILLINOIS, INDIANA, AND WISCONSIN PORTIONS OF THE CHICAGO NONATTAINMENT AREA 2030 AND 2035

[Tons/day]

Sector	2019 Attainment year	2030 Interim year	2035 Maintenance year	Emissions reduction 2019–2035
Illinois:				
EGU Point	0.97	2.52	2.80	−1.83
Non-EGU	45.35	44.71	44.54	0.81
Area	232.00	225.11	225.11	6.89
On-Road	66.45	37.42	34.27	32.18
Non-road	67.67	66.41	67.37	0.30
Total	412.44	376.17	374.09	38.35
Indiana:				
EGU Point	0.47	0.56	0.67	−0.20
Non-EGU	10.83	10.84	10.90	−0.07
Area	17.00	17.58	17.85	−0.85
On-road	3.51	2.03	1.82	1.69
Non-road	5.53	4.80	4.35	1.18
Total	37.34	35.81	35.59	1.75
Wisconsin:				
EGU Point	0.00	0.00	0.00	0.00
Non-EGU	0.19	0.26	0.26	−0.07
Area	3.58	3.49	3.56	0.02
On-Road	0.89	0.54	0.47	0.42
Non-road	0.70	0.63	0.62	0.08
Total	5.36	4.92	4.91	0.45
Chicago-Naperville, IL–IN–WI 2008 ozone area:				
Illinois	412.44	376.17	374.09	38.35
Indiana	37.34	35.81	35.59	1.75
Wisconsin	5.36	4.92	4.91	0.45
Total	455.14	416.9	414.59	40.55

Table 5 contains the NOx and VOC motor vehicle budgets for the Indiana portion of the Chicago area for 2030 and 2035. The budgets include a 15% margin of safety applied to NO_X and VOC emission estimates for both years.

TABLE 5—MOTOR VEHICLE EMISSIONS BUDGETS FOR THE INDIANA PORTION OF THE CHICAGO AREA 2008 OZONE MAINTENANCE PLAN

[Tons/day]

Pollutant	2030 Budget	2035 Budget
NO_X	5.23	5.49
VOC	2.33	2.09

III. Public Comments

EPA provided a 30-day review and comment period for the March 3, 2022, proposed rule. The comment period ended on April 4, 2022. We received one supportive comment on the proposed redesignation. We also received adverse comments from WDNR requesting that EPA not approve the NO_X RACT waiver. These comments are summarized and addressed below.

Comment 1: A NO_X RACT program was required for the three-state Chicago-Naperville 2008 ozone nonattainment area by January 1, 2017, after the area was reclassified to moderate. In response to this requirement, Indiana submitted several NO_X RACT waiver requests: The first in February 2017, the second in January 2020, and the third in January 2022. The Chicago nonattainment area did not attain the 2008 ozone standard in the 2019 ozone season and was reclassified to serious in August 2019. The Chicago nonattainment area briefly attained after the 2019 ozone season, but then violated the standard in 2020. The commenter states that this action is in response to Indiana's third NO_X waiver request, which was submitted in January 2022. The commenter argues that EPA's delayed decision-making means Indiana is now 5 years overdue in implementing the CAA required NO_X RACT program.

Response: CAA section 182(f)(1)(A) provides that the plan provisions to address RACT for major stationary sources of NO_X for nonattainment areas not within an ozone transport region do not apply if EPA determines ''that additional reductions of [NO_X] would not contribute to attainment of the national ambient air quality standard for ozone in the area.'' The Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019–2021 period. It is EPA's longstanding interpretation, as stated in EPA's January 2005 document, ''Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation,'' that when an ozone nonattainment area is attaining the ozone standard, as demonstrated by three consecutive years of adequate monitoring data, ''it is clear that the section 182(f)[(1)(A)] language is met since 'additional reductions of oxides of nitrogen would not contribute to attainment.' That is, since attainment has already occurred, additional NO_X reductions could not improve the area's attainment status and, therefore, the NO_X exemption request could be approved.''

EPA never acted on the waiver request submitted in February 2017 and, the waiver was withdrawn by IDEM in January 2020. Also, EPA never acted on the waiver request submitted in January 2020 and, that waiver was withdrawn by IDEM in November 2021. The NO_X RACT waiver under consideration in this action was submitted by IDEM in January 2022 and is based on CAA section 182(f)(1)(A). This waiver can be approved because the area qualifies for the NO_X RACT waiver due to the achievement of three years of clean monitoring data.

Comment 2: The implementation of NO_X RACT is a cost-effective way to address ozone-forming compounds from stationary sources and NO_X RACT technologies are widely available. Wisconsin has a fully approved NO_X RACT program and Illinois implements a NO_X emissions control program. Given this information, the commenter argues that there are no barriers in preventing the implementation of a NO_X RACT program in Indiana.

Response: The Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019–2021 period. EPA is finalizing our approval of the NO_X RACT waiver because as per the discussion above regarding the CAA section 182(f)(1)(A) the area qualifies for the NO_X RACT waiver due to the achievement of three years of clean monitoring data. The fact that other states (Wisconsin and Illinois) have implemented NO_X controls on stationary sources has no bearing on the availability of this waiver under the CAA.

Comment 3: The Chicago nonattainment area continues to struggle to meet Federal ozone standards. The Chicago area has failed to meet its August 3, 2021, marginal attainment date for the more stringent 2015 ozone standard. The commenter further states that EPA is overdue in meeting its statutory obligation to reclassify this area to moderate for the 2015 standard, which was due within 6 months of that attainment date. When this reclassification to moderate under the 2015 ozone standard is finalized, Indiana will be required to submit a NO_X RACT program under the CAA. Given this forthcoming NO_X RACT requirement, the commenter argues EPA's proposed approval to waive an emissions control requirement that will soon be reinstated by statute should not be granted.

Response: In this action, EPA is granting a NO_X RACT waiver only for the 2008 ozone standard based on three years of clean monitoring data for that standard. A CAA section 182(f) NO_X exemption granted for the 2008 ozone standard does not relieve the area from any CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS (*see* 40 CFR 51.1313(c)). Therefore, a potential future reclassification of the Chicago area under the 2015 ozone standard does not prevent EPA from approving the NO_X RACT waiver for the 2008 ozone standard.

Comment 4: The CAA does not compel EPA to grant this waiver request and that the approval of the NO_X waiver relies on EPA's 2005 guidance. In EPA's 2005 guidance, EPA cautions that actions relying on the guidance might not be approvable in every situation. The commenter requests that EPA explain how it is appropriate to apply that guidance when the Chicago area remains in nonattainment for ozone and needs additional NO_X emissions reductions in the area to meet all of the ozone standards.

Response: The Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019–2021 period. In this action, EPA is granting a NO_X RACT waiver only for the 2008 ozone standard because, as per the discussion above regarding the CAA section 182(f)(1)(A) and EPA's January 2005 document, the area qualifies for the NO_X RACT waiver due to the achievement of three years of clean monitoring data. A CAA section 182(f) NO_X exemption granted for the 2008 standard does not relieve the area

from any CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS (see 40 CFR 51.1313(c)). Therefore, approval of a NO_X RACT waiver only as it applies to the 2008 ozone NAAQS is appropriate.

Comment 5: EPA's recently released ozone transport modeling for the 2015 standard shows that Indiana significantly contributes to downwind nonattainment at several monitors along Wisconsin's Lake Michigan shoreline. Also, both the Sheboygan and Chicago nonattainment areas will continue to be nonattainment for the 2015 ozone standard in 2032 based on EPA's ozone transport modeling. Given these modeling results, the commenter states that additional, timely reductions in ozone precursor emissions, including NO_X, are needed to ensure attainment of the 2015 ozone standard throughout the region.

Response: The Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019–2021 period. In this action, EPA is finalizing our approval of the NO_X RACT waiver only for the 2008 ozone standard because, as discussed above regarding the CAA section 182(f)(1)(A), the area qualifies for the NO_X RACT waiver based on three years of clean monitoring data and EPA's modeling indicates that the Chicago area will continue to attain the 2008 NAAQS in the future. In this regard, further NO_X reductions will not improve the area's ability to attain the 2008 ozone standard. In contrast, EPA's ozone transport modeling indicates that, barring further emissions reductions, this area will continue to have difficulty attaining or maintaining the 2015 NAAQS in 2024 (the Moderate Area attainment date for the 2015 NAAQS) and beyond. CAA section 182(f) NO_X exemption granted for a prior ozone standard (in this case the 2008 standard) does not relieve the area from any CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS (*see* 40 CFR 51.1313(c)). If finalized, EPA's determination that the Chicago area failed to attain the 2015 ozone NAAQS by the attainment date and accompanying reclassification to Moderate would impose the CAA's NO_X RACT requirements for the 2015 ozone standard.

IV. Final Action

EPA is determining that the Chicago area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021. EPA is approving Indiana's January 18, 2022, NO_X exemption request as meeting section 182(f) requirements of the CAA. EPA is approving the VOC RACT, CFVP, EMP, and Enhanced I/M program SIP revisions included in Indiana's December 29, 2020, and January 18, 2022, submittals, because they satisfy the Serious requirements of the CAA for the Indiana portion of the Chicago area. EPA has determined that the Indiana portion of the Chicago area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Indiana portion of the Chicago-Naperville, IL–IN–WI area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also approving, as a revision to the Indiana SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Indiana portion of the Chicago area in attainment of the 2008 ozone NAAQS through 2035. Finally, EPA is finding adequate and is approving the newly established 2030 and 2035 motor vehicle emissions budgets for transportation conformity purposes in the Indiana portion of the Chicago area.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(1).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States* v. *Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

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

Dated: May 16, 2022.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (e) is amended by adding entries for ''Lake and Porter Counties 2008 8-hour Ozone Serious Planning Elements'', ''Lake and Porter Counties 2008 8-hour Ozone NO_X RACT Waiver'', and ''Lake and Porter Counties 2008 8-hour Ozone Maintenance Plan'' immediately following the entry for ''Lake and Porter Counties 2008 8-hour Ozone Negative Declarations'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* *		* *	* * *
Lake and Porter Counties 2008 8-hour Ozone Serious Planning Elements.	12/29/2020	5/20/22, [INSERT **FEDERAL REGISTER** CITATION].	2030 and 2035 VOC and NO_X motor vehicle emissions budgets, VOC RACT certification, Enhanced Motor Vehicle Inspection and Maintenance Program certification, clean-fuel vehicle programs certification, enhanced monitoring of ozone and ozone precursors certification.
Lake and Porter Counties 2008 8-hour Ozone NO_X RACT Waiver.	1/18/2022	5/20/22, [INSERT **FEDERAL REGISTER** CITATION].	
Lake and Porter Counties 2008 8-hour Ozone Maintenance Plan.	12/06/2021	5/20/22, [INSERT **FEDERAL REGISTER** CITATION].	
* *		* *	* * *

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PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. Section 81.315 is amended by revising the entry ''Chicago-Naperville, IL-IN-WI'' in the table entitled ''Indiana—2008 Ozone NAAQS [Primary and secondary]'' to read as follows:

§ 81.315 Indiana

* * * * *

INDIANA—2008 OZONE NAAQS

[Primary and secondary]

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*		*	*
Chicago-Naperville, IL-IN-WI [2]	5/20/22	Attainment	9/23/2019	Serious.

INDIANA—2008 OZONE NAAQS—Continued

[Primary and secondary]

Designation area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Lake County.				
Porter County.				
* * * * * * *				

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2022–10820 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[EPA–R05–OAR–2022–0137; FRL–9604–02–R5]

Air Plan Approval; Illinois; Redesignation of the Illinois Portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Illinois portion of the Chicago-Naperville, IL-IN-WI area (Chicago area) is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and is acting in accordance with a January 25, 2022, request from Illinois to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is approving, as a revision to the Illinois State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Illinois portion of the Chicago area. EPA finds adequate and is approving the 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_X) motor vehicle emission budgets (budgets) for transportation conformity purposes for the Illinois portion of the Chicago area. Pursuant to section 110 and part D of the CAA, EPA is approving the VOC reasonably available control technology (RACT), Enhanced motor vehicle inspection and maintenance (I/M), clean-fuel vehicle programs (CFVP), and the enhanced monitoring of ozone and ozone precursors (EMP) SIP revisions submitted by Illinois, because they satisfy serious SIP requirements of the CAA for the Illinois portion of the Chicago area. Finally, EPA is approving a CAA section 182(f) waiver from NO_X RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS.

DATES: This final rule is effective on May 20, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2022–0137. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Michael Leslie, Environmental Engineer at (312) 353–6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680, *leslie.michael@epa.gov.*

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

I. Background information

On March 10, 2022 (87 FR 13668), EPA proposed to find that the Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS and to act in accordance with a January 25, 2022, request from Illinois to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the CAA. EPA proposed to approve, as a revision to the Illinois SIP, the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Illinois portion of the Chicago area. EPA proposed to find adequate and approve the 2035 VOC and NO_X motor vehicle emission budgets (budgets) for the Illinois portion of the Chicago area. Pursuant to section 110 and part D of the CAA, EPA proposed to approve the VOC RACT, Enhanced I/M, the CFVP, and the EMP SIP revisions submitted by Illinois, because they satisfy serious SIP requirements of the CAA for the Illinois portion of the Chicago area. Finally, EPA proposed to approve a CAA section 182(f) waiver from NO_X RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS. An explanation of CAA requirements, a detailed analysis of how these requirements apply to the Illinois portion of the Chicago area, a discussion of how Illinois has met these requirements, and EPA's reasons for proposing these actions were provided in the notice of proposed rulemaking and will not be restated here.

II. Response to Public Comments

EPA provided a 30-day review and comment period for the March 10, 2022, proposed rule. The comment period ended on April 11, 2022. We received one adverse comment from the Wisconsin Department of Natural Resources (WDNR) on our proposed approval of the CAA section 182(f) waiver from NO_X RACT requirements. The adverse comment is summarized and addressed below.

Comment 1: WDNR requested that EPA not approve the NO_X RACT waiver for the following reasons:

Comment 1a: The commenter states that a NO_X RACT program was required for the three-state Chicago-Naperville 2008 ozone nonattainment area by January 1, 2017, after the area was reclassified to moderate. While Illinois has a NO_X program, it is not federally approved and does not fully meet all NO_X RACT requirements.

Response 1a: CAA section 182(f)(1)(A) provides that a state is not required to implement RACT for major stationary sources of NO_X for nonattainment areas not within an ozone transport region if EPA determines ''that additional reductions of [NO_X] would not contribute to attainment of the [NAAQS] for ozone in the area.'' The Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019–2021 period. It is EPA's longstanding interpretation, as stated in EPA's January 2005 document, ''Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation,'' that when an ozone nonattainment area is attaining the ozone standard, as demonstrated by three consecutive years of adequate monitoring data, ''it is clear that the section 182(f)[(1)(A)] language is met since 'additional reductions of oxides of nitrogen would not contribute to attainment.' That is, since attainment has already occurred, additional NO_X reductions could not improve the area's attainment status and, therefore, the NO_X exemption request could be approved.'' The NO_X RACT waiver under consideration in this action was submitted by Illinois on January 25, 2022, and is based on CAA section 182(f)(1)(A). This waiver can be approved because the area is attaining the 2008 ozone NAAQS, as demonstrated by the three years of clean monitoring data, and additional NO_X reductions would not improve the area's attainment status.

Comment 1b: The commenter states that the Chicago nonattainment area continues to struggle to meet Federal ozone standards, such as by failing to meet its August 3, 2021, marginal attainment date for the more stringent 2015 ozone standard. The commenter further states that EPA is overdue in meeting its statutory obligation to reclassify this area to moderate for the 2015 ozone standard, which was due within 6 months of that attainment date. When the reclassification to moderate under the 2015 ozone standard is finalized, Illinois will be required to submit a NO_X RACT program under the CAA. Given this forthcoming NO_X RACT requirement, the commenter argues EPA's proposed approval to waive an emissions control requirement that will soon be reinstated by statute should not be granted.

Response 1b: In this action, EPA is granting a NO_X RACT waiver only for the 2008 ozone standard based on three years of clean monitoring data for that standard. A CAA section 182(f) NO_X exemption granted for a prior ozone standard (in this case the 2008 ozone standard) does not relieve the area from any CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS (see 40 CFR 51.1313(c)). Therefore, potential future reclassification of the Chicago area under the 2015 ozone standard does not prevent EPA from approving the NO_X RACT waiver for the 2008 ozone standard.

Comment 1c: The commenter states that the CAA does not compel EPA to grant this waiver request and that the approval of the NO_X waiver relies on EPA's 2005 guidance, in which EPA cautions that actions relying on the guidance might not be approvable in every situation. The commenter requests that EPA explain how it is appropriate to apply that guidance when the Chicago area remains in nonattainment for ozone and needs additional NO_X emissions reductions in the area to meet all of the ozone standards.

Response 1c: The Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019–2021 period. In this action, EPA is granting a NO_X RACT waiver only for the 2008 ozone standard because, as per the discussion above regarding the CAA section 182(f)(1)(A) and EPA's January 2005 document, the area qualifies for the NO_X RACT waiver due to the achievement of three years of clean monitoring data. A CAA section 182(f) NO_X exemption granted for the 2008 ozone standard does not relieve the area from any CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS (see 40 CFR 51.1313(c)). Therefore, approval of a NO_X RACT waiver only as it applies to the 2008 ozone NAAQS is appropriate.

Comment 1d: The commenter states that EPA's recently released ozone transport modeling for the 2015 standard shows that Illinois significantly contributes to downwind nonattainment at several monitors along Wisconsin's Lake Michigan shoreline. Also, both the Sheboygan and Chicago nonattainment areas will continue to be nonattainment for the 2015 ozone standard in 2032 based on EPA's ozone transport modeling. Given these modeling results, the commenter states that additional, timely reductions in ozone precursor emissions, including NO_X, are needed to ensure attainment of the 2015 ozone standard throughout the region.

Response 1d: The Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS, based on the most recent certified monitoring data from the 2019–2021 period. In this action, EPA is finalizing our approval of the NO_X RACT waiver only for the 2008 ozone standard because, as per the discussion above regarding CAA section 182(f)(1)(A), the area is attaining the 2008 ozone NAAQS, as demonstrated by three consecutive years of clean monitoring data, and EPA's modeling indicates that the Illinois portion of the Chicago area will continue to attain the 2008 ozone NAAQS in the future. In this regard, further NO_X reductions will not improve the area's ability to attain the 2008 ozone standard. In contrast, EPA's ozone transport modeling indicates that, barring further emissions reductions, this area will continue to have difficulty attaining or maintaining the 2015 ozone NAAQS in 2024 (the Moderate Area attainment date for the 2015 ozone NAAQS) and beyond. A CAA section 182(f) NO_X exemption granted for the 2008 standard does not relieve the area from any CAA section 182(f) NO_X obligations under the 2015 ozone NAAQS (see 40 CFR 51.1313(c)). If finalized, EPA's determination that the Chicago area failed to attain the 2015 ozone NAAQS by the attainment date and accompanying reclassification to Moderate would impose the CAA's NO_X RACT requirements for the 2015 ozone standard.

III. Final Action

EPA finds that the Illinois portion of the Chicago area is attaining the 2008 ozone NAAQS and is acting in accordance with a January 25, 2022, request from Illinois to redesignate the Illinois portion of the Chicago area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the CAA. EPA is approving, as a revision to the Illinois SIP, the State's plan for maintaining the 2008 ozone NAAQS through 2035 in the Illinois portion of the Chicago area.

EPA finds adequate and is approving the 2035 VOC and NO_X motor vehicle emission budgets for use in transportation conformity determinations in the Illinois portion of the Chicago area. Specifically, EPA is finding adequate and approving the budgets for 2035 as proposed (*i.e.,* the last year of the maintenance plan) of 65

tons/day of VOCs and 110 tons/day of NO_X).

Pursuant to section 110 and part D of the CAA, EPA is also approving the VOC RACT, Enhanced I/M, CFVP, and the EMP SIP revisions submitted by Illinois, because they satisfy serious SIP requirements of the CAA for the Illinois portion of the Chicago area. Finally, EPA is approving a CAA section 182(f) waiver from NO_X RACT requirements for the Illinois portion of the Chicago area under the 2008 ozone NAAQS.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(1).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

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

Dated: May 16, 2022.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, E 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.720, the table in paragraph (e) is amended:

■ i. Under the heading ''Attainment and Maintenance Plans'' by adding an entry for ''Ozone (8-hour, 2008) redesignation and maintenance plan'' after the entry ''Ozone (8-hour, 2008) redesignation and maintenance plan'' for the St. Louis area; and

■ ii. Under the heading ''Moderate Area & Above Ozone Requirements'' by adding entries for ''2008 8-hour Ozone Serious Planning Elements'' and ''2008 8-hour Ozone NO_X RACT Waiver'' after

the entry ''2008 8-hour Ozone Non-CTG RACT Demonstration''.

The additions read as follows:

§ 52.720 Identification of plan.

(e) * * *

* * * * *

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Attainment and Maintenance Plans				
*	*	*	*	*
Ozone (8-hour, 2008) redesignation and maintenance plan.	Chicago Area	1/25/22	5/20/22, [INSERT **FEDERAL REGISTER** CITATION].	
*	*	*	*	*
Moderate Area & Above Ozone Requirements				
*	*	*	*	*
2008 8-hour Ozone Serious Planning Elements.	Chicago Area	1/25/22	5/20/22, [INSERT **FEDERAL REGISTER** CITATION].	2035 VOC and NO_X motor vehicle emissions budgets, VOC RACT certification, Enhanced Motor Vehicle Inspection and Maintenance Program certification, clean-fuel vehicle programs certification, enhanced monitoring of ozone and ozone precursors certification.
2008 8-hour Ozone NO_X RACT Waiver.	Chicago Area	1/25/22	5/20/22, [INSERT **FEDERAL REGISTER** CITATION].	
*	*	*	*	*

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 4. Section 81.314 is amended by revising the entry for ''Chicago-Naperville, IL-IN-WI'' in the table entitled ''Illinois-2008 8-Hour Ozone NAAQS [Primary and secondary]'' to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Chicago-Naperville, IL-IN-WI [2]	May 20, 2022.	Attainment		Serious.
Cook County.				
DuPage County.				
Grundy County (part):				
Aux Sable Township.				
Goose Lake Township.				
Kane County.				
Kendall County (part):				
Oswego Township.				
Lake County.				
McHenry County.				
Will County.				
*	*	*	*	*

[1] This date is July 20, 2012, unless otherwise noted.

[2] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2022–10821 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0582; FRL–8959–01–OCSPP]

Cocamidopropylamine Oxide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of cocamidopropylamine oxide (CAS Reg. No. 68155–09–9) when used as an inert ingredient (surfactant) at a concentration not to exceed 6% by weight in glyphosate formulations. SciReg, Inc., on behalf of Albaugh, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of cocamidopropylamine oxide when used in accordance with this exemption.

DATES: This regulation is effective May 20, 2022. Objections and requests for hearings must be received on or before July 19, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0582, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0582 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 19, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0582, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of September 22, 2021 (86 FR 52624) (FRL8792–03), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11268) by SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192 on behalf of Albaugh, LLC. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of cocamidopropylamine oxide when used as an inert ingredient (surfactant) at a concentration not to exceed 6% by weight in glyphosate formulations. That document referenced a summary of the petition prepared by SciReg, Inc on behalf of Albaugh, LLC, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and

diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cocamidopropylamine oxide including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with cocamidopropylamine oxide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by cocamidopropylamine oxide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Available acute toxicity studies on cocamidopropylamine oxide show low oral, dermal, and inhalation toxicity. Cocamidopropylamine oxide was determined to be a severe eye irritant and moderate dermal irritant. Dermal sensitization studies showed cocamidopropylamine oxide was a non-sensitizer to a mild sensitizer. No mutagenic effects were noted in mutagenicity studies with cocamidopropylamine oxide. In a 28-day repeat-dose oral toxicity study in rats, hematological changes, statistically significant increase in spleen weight, and treatment-related changes in liver, spleen, kidneys, urinary bladder, and stomach were observed at the 150 mg/kg/day dose level. No adverse effects of treatment were seen in reproduction/developmental toxicity study at the highest dose tested (100 mg/kg/day). Therefore, the NOAEL for the 28-day repeat-dose oral toxicity study is 15 mg/kg/day and the parental, reproductive, and developmental NOAELs are 100 mg/kg/day.

There was no evidence of carcinogenicity or neuropathological changes or effects reported in any of the studies. The agency does not believe cocamidopropylamine oxide will be carcinogenic or neurotoxic.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

The toxicity endpoint selected for use in risk assessment is taken from the 28-day repeat-dose toxicity study of cocamidopropylamine oxide in which a NOAEL was established at 15 mg/kg/day based on hematological changes, a statistically significant increase in spleen weight, and treatment-related changes in liver, spleen, kidneys, urinary bladder, and stomach seen at 150 mg/kg/day. The uncertainty factors include 10X for interspecies extrapolation, 10X for intraspecies variation, and a 1X for the FQPA Safety Factor, bringing the combined uncertainty factor to 100. The resultant chronic Population Adjusted Dose (cPAD) is 0.15 mg/kg/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cocamidopropylamine oxide, EPA considered exposure under the proposed exemption from the requirement of a tolerance. Dietary exposure to cocamidopropylamine oxide may occur from eating foods treated with pesticide formulations containing this inert ingredient and drinking water containing runoff from

soils containing the treated crops. Because no acute endpoint of concern was identified, a quantitative acute dietary exposure assessment is unnecessary. In conducting the chronic dietary exposure assessment using the Dietary Exposure Evaluation Model (DEEM)—FCIDTM, Version 3.16, EPA used food consumption information from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. Dietary exposure is estimated using the Agency's Dietary Exposure Estimate Model (DEEM). The Inert Dietary Exposure Evaluation Model (I–DEEM) is a highly conservative model with the assumption that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation between the active and inert ingredient (if any) and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient. The model assumes 100 percent crop treated (PCT) for all crops and that every food eaten by a person each day has tolerance-level residues. In the case of cocamidopropylamine oxide a 6% by weight limitation in glyphosate formulations was incorporated into the model. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts,'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

2. *Dietary exposure from drinking water.* For the purpose of the screening-level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for cocamidopropylamine oxide, a conservative drinking water concentration value of 100 ppb based on screening-level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Cocamidopropylamine oxide may be used as an inert ingredient in pesticide products that are registered for specific uses that may result in residential exposure, such as pesticides used in and around the home, and in non-pesticide products such as personal care products and cosmetics. In a conservative effort to assess residential exposure, EPA has conducted a screening-level assessment using high-end residential exposure scenarios, such as pesticides used on lawns/turf and as antimicrobial cleaning products. Cocoamidopropylamine oxide is also used in some cosmetics, however the primary cosmetic use of cocoamidopropylamine oxide is in rinse-off hair care products in which dermal absorption would be unlikely given its highly polarized molecular structure and short contact time. As a result, such uses would result in negligible residential exposure to cocamidopropylamine oxide.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found cocamidopropylamine oxide to share a common mechanism of toxicity with any other substances, and cocamidopropylamine oxide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cocamidopropylamine oxide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10X is reduced to 1X for the assessment of all exposure for the following reasons. The toxicity database for cocamidopropylamine oxide contains subchronic, developmental, reproduction, and mutagenicity studies. There is no indication of immunotoxicity or neurotoxicity in the available studies; therefore, there is no need to require an immunotoxicity or neurotoxicity study. No fetal susceptibility is observed in developmental/reproductive toxicity studies in the rat. Neither maternal, offspring nor reproduction toxicity is observed in any of the studies. Therefore, based on the adequacy of the toxicity database, the conservative nature of the exposure assessment and the lack of concern for prenatal and postnatal sensitivity, the Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10x is reduced to 1x all exposure scenarios.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, cocamidopropylamine oxide is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cocamidopropylamine oxide from food

and water will utilize 82% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cocamidopropylamine oxide may be used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cocamidopropylamine oxide.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 195 for both adult males and females and 105 for children. Because EPA's level of concern for cocamidopropylamine oxide is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cocamidopropylamine oxide may be used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to cocamidopropylamine oxide.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 195 for adult males and females and 105 for children. Because EPA's level of concern for cocamidopropylamine oxide is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of structural alerts in the DEREK expert-based knowledge analysis regarding carcinogenicity, cocamidopropylamine oxide is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cocamidopropylamine oxide residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of cocamidopropylamine oxide ADAOs in or on any food commodities. EPA is establishing limitations on the amount of cocamidopropylamine oxide that may be used in glyphosate formulations. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any glyphosate formulation for food use that contains cocoamidopropylamine oxide at concentations that exceed 6% by weight of the glyphosate formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180. 910 for cocamidopropylamine oxide (CAS Reg. No. 68155–09–9) when used as inert ingredient (surfactant) in glyphosate formulations at a concentration not to exceed 6% by weight in the formulation.

VII. Statutory and Executive Order Reviews

This action establishes tolerance exemptions under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 28, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910 amend table 1 by adding in alphabetical order the Inert ingredient ''Cocoamidopropylamine oxide (CAS Reg. No. 68155–09–9)'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
*	*	*
Ccocamidopropylamine oxide (CAS Reg. No. 68155–09–9) ...	Not to exceed 6% by weight in the formulated product; only for use with glyphosate.	Surfactant.
*	*	*

[FR Doc. 2022–10878 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WTB Docket No. 21–333; DA 22–300; FR ID 86867]

Procedures for Appeals of Relocation Payment Clearinghouse Decisions

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB or Bureau) establishes procedures for the filing and processing of challenges to decisions made by the C-band Relocation Payment Clearinghouse (Clearinghouse) pursuant to the *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification* (*3.7 GHz Report and Order*). This document clarifies that before the Bureau will consider an appeal of a Clearinghouse decision, relevant parties must first file an objection with the Clearinghouse as required by the Federal Communications Commission's rules and pursuant to the process established in the Clearinghouse Dispute Resolution Plan (RPC DRP). The Bureau describes the two possible paths pursuant to which an appeal of a Clearinghouse decision can be made to the Bureau, depending on which party or parties submit a timely notice of objection with the Clearinghouse in this document.

DATES: May 20, 2022.

ADDRESSES: All documents must be filed in WT Docket No. 21–333, 3.7–4.2 GHz Band Transition Clearinghouse Dispute Referrals and Appeals, in the Commission's Electronic Comment Filing System (ECFS), available at *http://www.fcc.gov/ecfs.* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial deliveries (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 ST NE, Washington, DC 20554. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020) *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changeshand-delivery-policy.* 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 & Government Affairs Bureau at 202–418–0530 (voice, 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Susan Mort, Wireless Telecommunications Bureau, at *Susan.Mort@fcc.gov* or 202–418–2429.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Public Notice, in WT Docket No. 21–333; DA 22–300, released on March 21, 2022. The complete text of this document is available on the Commission's website at *https://www.fcc.gov/document/wtb-announces-appeal-procedures-c-band-clearinghouse-decisions.*

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified 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 will not send a copy of this document to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted action is an action of particular applicability.

Synopsis

With this document, the Wireless Telecommunications Bureau (WTB or Bureau) establishes procedures for the filing and processing of challenges to decisions made by the 3.7–4.2 GHz (C-band) Relocation Payment Clearinghouse (Clearinghouse).

In the *3.7 GHz Report and Order* (85 FR 22804, April 23, 2020), the Commission found that selecting a single, independent clearinghouse to oversee cost-related aspects of the C-band transition in a fair and transparent manner, subject to Commission oversight, would best serve the public interest. Among its duties set forth by the Commission, the

Clearinghouse is responsible for making initial determinations about the reasonableness of transition-related cost reimbursement claims. The Clearinghouse also apportions costs among 3.7 GHz Service Licensees and distributes payments to claimants that incur compensable costs. The *3.7 GHz Report and Order* also specified that the Clearinghouse will serve ''in an administrative role and in a function similar to a special master in a judicial proceeding'' and ''may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora.'' Any unresolved issues relating to Clearinghouse decisions may be appealed to the Bureau.

This document sets forth the procedures by which eligible parties may appeal Clearinghouse decisions to the Bureau. As an initial matter, we clarify that before the Bureau will consider any appeal, the relevant party or parties, whether an eligible incumbent claimant or eligible 3.7 GHz Service Licensee, must first timely file a notice of objection with the Clearinghouse as required by the Commission's rules and pursuant to the process established in the Clearinghouse Dispute Resolution Plan (RPC DRP). Interlocutory appeals, before a timely notice of objection is filed with the Clearinghouse, will not be considered by the Bureau.

The RPC DRP identifies different scenarios and timeframes within which eligible parties must file a notice of objection. Specifically, the RPC DRP requires eligible incumbent claimants or eligible 3.7 GHz Service Licensees to file a notice of objection with the Clearinghouse within twenty (20) days of invoice issuance following Clearinghouse review of lump sum or reimbursement claims. Where the eligible incumbent claimant first files a notice of objection to the Clearinghouse's decision on its lump sum or reimbursement claim within the applicable twenty (20) day timeline, and an eligible 3.7 GHz Service Licensee also wishes to be a party to that objection, that eligible 3.7 GHz Licensee must itself file an objection within thirty (30) days of invoice issuance. We clarify that the same approach and timeline will apply in cases where the first notice of objection to a lump sum or reimbursement claim is filed by the eligible 3.7 GHz Service Licensee within the applicable twenty (20) day timeline and the eligible incumbent claimant wishes to be a party to that appeal. In such cases, that eligible incumbent claimant must itself file an objection with the Clearinghouse within thirty (30) days of invoice issuance. Where one or more eligible 3.7 GHz Service Licensees wish to dispute any type of payment or cost sharing decision by the Clearinghouse other than a lump sum or reimbursement claim, they must file an objection within twenty (20) days of statement or invoice issuance. We further clarify that any other eligible 3.7 GHz Service Licensee wishing to be a party to an objection of this type first filed by a different eligible 3.7 GHz Service Licensee must itself file an objection with the Clearinghouse within thirty (30) days of statement or invoice issuance.

There are two possible paths pursuant to which an appeal of a Clearinghouse decision can be made to the Bureau, depending on which party or parties submit a timely notice of objection with the Clearinghouse. The first path is a single-party dispute where one eligible party (whether an incumbent claimant or 3.7 GHz Service Licensee) files a timely notice of objection with the Clearinghouse and no other eligible party elects to join by filing its own timely notice of objection with the Clearinghouse. The second path is a multi-party dispute where more than one eligible party files a timely notice of objection regarding the same determination with the Clearinghouse, and the mediation and arbitration provisions in § 27.1421(b) of the Commission's rules have already been satisfied (47 CFR 1421(b)). For example, a multi-party dispute could involve both an eligible incumbent claimant or one or more eligible 3.7 GHz Service Licensees in the case of lump sum or reimbursement claim review, or multiple eligible 3.7 GHz Service Licensees where the apportionment of relocation costs is at issue. Below, we detail the specific procedures applicable to each path. In all cases, the requirements (including deadlines) of the *3.7 GHz Report and Order* and this document, and any other requirements established by the Commission or WTB, must be satisfied before the Bureau will consider an appeal.

Single-Party Disputes: If an eligible incumbent claimant or eligible 3.7 GHz Service Licensee submits a timely objection to the Clearinghouse that is not joined by any other eligible party, the following process applies:

1. The appealing party must directly submit a written appeal to the Bureau seeking review of the Clearinghouse's decision no later than thirty (30) days from the date any other eligible party fails to file a timely notice of objection with the Clearinghouse. While the Clearinghouse should provide notice to the appealing party that no other eligible party has joined its dispute within three (3) business days of such event, we clarify that the appealing party must directly file a written appeal to the Bureau by the requisite thirty (30) day deadline in order for its appeal to be considered by the Bureau.

2. The burden of proof lies on the appealing party to demonstrate in its appeal that the Clearinghouse decision was incorrect. Appealing parties bear responsibility for their costs associated with an appeal, none of which are reimbursable transition expenses.

3. The Bureau will issue regular public notices setting pleading cycles for any single-party appeals received in a given week and assigning file numbers to each appeal.

4. The Clearinghouse will automatically be joined as the opposing party to any such appeal and have ten (10) days from the date of any such public notice to respond, including the submission of any decisional paperwork or supporting materials.

5. The appealing party will have five (5) days thereafter for any reply. Filings by third parties are not permitted.

6. All pleadings and documentation relating to an appeal shall be submitted electronically, using the Commission's Electronic Comment Filing System (ECFS) in WT Docket No. 21–333, with a copy thereof served electronically on the Clearinghouse as opposing party. These pleadings and documents must also comply with § 1.49 of the Commission's rules (47 CFR 1.49).

7. The first page of any pleading or other document filed by a party shall be captioned with the name and address of the parties and the file number assigned by the Bureau.

8. Any party may request confidential treatment of any document, or portion thereof, pursuant to § 0.459 of the Commission's rules (47 CFR 0.459).

9. The Bureau may, at its discretion, designate the matter for an evidentiary hearing before an Administrative Law Judge, making the Enforcement Bureau a party.

Multi-Party Disputes: If an eligible incumbent claimant or eligible 3.7 GHz Service Licensee submits a timely objection to the Clearinghouse that is joined by at least one other eligible party, the following process applies:

1. Following the filing of timely notices of objection by multiple eligible parties with the Clearinghouse, such parties must first satisfy the mediation and arbitration provisions in § 27.1421(b) of the Commission's rules (47 CFR 27.1421(b)).

2. Should any issues still remain unresolved and the parties have not

opted for arbitration pursuant to Section 9 of the RPC DRP, the Clearinghouse may refer the matter to the Bureau within ten (10) days of the recommended decision or advice of the Clearinghouse (qua mediator) or other mediator. Should all parties elect to seek non-binding expedited arbitration, the same ten (10) day timeframe will be applicable to referral of the matter to the Bureau for review following issuance of a recommended decision or advice from the Clearinghouse (qua arbitrator) or other arbitrator.

3. The Clearinghouse shall forward the entire record on any disputed issues, including such dispositions thereof that the Clearinghouse has considered. The Bureau will rely on the factual record before it as provided by the Clearinghouse.

4. The burden of proof is on each party to demonstrate that their view is correct. All eligible parties that filed timely notices of objection with the Clearinghouse and participated in the underlying mediation or arbitration will automatically be parties to the appeal unless they opt out by providing written notice to the Bureau as set forth below. Appealing parties bear responsibility for their costs associated with an appeal, none of which are reimbursable transition expenses.

5. The Bureau will issue a public notice upon receipt of the record from the Clearinghouse and assign a file number to the appeal.

6. Each party has ten (10) days from the date of such public notice to either submit statements of position or opt out of the appeal by providing written notice to the Bureau. Statements shall comply with § 1.49 of the Commission's rules (47 CFR 1.49). Statements must be strictly limited to issues raised in the course of mediation and/or arbitration and facts contained in the record. In their statements, parties may not introduce facts not contained in the record or introduce arguments on issues that were not presented to the mediator and/or arbitrator for consideration. Any material not conforming to these restrictions will be stricken. Reply filings and filings by third parties are not permitted. The Clearinghouse and any party to the appeal may file other documents or pleadings only if specifically requested by the Commission.

7. Parties' statements, any record documents, and opt out notices shall be submitted electronically, using the Commission's ECFS in WT Docket No. 21–333, with a copy thereof served electronically on any other party to the appeal and the Clearinghouse. These documents must also comply with § 1.49 of the Commission's rules (47 CFR 1.49).

8. The first page of any statement or other document filed by a party shall be captioned with the name and address of the parties and the file number assigned by WTB.

9. The Clearinghouse and any party to the appeal may request confidential treatment of any document, or portion thereof, pursuant to § 0.459 of the Commission's rules (27 CFR 0.459).

10. The Bureau may, at its discretion, designate the matter for an evidentiary hearing before an Administrative Law Judge, making the Enforcement Bureau a party.

Following a Bureau decision in either a single-party or multi-party dispute, any party to a specific matter wishing to appeal that decision may do so by filing with the Commission, within ten (10) days of the effective date of the Bureau decision, a petition for de novo review, whereupon the Commission will set the matter for an evidentiary hearing before an Administrative Law Judge. Parties seeking de novo review of a decision by the Bureau are advised that, in the course of the evidentiary hearing, the Commission may require complete documentation relevant to any disputed matters, and, where necessary, and at the presiding judge's discretion, require expert engineering, economic, or other reports, or testimony, and that the cost of producing such documentation is not a reimbursable transition expense. Parties may therefore wish to consider possibly less burdensome and expensive means of resolving their disputes, such as alternative dispute resolution.

A party to any appeal, whether single-party or multi-party, must certify in each submission that it attests to the truthfulness of the information it is providing and is making the submission in good faith. We remind parties of their obligations under § 1.17 of the Commission's rules (47 CFR 1.17), and note that violators will be subject to potential enforcement action. The Bureau will determine a submission has been made in bad faith if, for example, the submitting party makes a statement that is false and if it finds the party did not use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted.

Restricted Proceeding. This docket and each appeal is a ''restricted'' proceeding under § 1.1208 (47 CFR 1.1208) of the Commission's rules, and thus *ex parte* presentations to or from Commission decision-making personnel, including the Chief and staff of the Wireless Telecommunications Bureau, are prohibited, except as otherwise provided in the Commission's rules.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2022–10587 Filed 5–19–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XB937]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the Angling category Gulf of Mexico area incidental fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater)) Atlantic bluefin tuna (BFT). This action applies to Highly Migratory Species (HMS) Angling and HMS Charter/Headboat permitted vessels. This action is necessary because landings data indicate the Angling category Gulf of Mexico incidental trophy BFT subquota of 1.8 mt has been reached and exceeded.

DATES: Effective 11:30 p.m., local time, May 17, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Nicholas Velseboer, *nicholas.velsboer@noaa.gov,* 978–281–9260, or Thomas Warren, *thomas.warren@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT

quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified.

The 2022 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2022. The Angling category season opened January 1, 2022, and continues through December 31, 2022. The Angling category baseline quota is 232.4 metric tons (mt), of which 5.3 mt is allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 1.8 mt allocated for each of the following areas: North of 39°18′ N lat. (off Great Egg Inlet, NJ); south of 39°18′ N lat. and outside the Gulf of Mexico (the ''southern area''); and in the Gulf of Mexico. Trophy BFT measure 73 inches (185 cm) curved fork length or greater.

Angling Category Large Medium and Giant Gulf of Mexico ''Trophy'' Fishery Closure

Based on landings data from the NMFS Automated Catch Reporting System, as well as average catch rates and anticipated fishing conditions, NMFS projects the Angling category Gulf of Mexico incidental trophy BFT subquota of 1.8 mt has been reached and exceeded. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT in the Gulf of Mexico by persons aboard Angling and HMS Charter/Headboat permitted vessels must cease at 11:30 p.m. local time on May 17, 2022. This closure will remain effective through December 31, 2022. This action applies to HMS Angling and HMS Charter/Headboat permitted vessels, and is taken consistent with the regulations at § 635.28(a)(1). This action is intended to prevent overharvest of the Angling category Gulf of Mexico incidental trophy BFT subquota.

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches (185 cm) and any further Angling category adjustments, is available at *hmspermits.noaa.gov* or by calling (978) 281–9260. HMS Angling and HMS Charter/Headboat permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

HMS Angling and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. This fishery is currently underway and delaying this action could result in excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the Gulf of Mexico incidental trophy BFT fishery before additional landings of these sizes of BFT occur. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 16, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–10852 Filed 5–17–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 98
Friday, May 20, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0586; Project Identifier MCAI–2021–01262–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2016–26–05 and AD 2019–21–02, which apply to certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. AD 2016–26–05 and AD 2019–21–02 require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2016–26–05 and AD 2019–21–02, the FAA has determined that new or more restrictive airworthiness limitations are necessary, and new airplanes have been added to the applicability. This proposed AD would continue to require the actions in AD 2019–21–02 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by July 5, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* For Airbus service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office-EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; internet *https://www.airbus.com.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0586.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0586; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0586; Project Identifier MCAI–2021–01262–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–21–02, Amendment 39–19768 (84 FR 57313, October 25, 2019) (AD 2019–21–02), which applies to certain Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. AD 2019–21–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2019–21–02 to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. AD 2019–21–02 specifies that accomplishing the revision required by that AD terminates all requirements of 2016–26–05, Amendment 39–18763 (82 FR 1170, January 5, 2017) (AD 2016–26–05).

Actions Since AD 2019–21–02 Was Issued

Since the FAA issued AD 2019–21–02, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0248, dated November 15, 2021 (EASA AD 2021–0248) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model Airbus A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A330–841, and A330–941 airplanes.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after July 1, 2021, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary, and that EASA AD 2021–0248 has added Airbus SAS Model A330–841 and A330–941 airplanes to the applicability. The FAA is proposing this AD to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0248 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits, and adds new models to the applicability.

This proposed AD would also require Airbus A330 Airworthiness Limitations Section (ALS) Part 3-Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018; and Airbus A330 ALS Part 3-Certification Maintenance Requirements (CMR), Variation 6.1, dated June 28, 2019; which the Director of the Federal Register approved for incorporation by reference as of November 29, 2019 (84 FR 57313, October 25, 2019).

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain the requirements of AD 2019–21–02. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2021–0248 described previously, as proposed for incorporation by reference. Any differences with EASA AD 2021–0248 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0248 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0248 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0248 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0248. Service information required by EASA AD 2021–0248 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0586 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional FAA AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 138 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–21–02 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2016–26–05, Amendment 39–18763 (82 FR 1170, January 5, 2017); and Airworthiness Directive 2019–21–02, Amendment 39–19768 (84 FR 57313, October 25, 2019); and

■ b. Adding the following new airworthiness directive:

Airbus SAS: Docket No. FAA–2022–0586; Project Identifier MCAI–2021–01262–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by July 5, 2022.

(b) Affected ADs

This AD replaces AD 2016–26–05, Amendment 39–18763 (82 FR 1170, January 5, 2017) (AD 2016–26–05); and AD 2019–21–02, Amendment 39–19768 (84 FR 57313, October 25, 2019) (AD 2019–21–02).

(c) Applicability

This AD applies to Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 1, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary, and that new airplanes have been added to the applicability. The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated) that, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–21–02, with no changes. For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 15, 2018: Within 90 days after November 29, 2019 (the effective date of AD 2019–21–02), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 3—Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018, as supplemented by Airbus A330 ALS Part 3—Certification Maintenance Requirements (CMR), Variation 6.1, dated June 28, 2019. The initial compliance times for doing the tasks is at the time specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 3—Certification Maintenance Requirements (CMR), Revision 06, dated October 15, 2018, as supplemented by Airbus A330 ALS Part 3—Certification Maintenance Requirements (CMR), Variation 6.1, dated June 28, 2019, or within 90 days after November 29, 2019, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2019–21–02, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0248, dated November 15, 2021 (EASA AD 2021–0248). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2021–0248

(1) Where EASA AD 2021–0248 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0248 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0248 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0248 is at the applicable ''associated thresholds,'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0248, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0248 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0248 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0248.

(l) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2019–21–02 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0248 that are required by paragraph (g) of this AD.

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

(m) Related Information

(1) For EASA AD 2021–0248, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(3) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office-EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; internet *https://www.airbus.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on May 16, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–10775 Filed 5–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 190

[Docket No. FDA–2022–D–0281]

Policy Regarding Certain New Dietary Ingredients and Dietary Supplements Subject to the Requirement for Pre-Market Notification; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Policy Regarding Certain New Dietary Ingredients and Dietary Supplements Subject to the Requirement for Pre-market Notification.'' The draft guidance, when finalized, will advise the dietary supplement industry of our intent to exercise enforcement discretion, for a limited time and in limited circumstances, regarding the requirement to submit a new dietary ingredient (NDI) notification prior to marketing. The purpose of the policy is to encourage manufacturers and distributors of certain NDI-containing dietary supplements to correct any past failures to submit a required NDI notification.

DATES: Submit either electronic or written comments on the draft guidance by July 19, 2022 to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance. Submit written comments (including recommendations) on the collection of information under the Paperwork Reduction Act of 1995 by July 19, 2022.

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–2022–D–0281 for ''Policy Regarding Certain New Dietary Ingredients and Dietary Supplements Subject to the Requirement for Pre-market Notification.'' 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit comments on the information collection under the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB) at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this proposed collection is ''Policy Regarding Certain New Dietary Ingredients and Dietary Supplements Subject to the Requirement for Pre-market Notification; Draft Guidance for Industry.''

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 Office of Dietary Supplement Programs, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: *With regard to the draft guidance:* Laura Rich, Office of Dietary Supplement Programs (HFS–810), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–8152; or Alexandra Jurewitz, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

With regard to the proposed collection of information: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Policy Regarding Certain New Dietary Ingredients and Dietary Supplements Subject to the Requirement for Pre-market Notification.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

The draft guidance, when finalized, will advise manufacturers and distributors of certain NDI-containing dietary supplements (namely, those that are subject to the premarket notification requirement and are being marketed without such a notification) of FDA's intent to exercise enforcement discretion for such firms to submit a late NDI notification for a limited time and in limited circumstances.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

III. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Policy Regarding Certain New Dietary Ingredients and Dietary Supplements Subject to the Requirement for Pre-Market Notification

OMB Control Number 0910—NEW

This draft guidance, when finalized, is intended to advise the dietary supplement industry of our intent to exercise enforcement discretion, for a limited time and in limited circumstances, regarding the requirement to submit an NDI notification prior to marketing. The purpose of the policy is to encourage manufacturers and distributors of certain NDI-containing dietary supplements to correct any past failures to submit an NDI notification as required by § 190.6 (21 CFR 190.6). The proposed information collection requests that manufacturers and distributors who submit a late NDI notification under the enforcement discretion policy in the draft guidance supplement the notification with the following additional information: (1) A copy of the current label for the dietary supplement containing the NDI and (2) documentation to demonstrate the date that the dietary supplement was first introduced or delivered for introduction into interstate commerce.

We are developing a new submission type in the CFSAN Online Submission Module that will be used for late notifications submitted under the temporary enforcement discretion policy if the draft guidance is finalized. A draft screenshot of the questions specific to late notifications is available for comment at *https://www.fda.gov/food/new-dietary-ingredients-ndi-notification-process/how-submit-notifications-new-dietary-ingredient.*

Description of Respondents: The respondents to this collection of information are manufacturers and distributors in the dietary supplement industry; specifically, firms that failed to comply with the NDI notification requirements in § 190.6 and that wish to take advantage of FDA's temporary enforcement discretion policy to submit a late NDI notification.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ONE-TIME REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total hours
Submit product label and documentation of date of introduction into interstate commerce to FDA.	3,500	1	3,500	0.30 (18 minutes)	1,050

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates in table 1 are based on our experience with our current NDI program. We estimate that 3,500 respondents will submit their product labels and documentation of dates of introduction into interstate commerce and that each respondent will submit 1 product label and corresponding documentation of date of introduction into interstate commerce. We further estimate that preparing and submitting each response will take approximately 0.30 hour (18 minutes), resulting in a total reporting burden of 1,050 hours (3,500 responses × 0.30 hour). This will be a temporary collection of information, as we expect to conduct this program for 6 months.

This draft guidance also refers to previously approved FDA collections of information. The collections of information in § 190.6 have been approved under OMB control number 0910–0330.

Dated: May 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10942 Filed 5–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[REG–105954–20]

RIN 1545–BP82

Required Minimum Distributions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking and notice of public hearing.

SUMMARY: The IRS published a document in the **Federal Register** of February 24, 2022, concerning required minimum distributions from qualified plans; section 403(b) annuity contracts; custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under section 457. The document contained an incomplete phrase.

DATES: Written or electronic comments and outlines for a public hearing are still accepted and must be received by May 25, 2022. Outlines of topics to be discussed at the public hearing scheduled for June 15, 2022, at 10 a.m. must be received by May 25, 2022.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–105954–20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–105954–20), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning this correction notice, Brandon M. Ford, or Linda S.F. Marshall, (202) 317–6700; concerning submissions of comments and outlines of topics for the public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers) or *publichearings@irs.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 24, 2022, in FR Doc 2022–02522, on page 10545, in the second column, correct paragraph (o)(6)(iii) to read:

Total future expected payments. Total future expected payments means the total future payments expected to be made under the annuity contract as of the date the contract is annuitized, based on the mortality rates contained in § 1.401(a)(9)–9(e), and without regard to any increases in annuity payments after that date.

Oluwafunmilayo A. Taylor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–10624 Filed 5–19–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2022–0374]

RIN 1625–AA08, AA00

Special Local Regulation and Safety Zone; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish regulations for certain waters of the Back River. This action is necessary to provide for the safety of life on these navigable waters near Baltimore County, MD, during a fireworks display on July 16, 2022. This proposed rulemaking would prohibit persons and vessels from being in the regulated area and safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 21, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0374 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST3 Melissa Kelly, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2596, email *D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On February 8, 2022, Fantastic Fireworks, on behalf of Tiki Lee's Dock Bar, notified the Coast Guard that it will be conducting a fireworks display between 9 and 10 p.m. on July 16, 2022, as a part of the ''Shootout on the River'' event activities. The fireworks are to be launched from a barge in the Back River located near Tiki Lee's Dock Bar in Sparrows Point, MD. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 420 foot radius of the barge. The Coast Guard anticipates a large spectator fleet for these events.

The purpose of this rulemaking is to promote maritime safety and protect participants and the boating public in the Back River immediately prior to, during, and after the scheduled events. The regulations will provide for controlled passage of spectating vessels and a safety buffer around the fireworks barge for the benefit of participants and spectators. The regulations will impact the movement of all vessels operating in specified waters of the Back River. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish temporary regulations (special local regulation and safety zone) from 8 p.m. to 10:30 p.m. on July 16, 2022.

The COTP is proposing to establish a special local regulation for the area in the Back River in which spectating vessels will transit and gather. The regulated area would cover all navigable waters of Back River within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

In addition to establishing a special local regulation, the COTP is proposing to establish a temporary safety zone around the fireworks discharge site, in approximate position latitude 39°15′35.54″ N, longitude 76°26′56.62″ W. The safety zone would cover all navigable waters within 420 feet of a fireworks barge in the Back River located near Tiki Lee's Dock Bar in Sparrow's Point, MD. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and time-of-day of the special local regulation

and safety zone, which would impact a small designated area of the Back River for a total no more than 2.5 enforcement-hours, during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area, and within 33 CFR part 165 establishing a temporary safety zone that would prohibit entry within 420 feet of a fireworks barge, both lasting a total of 2.5 consecutive hours. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0374 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked

Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.501T05–0374 to read as follows:

§ 100.501T05–0374 2022 Tiki Lee's Shootout on the River Fireworks, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: From the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin.

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

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or *Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the ''2022 Tiki Lee's Shootout on the River Fireworks'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 8 p.m. to 10:30 p.m. on July 16, 2022.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 4. Add § 165.T05–0374 to read as follows:

§ 165.T05–0374 Safety Zone; Back River, Baltimore County, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Back River within 420 feet of the fireworks barge in approximate position latitude 39°15′35.54″ N, longitude 76°26′56.62″ W. These coordinates are based on datum NAD 1983.

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

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 p.m. to 10:30 p.m. on July 16, 2022.

Dated: May 13, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–10837 Filed 5–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 143, and 146

46 CFR Parts 61 and 62

[Docket No. USCG–2014–0063]

RIN 1625–AC16

Requirements for MODUs and Other Vessels Conducting Outer Continental Shelf Activities With Dynamic Positioning Systems

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing the proposed rule entitled ''Requirements for MODUs and Other Vessels Conducting Outer Continental Shelf Activities with Dynamic Positioning Systems'' published on November 28, 2014. We are taking this action because there have been changes in the industry in the past 7 years, including new standards and technologies, and the rule we proposed in 2014 is no longer appropriate in light of those changes. The Coast Guard may issue a new rulemaking in the future if warranted.

DATES: The notice of proposed rulemaking published on November 28, 2014 (79 FR 70943); comment period extended on February 6, 2015 (80 FR 6679); notice of public meeting and request for comments (80 FR 12784, March 11, 2015); and notice of availability published on July 29, 2016 (81 FR 49908), is withdrawn as of May 20, 2022.

ADDRESSES: The Docket for this withdrawal is available at the Federal eRulemaking Portal at *https://www.regulations.gov.* Please search for Docket Number USCG–2014–0063.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Lieutenant Commander Dimitri Wiener, Staff Engineer, Naval Architecture Division, CG–ENG, Coast Guard; telephone 202–372–1414, email *Dimitrios.N.Wiener@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background

On November 28, 2014, Coast Guard published a notice of proposed rulemaking titled ''Requirements for MODUs and Other Vessels Conducting Outer Continental Shelf Activities with Dynamic Positioning Systems'' in the **Federal Register** (79 FR 70943).[1] The proposed rulemaking sought to establish minimum design, operation, training, and manning standards for mobile offshore drilling units (MODUs) and other vessels using dynamic positioning systems to engage in Outer Continental Shelf activities. We viewed establishing these minimum standards as necessary at the time to improve the safety of people and property involved in such operations, and the protection of the environment in which they operate. The notice of proposed rulemaking sought to decrease the risk of a loss of position by a dynamically positioned MODU or other vessel that could result in a fire, explosion, or subsea spill, and to support the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Withdrawal

The Coast Guard is withdrawing the proposed rule published on November 28, 2014. Upon further review of current dynamic positioning system technologies, industry use of updated third-party standards, and the engineering and survey activities performed by recognized organizations, it is evident that significant change has occurred in the industry and that the original proposal is no longer appropriate.

The Coast Guard will continue to assess the risks associated with the use of dynamic positioning by vessels engaged in OCS activities, support the continuing development of third-party standards, oversee the work of recognized organizations, and request input from our Federal advisory committees, as appropriate. The Coast Guard may decide to develop new rulemaking proposals in the future, but Unified Agenda item 1625–AC16 will be completed once this notice is published.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: May 13, 2022.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2022–10836 Filed 5–19–22; 8:45 am]

BILLING CODE 9110–04–P

[1] The Coast Guard published three additional documents related to the 2014 NPRM. The comment period of the 2014 NPRM was extended on February 6, 2015 at 80 FR 6679. A notice of public meeting was published at 80 FR 12784, (March 11, 2015) and notice discussing the availability of three industry accepted training certification programs for dynamic positioning was published on July 29, 2016 (81 FR 49908).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R02–OAR–2022–0400; FRL 9785–01–R2]

Outer Continental Shelf Air Regulations Update To Include New York State Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of New York is the COA. The intended effect of approving the OCS requirements for the State of New York is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Written comments must be received on or before June 21, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–

R02–OAR–2022–0400 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Viorica Petriman, Air Programs Branch, Permitting Section, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007, (212) 637–4021, *petriman.viorica@epa.gov.*

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II. The EPA's Evaluation
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I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55 (''Part 55''),[1] which established requirements to control air pollution from Outer Continental Shelf (OCS) sources in order to attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The Part 55 regulations apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude.

Section 328(a) of the CAA requires that for such OCS sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, CAA section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements. To comply with this statutory mandate, the EPA must incorporate by reference into Part 55 all relevant state rules in effect for onshore sources, so they can be applied to OCS sources located offshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a state's rules must be updated. One time such a ''consistency update'' must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA an NOI before performing any physical change or change in method of operation that results in an increase in emissions. EPA must conduct any necessary consistency update when it receives an NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f). This proposed action is being taken in response to the submittal of an NOI to EPA, with copies provided to certain state agencies, by March 14, 2022, by Empire Wind Offshore, LLC, which proposes to submit an OCS permit application for the construction of a new OCS source (a wind energy project) about 14 miles offshore New York.

II. The EPA's Evaluation

In updating 40 CFR part 55, the EPA reviewed the New York State Department of Environmental Conservation (''NYSDEC'') air rules currently in effect, to ensure that they are rationally related to the attainment or maintenance of Federal and State AAQS or part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary and capricious. *See* 40 CFR 55.12(e). The EPA has excluded New York's administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

III. The EPA's Proposed Action

In today's action, the EPA is proposing to update the ''New York'' section of Appendix A to 40 CFR part 55 to incorporate by reference relevant New York air pollution control rules that are found at various locations in Chapter III of Title 6 of the New York Codes, Rules and Regulations (NYCRR), and are currently in effect. The specific provisions being incorporated by reference are identified in the proposed regulatory language at the end of this proposed rule.

IV. Incorporation by Reference

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NYSDEC air rules that are applicable to OCS sources and which are currently in effect. These regulations are described in Section III (''The EPA's Proposed Action'') of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office. Please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42

[1] The reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as is the case in New York, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA.

a. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Orders (E.O.) 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011) and is therefore not subject to review under the E.O.

b. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to 40 CFR part 55, and has assigned OMB control number 2060–0249. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A.

c. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant impact on a substantial number of small entities under the RFA. This proposed rule does not impose any requirements or create impacts on small entities. This proposed consistency update under CAA section 328 will not create any new requirements but simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

d. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate or significantly or uniquely affect small governments as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any state, local or tribal governments.

e. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

f. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct costs on tribal governments, nor preempt tribal law. It merely updated the State law incorporated by reference into 40 CFR part 55 to match current State requirements.

g. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 and simply proposes to update the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

h. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use.

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

i. National Technology Transfer and Advancement Act

This rulemaking is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health, or environmental effects, using practicable and legally permissible methods.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Lisa Garcia,

Regional Administrator, Region 2.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows.

PART 55—[AMENDED]

■ 1. The authority citation for 40 CFR part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising the paragraph (e)(16)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(16) * * *

(i) * * *

(A) State of New York Requirements Applicable to OCS Sources, March 10, 2022.

* * * * *

■ 3. Appendix A to 40 CFR part 55 is amended by revising the entry for ''New York'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

New York

(a) State requirements.

(1) The following State of New York requirements are applicable to OCS Sources, as of March 10, 2022. New York Environmental Conservation Law—

Department of Environmental Conservation. The following sections of Title 6, Chapter III:

Subchapter A. Prevention and Control of Air Contamination and Air Pollution

Part 200. General Provisions
- 6 NYCRR 200.1. Definitions (effective 4/2/2020)
- 6 NYCRR 200.3. False Statement (effective 6/16/1972)
- 6 NYCRR 200.4. Severability (effective 8/9/1984)
- 6 NYCRR 200.6. Acceptable Ambient Air Quality (effective 4/6/1983)
- 6 NYCRR 200.7. Maintenance of Equipment (effective 2/22/1979)
- 6 NYCRR 200.9. Referenced Material (effective 2/11/2021)

Part 201. Permits and Certificates
- 6 NYCRR 201–1.1. Purpose and applicability (effective 2/22/2013)
- 6 NYCRR 201–1.4. Malfunctions and start-up/shutdown activities (effective 2/25/2021)
- 6 NYCRR 201–1.5. Emergency defense (effective 2/25/2021)
- 6 NYCRR 201–1.7. Recycling and salvage (effective 2/22/2013)
- 6 NYCRR 201–1.8. Prohibition of reintroduction of collected contaminants to the air (effective 2/22/2013)
- 6 NYCRR 201–1.11. Temporary emission sources (effective 2/25/2021)
- 6 NYCRR 201–1.12. Suspension, reopening, reissuance, modification, or revocation of air permits (effective 2/25/2021)
- 6 NYCRR 201–2. Definitions (effective 2/25/2021)
- 6 NYCRR 201–4. Minor Facility Registration (effective 2/25/2021)
- 6 NYCRR 201–5. State Facility Permits (effective 2/25/2021)
- 6 NYCRR 201–6. Title V Facility Permits (effective 2/25/2021)
- 6 NYCRR 201–7. Federally Enforceable Emission Caps (effective 2/25/2021)
- 6 NYCRR 201–8. General Permits (effective 2/22/2013)
- 6 NYCRR 201–9. Tables (effective 2/25/2021)

Part 202. Emissions Verification
- 6 NYCRR 202–1. Emissions Testing, Sampling and Analytical Determinations (effective 9/30/2010)
- 6 NYCRR 202–2. Emission Statements (effective 12/3/2020)

Part 207. Control Measures for an Air Pollution Episode (effective 2/22/1979)

Part 211. General Prohibitions (effective 1/1/2011)

Part 212. Process Operations (effective 6/13/2015)

Part 215. Open Fires (effective 10/14/2009)

Part 219. Incinerators
- 6 NYCRR 219–1. Incineration—General Provisions (effective 3/15/2020)
- 6 NYCRR 219–2. Municipal and Private Solid Waste Incineration Facilities (effective 5/21/2005)
- 6 NYCRR 219–10. Reasonably Available Control Technology (RACT) For Oxides of Nitrogen (NO_X) at Municipal and Private Solid Waste Incineration Units (effective 3/15/2020)

Part 221. Asbestos-Containing Surface Coating Material (effective 9/29/1972)

Part 222. Distributed Generation Sources (effective 3/26/2020)

Part 225. Fuel Consumption and Use
- 6 NYCRR 225–1. Fuel Composition and Use—Sulfur Limitations (effective 2/4/2021)
- 6 NYCRR 225–2. Fuel Composition and Use—Waste Oil as a Fuel (effective 4/2/2020)
- 6 NYCRR 225–3. Fuel Composition and Use—Gasoline (effective 11/4/2001)
- 6 NYCRR 225–4. Motor Vehicle Diesel Fuel (effective 5/8/2005)

Part 226. Solvent Metal Cleaning Processes and Industrial Cleaning Solvents (effective 11/1/2019)

Part 227. Stationary Combustion Installations
- 6 NYCRR 227–1. Stationary Combustion Installations (effective 2/25/2000)
- 6 NYCRR 227–2. Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_X) (effective 12/7/2019)
- 6 NYCRR 227–3. Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines (effective 1/16/2020)

Part 228. Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers (effective 6/5/2013)

Part 229. Petroleum and Volatile Organic Liquid Storage and Transfer (effective 4/4/1993)

Part 230. Gasoline Dispensing Sites and Transport Vehicles (effective 2/11/2021)

Part 231. New Source Review for New and Modified Facilities
- 6 NYCRR 231–3. General Provisions (effective 2/25/2021)
- 6 NYCRR 231–4. Definitions (effective 2/25/2021)
- 6 NYCRR 231–5. New Major Facilities and Modifications to Existing Non-Major Facilities in Nonattainment Areas, and Attainment Areas of the State Within the Ozone Transport Region (effective 2/25/2021)
- 6 NYCRR 231–6. Modifications to Existing Major Facilities in Nonattainment Areas and Attainment Areas of the State Within the Ozone Transport Region (effective 2/25/2021)
- 6 NYCRR 231–7. New Major Facilities and Modifications to Existing Non-Major Facilities in Attainment Areas (Prevention of Significant Deterioration) (effective 2/25/2021)
- 6 NYCRR 231–8. Modifications to Existing Major Facilities in Attainment Areas (Prevention of Significant Deterioration) (effective 2/25/2021)
- 6 NYCRR 231–9. Plantwide Applicability Limitation (PAL) (effective 2/25/2021)
- 6 NYCRR 231–10. Emission Reduction Credits (ERCs) (effective 2/25/2021)
- 6 NYCRR 231–11. Permit and Reasonable Possibility Requirements (effective 2/25/2021)
- 6 NYCRR 231–12. Ambient Air Quality Impact Analysis (effective 2/25/2021)
- 6 NYCRR 231–13. Tables and Emission Thresholds (effective 2/25/2021)

Part 241. Asphalt Pavement and Asphalt Based Surface Coating (effective 1/1/2011)

Part 242. CO_2 Budget Trading Program
- 6 NYCRR 242–1. CO_2 Budget Trading Program General Provisions (effective 12/31/2020)
- 6 NYCRR 242–2. CO_2 Authorized Account Representative for CO_2 Budget Sources (effective 12/31/2020)
- 6 NYCRR 242–3. Permits (effective 1/1/2014)
- 6 NYCRR 242–4. Compliance Certification (effective 1/1/2014)
- 6 NYCRR 242–5. CO_2 Allowance Allocations (effective 12/31/2020)
- 6 NYCRR 242–6. CO_2 Allowance Tracking System (effective 12/31/2020)
- 6 NYCRR 242–7. CO_2 Allowance Transfers (effective 1/1/2014)
- 6 NYCRR 242–8. Monitoring and Reporting (effective 12/31/2020)
- 6 NYCRR 242–10. CO_2 Emissions Offset Projects (effective 12/31/2020)

Part 243. CSAPR NO_X Ozone Season Group 2 Trading Program (effective 1/2/2019)

Part 244. CSAPR NO_X Annual Trading Program (effective 1/2/2019)

Part 245. CSAPR SO_2 Group 1 Trading Program (effective 1/2/2019)

Subchapter B. Air Quality Classifications and Standards

Part 256. Air Quality Classifications System (effective 5/1/1972)

Part 257. Air Quality Standards
- 6 NYCRR 257–1. Air Quality Standards-General (effective 12/6/2019)
- 6 NYCRR 257–2. Air Quality Standards-Sulfur Dioxide (SO_2) (effective 3/18/1977)
- 6 NYCRR 257–3. Air Quality Standards-Particulates (effective 12/6/2019)
- 6 NYCRR 257–4. Ambient Air Quality Standards—Fluorides (effective 12/6/2019)
- 6 NYCRR 257–5. Ambient Air Quality Standards—Hydrogen Sulfide (H_2S) (effective 12/6/2019)

Subchapter C. Air Quality Area Classifications

Part 287. Nassau County (effective 5/1/1972)

Part 288. New York City (effective 5/1/1972)

Part 307. Suffolk County (effective 5/1/1972)

Part 315. Westchester County (effective 5/1/1972)

* * * * *

[FR Doc. 2022–10794 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2019–0698; FRL–7826.1–3–OAR]

RIN 2060–AV31

Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal and partial withdrawal.

SUMMARY: On October 6, 2021, the U.S. Environmental Protection Agency issued a supplemental proposed rulemaking under the Significant New Alternatives Policy program to list certain substitutes to ozone-depleting substances in the foam blowing sector, extruded polystyrene: Boardstock and billet end-use, as acceptable, subject to narrowed use limits, from the effective date of a subsequent final rule until January 1, 2023. This followed EPA's June 12, 2020, initial proposal which proposed to list three foam blowing agents, which are hydrofluorocarbon blends, as acceptable. Taking into consideration information available to EPA since issuance of that initial proposal, EPA proposed narrowed use limits and time-limited use of the substitutes in the supplemental proposal. Based on further information available to EPA, EPA is now withdrawing the proposed listings for the three foam blowing agents described in the initial and supplemental proposals. This document summarizes the proposed listings and provides an explanation for the Agency's decision not to finalize the proposed actions.

DATES: The U.S. EPA is withdrawing the proposed rule published on October 6, 2021 (86 FR 55549; FRL–7826.1–02–OAR); and is partially withdrawing the proposed rule published on June 12, 2020 (85 FR 35874; FRL–10009–66–OAR), by withdrawing the listings described in the table (''SUMMARY OF PROPOSED NEW LISTINGS FOR XPS FOAM BLOWING AGENTS'') published at 85 FR 35888–35889 on June 12, 2020, as of May 20, 2022.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0698. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division; telephone number 202–564–1230; or email address: *feather.john@epa.gov.* You may also visit our website at *https://www.epa.gov/ozone-layer-protection* for further information.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' ''the Agency,'' or ''our'' is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

AIM Act—American Innovation and Manufacturing Act
CAA—Clean Air Act
CBI—Confidential Business Information
CFR—Code of Federal Regulations
CO_2—Carbon dioxide
EPA—Environmental Protection Agency
FR—Federal Register
GWP—Global Warming Potential
HCFC—Hydrochlorofluorocarbon
HCFO—Hydrochlorofluoroolefin
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
NAICS—North American Industrial Classification System
NPRM—Notice of Proposed Rulemaking
ODS—Ozone-depleting substances
SNAP—Significant New Alternatives Policy
XPS—Extruded Polystyrene: Boardstock and Billet

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I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of particular interest to regulated entities under the following North American Industrial Classification System (NAICS) codes:

- All Other Basic Organic Chemical Manufacturing (NAICS 325199)
- Polystyrene Foam Product Manufacturing (NAICS 326140)

B. Why is EPA issuing this withdrawal of the proposed actions?

This document serves the following purposes:

1. It announces to the public that EPA is withdrawing proposed listings under EPA's Significant New Alternatives Policy (SNAP) program for three foam blowing agents for which the Agency no longer intends to issue a final rule; and

2. It officially terminates the ongoing rulemaking activity, which allows the Agency to close out the individual rulemaking entry for these actions that appear in EPA's Semiannual Regulatory Agenda.

C. What is the Agency's authority for this action?

EPA's SNAP program implements section 612 of the Clean Air Act (CAA), including section 612(c) provisions concerning rulemakings that restrict replacing ozone-depleting substances (ODS) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available. Section 612(c) also requires EPA to publish lists of those substitutes which are unacceptable or acceptable for specific uses. Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). Section 612(e) also requires producers of substitutes for class I ODS to notify the Agency of introductions of these substances into interstate commerce for significant new uses, along with unpublished health and safety studies. The regulations for the SNAP program are promulgated at 40 CFR part 82, subpart G, and the Agency's process for reviewing SNAP submissions is described in regulations at 40 CFR 82.180. For additional information on the SNAP program, visit the SNAP portion of EPA's Ozone Layer Protection website at *www.epa.gov/snap.* Copies of the full lists of acceptable substitutes for ODS in all industrial sectors are available at *www.epa.gov/snap/substitutes-sector.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the initial SNAP rulemaking published March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. SNAP decisions and the appropriate **Federal Register** citations are found at: *www.epa.gov/snap/snap-regulations.* Substitutes listed as

unacceptable; acceptable, subject to narrowed use limits; or acceptable, subject to use conditions, are also listed in the appendices to 40 CFR part 82, subpart G.

II. Background

A. 2020 Notice of Proposed Rulemaking (NPRM)

As one component of the June 12, 2020, NPRM (85 FR 35874) (''2020 NPRM''),[1] EPA, as noted in a table titled ''Summary of Proposed New Listings for XPS Foam Blowing Agents'' on 85 FR 35888–35889, proposed to list three blends containing hydrofluorocarbon (HFC)–134a as acceptable foam blowing agents in extruded polystyrene: Boardstock and billet (XPS): Blends of 40 to 52 percent HFC–134a by weight and the remainder hydrofluoroolefin (HFO)-1234ze(E); blends of 40 to 52 percent HFC-134a with 40 to 60 percent HFO–1234ze(E) and 10 to 20 percent each water and carbon dioxide (CO_2) by weight; and blends with a maximum of 51 percent HFC–134a, 17 to 41 percent HFC–152a, up to 20 percent CO_2, and 1 to 13 percent water. EPA proposed to list those three specific blends of HFC–134a as acceptable in XPS, stating that ''[t]hese blends have higher [global warming potentials] GWPs and are otherwise comparable or lower in risk than other alternatives listed as acceptable; however, EPA is taking this action because the Agency believes that other acceptable alternatives are not generally available for most needs under this end-use.'' 85 FR 35888.

EPA also stated in the 2020 NPRM that, for substitutes to be ''available'' in the XPS end-use, they must be capable of blowing foam that meets the technical needs of XPS products including density and ability to meet testing requirements of building codes and standards, such as for thermal efficiency, compressive strength, and flame and smoke generation (85 FR 35888). Further, EPA noted that the company that initially submitted the three blends to the SNAP program for review indicated their difficulty meeting requirements for insulation value (''R-value'') with neat[2] acceptable blowing agents such as HFO–1234ze(E), HFC–152a, and CO_2.[3] The submitter indicated that if in some cases it could meet R-value requirements with those neat blowing agents, these alternatives were not able to meet other requirements such as compressive strength, density and thickness, or fire test results. The submitter also identified challenges with meeting code requirements for XPS products manufactured with flammable substitutes (*e.g.,* HFC–152a, light saturated hydrocarbons C3–C6, and methyl formate) and provided examples of failed test results[4] (85 FR 35888).

EPA stated that it appeared that only one of the substitutes that the Agency believed would be available for use in XPS foam as of January 1, 2021 at the time of the final rule issued July 20, 2015 (80 FR 42870) (''2015 Rule''),[5] was in fact available, and that it likely could only be used to meet the needs for some portion of the XPS foams market.[6] Based on concerns about ensuring that the needs of the full XPS foams market in the United States could be met and not limiting the choice of acceptable substitutes to only one option, EPA proposed to list three additional blowing agent options for XPS that have been proven to work for this end-use.

B. 2021 Supplemental Proposal

EPA issued a supplemental proposal on October 6, 2021 (86 FR 55549), because of new information on the availability of substitutes which, among other things, included information on the introduction of a new substitute, blends of 10 to 99 percent by weight HFO–1336mzz(Z) and the remainder HFC–152a, which EPA listed as acceptable for use in XPS on December 11, 2020 (85 FR 79863). In the 2020 NPRM, EPA proposed to list the three HFC blends for use in XPS as acceptable. In the supplemental proposal, EPA took another approach by proposing to list these three HFC blends as acceptable, subject to narrowed use limits, from the effective date of any final rule to January 1, 2023.

C. Comments Received

EPA received comments on the initial and supplemental proposals from entities with various interests in foam blowing agents and foam insulation, including industry organizations for manufacturers of insulation other than XPS, chemical producers, manufacturers of XPS, manufacturers of other types of foam insulation, and environmental organizations. The two proposals addressed similar issues and similar issues were raised in public comment, with some updated information related to the supplemental proposal. The comments are briefly summarized below and are available in full in Docket EPA–HQ–OAR–2019–0698.

Multiple commenters requested that EPA withdraw the proposal and/or the supplemental proposal. Commenters raised concerns with the proposed listings, with some stating that there are other alternatives commercially available internationally with lower GWP for use in XPS boardstock. Commenters also provided information on the commercial availability in the United States of new XPS products using blowing agents with GWPs lower than 150 from all U.S. manufacturers of XPS. One major chemical producer added that their lower-GWP replacement foam blowing agent for HFC–134a used in the XPS end-use has been fully commercialized and has been manufactured in the United States since 2014. They stated that since then, this product has been adopted by a number of key XPS foam manufacturers and provides customers significant GWP-reduction benefits in a market that will continue to value and require such benefits. A manufacturer of XPS stated that in Europe, a large manufacturer of XPS with CO_2 asserted that CO_2 as a blowing agent is clearly a viable technology with no supply barrier. A major chemical producer stated that HFO–1234ze(E) has been used commercially for many years and is used in the manufacture of XPS products by several firms in several countries around the globe where there are regulations requiring the use of safer blowing agents, including a large manufacturer of XPS in Europe. An environmental organization provided information on European products that contain CO_2 and various blends of either CO_2 or HFO–1234ze(E), including products from a European XPS manufacturer. Some commenters stated that all three U.S. manufacturers of XPS are now manufacturing products using lower-GWP blowing agents.

[1] Other provisions of that proposal related to refrigeration and air conditioning and to fire suppression were finalized in a rule issued May 6, 2021 (86 FR 24444).

[2] Individual, unblended blowing agents.

[3] DuPont, 2019. December 17, 2019 Letter from DuPont Performance Building Solutions to EPA. Docket ID EPA–HQ–OAR–2019–0698–0008.

[4] DuPont, 2019. *Op. cit.*

[5] The 2015 Rule, among other things, changed the listings for certain HFCs and blends from acceptable to unacceptable in various end-uses in the aerosols, refrigeration and air conditioning, and foam blowing sectors. After a challenge to the 2015 Rule, the United States Court of Appeals for the District of Columbia Circuit (''the court'') issued a partial vacatur of the 2015 Rule ''to the extent it requires manufacturers to replace HFCs with a substitute substance'' (see *Mexichem Fluor, Inc.* v. *EPA,* 866 F.3d 451, 462 (D.C. Cir. 2017)) and remanded the rule to the Agency for further proceedings. The court also upheld EPA's listing changes as being reasonable and not ''arbitrary and capricious.'' See *Mexichem Fluor* v. *EPA,* 866 F.3d at 462–63.

[6] In the 2020 NPRM, EPA further stated that the set of products that may be able to be manufactured with that substitute, HFC–152a, would account for a minority of the current market for XPS (85 FR 35888, footnote 54). As discussed further below, information available to the Agency since that proposal indicates that the statement that HFC–152a was being used alone was likely incorrect.

One commenter, a manufacturer of XPS, and the company that submitted the three blends to the SNAP program for review, had supported the initial proposal of listing the blends as acceptable, and in the supplemental proposal supported the option of listing the blends as acceptable, subject to narrowed use limits, for use in XPS until January 1, 2023. That company stated that suitable alternatives with sufficient performance parameters were not available, that these listings are necessary to bridge the transition to such alternatives, and that the near-term supply of alternatives was uncertain.

D. Additional Information That EPA Considered

After issuing the supplemental proposal, EPA listed three more substitutes with lower-GWP as acceptable for use in XPS (January 20, 2022; 87 FR 3037). The three substitutes are: Blends of 10 to 90 percent HFO-1234ze(E) by weight and the remainder hydrochlorofluoroolefin (HCFO)–1233zd(E); blends of 10 to 90 percent HFO–1234ze(E) by weight and the remainder HFC-152a; and blends of zero to 100 percent HFO–1234ze(E), zero to 70 percent methyl formate, zero to 60 percent HFC–152a, zero to 60 percent CO_2, and zero to 60 percent water. At least one of the three U.S. manufacturers of XPS is using one of these substitutes in manufacturing its products.

III. How does EPA intend to proceed?

Based on our consideration of these comments and the emergence of new listings of substitutes for this end-use, we believe lower risk alternatives are available and technically feasible. Accordingly, an acceptable listing, as proposed in the 2020 NPRM, is not appropriate, and a rulemaking effort for a limited duration, as proposed in the 2021 Supplemental Proposal, is not warranted. The information above demonstrates that alternatives are available and technically feasible that pose overall risk to human health and the environment comparable to or lower than that of other acceptable substitutes for use in XPS. The blends of HFC–134a described above remain unacceptable, as listed in appendix U to 40 CFR part 82 subpart G. This notice serves to provide transparency and clearly notify the public and those with particular interest of how we intend to proceed with respect to these listings.

For these reasons, EPA is withdrawing the proposed rule published on October 6, 2021 (86 FR 55549; FRL–7826.1–02–OAR), along with withdrawing the portions of the proposed rule published on June 12, 2020 (85 FR 35874; FRL–10009–66–OAR), that relate to listing as acceptable the three HFC blends for use in XPS.

IV. Impact Analysis

Because the EPA is not promulgating any regulatory requirements, there are no compliance costs or impacts associated with this action.

V. Statutory and Executive Order Reviews

This action does not establish new regulatory requirements. Hence, the requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (*e.g.,* the Unfunded Mandate Reform Act) do not apply to this action.

Michael S. Regan,

Administrator.

[FR Doc. 2022–10853 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2022–0161; FRL–9410–13–OCSPP]

Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities April 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before June 21, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

The latest information on EPA/DC docket access, services and submitting comments is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov;* or Marietta Echeverria, Registration Division (RD) (7505T), main telephone number: (202) 566–1030, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Include the contact person's name, division, and mail code in the mailing address. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), summaries of the petitions that are the subject of this document, prepared by the petitioners, are included in dockets EPA has created for these rulemakings. The dockets for these petitions are available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

A. Amended Tolerance Exemptions for Non-Inerts (Except PIPS)

PP 1F8962. (EPA–HQ–OPP–2021–0911). Agroindustrial Kimitec S.L., Maavi Innovation Center, Paraje Cerro de los Lobos s/n, 04738 Vicar, Almeria, Spain (c/o Compliance Services International, 7501 Bridgeport Way West, Lakewood, WA 98499–2423), requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1271 for residues of the insecticide eucalyptus oil in or on all food commodities when used in accordance with good agricultural practices. The petitioner believes no analytical method is needed because eucalyptus oil is included by the FDA in the Direct Food Substances Affirmed as Generally Recognized as Safe list and, per 40 CFR part 150.2040, ''residue chemistry data requirements apply to biochemical pesticide products when Tier II or Tier III toxicology data are required, as specified for biochemical agents in the biochemical human health assessment data requirements, § 158.2050''. In the case of eucalyptus oil, the results of Tier I toxicology testing indicated that no Tier II or Tier III toxicology data were required, and as a result, no residue enforcement method is required. *Contact:* BPPD.

B. Notice of Filing—Amended Tolerances for Non-Inerts

1. *PP 2E8987.* (EPA–HQ–OPP–2021–0361). Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606, requests to amend 40 CFR 180.383 by removing the established tolerance for residues of the herbicide sodium salt of acifluorfen, sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its metabolites (the corresponding acid, methyl ester, and amino analogues) in or on Strawberry at 0.05 parts per million (ppm). *Contact:* RD.

2. *PP 1F8946.* (EPA–HQ–OPP–2021–0729). Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419, requests to amend the tolerance(s) in 40 CFR 180.507 for residues of the fungicide, azoxystrobin (methyl (E)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl}-3-methoxyacrylate) and the Z isomer of azoxystrobin (methyl (Z)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]pheny1}-3-methoxyacrylate), in or on mango at 4 ppm and papaya at 6 ppm. Gas chromatography with nitrogen-phosphorus detection (GC–NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC–UV) is used to measure and evaluate the chemical Azoxystrobin and its Z isomer. *Contact:* RD.

C. New Tolerance Exemptions for Inerts (Except PIPS)

1. *IN–11660.* (EPA–HQ–OPP–2022–0364). The United States Department of Agriculture, Animal and Plant Health Inspection Service (4700 River Road, Unit 149, Riverdale, MD 20737), requests to establish an exemption from the requirement of a tolerance for residues of zein (CAS Reg. No. 9010–66–6) when used as a pesticide inert ingredient (stabilizing agent) in pesticide formulations applied to animals under 40 CFR 180.930, limited to no more than 10,000 ppm in the final pesticide formulation. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *IN–11693.* (EPA–HQ–OPP–2022–0325). Ethox Chemicals, LLC (1801 Perimeter Road, Greenville, SC 29605) requests to establish an exemption from the requirement of a tolerance for residues of oxirane, 2-methyl-, polymer with oxirane, di-(9Z)-9-octadecenoate (CAS Reg. No. 67167–17–3) with a minimum number average molecular weight (in amu) of 2500 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

D. New Tolerance Exemptions for Non-Inerts (Except PIPS)

PP 1F8915. (EPA–HQ–OPP–2022–0308). Gowan Company in cooperation with SDS Biotech K.K., c/o Landis International, Inc., P.O. Box 5126, 3185 Madison Highway, Valdosta, GA 31603, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide *bacillus amyloliquefaciens* strain AT–332 in or on all food commodities. The petitioner believes no analytical method is needed because it is not applicable. *Contact:* BPPD.

E. Notice of Filing—New Tolerances for Non-Inerts

1. *PP 2E8987.* (EPA–HQ–OPP–2022–0361). Interregional Research Project No. 4 (IR–4) North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606, requests to establish a tolerance in 40 CFR 180.383 for residues of the herbicide, sodium salt of acifluorfen, sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, and its metabolites (the corresponding acid, methyl ester, and amino analogues) in or on the following raw agricultural commodities: Soybean, vegetable, edible podded at 0.09 ppm; soybean, vegetable, succulent shelled at 0.09; and berry, low growing, subgroup 13–07G at 0.1 ppm. A gas chromatography and liquid chromatography BASF corporation: Study No. 92161, Method No. D9205 was used to measure and evaluate the chemical. *Contact:* RD.

2. *PP 1F8937.* (EPA–HQ–OPP–2021–0634). Albaugh, LLC, 1535 36th St. NE, Ankeny, IA 50021, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, oxyfluorfen in or on rice at 0.01 ppm. The acetonitrile fraction method is used to measure and evaluate the chemical oxyfluorfen. *Contact:* RD.

3. *PP 1F8946.* (EPA–HQ–OPP–2021–0729). Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419, requests to establish an import tolerance in 40 CFR part 180 for residues of the fungicide, azoxystrobin (methyl (E)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl}-3-methoxyacrylate) and the Z isomer of azoxystrobin (methyl (Z)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]pheny1}-3-methoxyacrylate), in or on palm, oil at 0.06 ppm. GC–NPD or in mobile phase by HPLC–UV is used to measure and evaluate the chemical azoxystrobin and its Z isomer. *Contact:* RD.

4. *PP 1F8954.* (EPA–HQ–OPP–2022–0003). Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27410, requests to establish a tolerance in 40 CFR part 180 for residues of the nematocide, cyclobutrifluram (rel-N-[(1R,2R)-2-(2,4-dichlorophenyl)cyclobutyl]-2-(trifluoromethyl)-3-pyridinecarboxamide) in or on cotton at 0.01 ppm; cotton, by-products at 0.01 ppm; lettuce, romaine at 0.015 ppm; and soybean at 0.01 ppm. The methods GRM076.07A and GRM076.11A are used to measure and evaluate the chemical cyclobutrifluram and related metabolites, SYN510275 and SYN549104. *Contact:* RD.

5. *PP 1F8958.* (EPA–HQ–OPP–2022–0198). ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio, 44077, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, tolpyralate, 1-[[1-Ethyl-4-[3-(2-methoxyethoxy)-2-methyl-4-(methylsulfonyl)benzoyl]-1H-pyrazol-5-yl]oxy]ethyl methyl carbonate, including its metabolite MT–2153, in or on wheat, grain at 0.01 ppm; wheat, forage at 0.02 ppm; wheat, hay at 0.05 ppm; wheat, straw at 0.03 ppm; barley, grain at 0.015 ppm; barley, hay at 0.2 ppm; and barley, straw at 0.08 ppm. The Analytical method using liquid Chromatography-MS/MS is used to measure and evaluate the chemical tolpyralate. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: May 12, 2022.

Brian Bordelon,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–10851 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 10

[Public Safety and Homeland Security Bureau: PS Docket Nos. 15–91, 15–94; FCC 22–31: FR ID 85971]

Wireless Emergency Alerts

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Further Notice of Proposed Rulemaking (*Further Notice*) seeks comment on proposals to develop performance metrics and reporting standards to measure the reliability, speed, and accuracy of the provision of Wireless Emergency Alerts (WEA), in order to identify issues with and improve the WEA system. This document also seeks comment on how Participating Commercial Mobile Service (CMS) Providers should measure the performance of their WEA service to improve the provision of WEA. By this action, the Commission affords interested parties an opportunity to submit comments. Through this action, the Commission hopes to collect data on the provision of WEA in order to empower state and local alert originators to more fully and better use the WEA system.

DATES: Comments are due on or before June 21, 2022 and reply comments are due on or before July 19, 2022.

ADDRESSES: You may submit comments, identified by PS Docket No. 15–91, and PS Docket No 15–94, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Federal Communications Commission's Electronic Comment Filing System (ECFS) at: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Comments may be filed in paper by sending an original and one copy of each filing.

All filings must be addressed to the FCC's Secretary: Office of the Secretary, Federal Communications Commission. Filings can be sent by commercial carrier, or by U.S. Postal Service mail.

- Comments sent using commercial carrier other than U.S. Postal Service mail, must be addressed to 9050 Junction Drive, Annapolis, MD 20701.
- Comments sent using the U.S. Postal Service first-class, Express, or Priority mail, must be addressed to 45 L Street NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA–20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People With Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), please send an email to: *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information, contact James Wiley, Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division, at (202) 418–1678, or by email to *james.wiley@fcc.gov*, or David Kirschner, Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division, at (202) 418–0695, or by email to *david.kirschner@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice,* FCC 22–31, released on April 21, 2022. The full text of this document is available at: *https://www.fcc.gov/document/fcc-proposes-public-wireless-emergency-alerts-performance-reporting-0.*

In this *Further Notice* in PS Docket Nos. 15–91, and 15–94, the Commission seeks comment on proposals to amend the Part 10 rules governing Wireless Emergency Alerts (47 CFR part 10).

Synopsis

The Commission seeks to improve WEA effectiveness through the development of performance metrics and reporting standards. The Commission proposes that Participating CMS Providers file public reports with the Commission on important attributes of WEA's performance: Its reliability, speed, and accuracy. The Commission seeks comment on how to define and measure the reliability, speed, and accuracy of WEAs. The Commission seeks comment on how Participating CMS Providers should measure WEA performance and generate WEA performance reports. The Commission seeks comment on whether these reports should be based on tests or data from real-time WEA use. The Commission seeks comment on when and how these reports should be provided to the Commission. The Commission seeks comment on whether Participating CMS Providers should provide locality-specific WEA performance reporting. The Commission seeks comment on what information Participating CMS Providers would need to collect to assess WEA performance and whether it already is possible to collect the requisite information. If Participating CMS Providers currently cannot collect information necessary to assess WEA performance, the Commission seeks comment on what changes would be necessary to comply with these reporting requirements. The Commission seeks comment on whether information about how, when, and where alerts are being delivered to devices would be beneficial to emergency managers that are evaluating WEA's effectiveness. The Commission seeks comment on whether Participating CMS Providers should offer WEA-capable mobile devices that automatically report WEA performance information. The Commission seeks comment on the steps need to be taken to have mobile devices log and report WEA performance information, and how long it would take to implement. The Commission seeks comment on whether there are consumer privacy concerns associated with the automatic reporting of WEA performance information from WEA-capable mobile devices. The Commission seeks comment on the costs associated with Participating CMS Providers' production of WEA performance reports. The Commission seeks comment on the effect of our proposals would have on the level of participation in WEA. The Commission seeks comment on ways to further improve WEA. The Commission seeks comment on how non-Participating CMS providers deliver WEA alerts and on what factors they depend on to provide wireless emergency alerts.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice.* The Commission will send a copy of the *Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

In the *Further Notice,* the Commission seeks to improve the effectiveness of WEA by building upon and refreshing the record on the Commission's prior proposals to require commercial mobile service (CMS) providers participating in WEA (Participating CMS Providers) to file with the Commission, public reports on WEA's reliability, speed, and accuracy. Further, we seek to strengthen WEA's effectiveness through the development of performance metrics and reporting standards that will help emergency management and other stakeholders understand the effectiveness of WEA in their particular area, and identify areas where improvement is needed. More specifically, in the *Further Notice* we propose that CMS providers who choose to participate in WEA file public reports with the Commission on important attributes of WEA's performance and comment on (1) how WEA's reliability, speed, and accuracy should be defined, and whether these are the most pertinent measures of WEA's performance; (2) how Participating CMS Providers should measure performance of WEA for the purpose of generating WEA performance reports; (3) how and when WEA performance reports should be provided to the Commission; (4) whether WEA performance reports should include information collected at the consumer's device, including information about the actual time and location of alert receipt, and whether consumer devices should automatically report this information to Participating CMS Providers; and, (5) how the Commission can further improve WEA's speed and reliability based on the findings of the 2021 nationwide WEA test. We believe that having empirical data on WEA's reliability, speed, and accuracy, and developing a shared understanding among emergency management agencies and the public regarding the system's capabilities will help promote and increase emergency managers' use of WEA during emergencies and other critical situations which will save lives. We also believe that our actions will help increase public confidence in WEA.

B. Legal Basis

The proposed action is taken pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 301(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, as well as by sections 602(a),(b),(c), (f), 603, 604, 605 and 606 of the WARN Act, 47 U.S.C. 1202(a),(b),(c), (f), 1203, 1204, 1205 and 1206.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA 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.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not

easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Narrowband Personal Communications Services. Narrowband Personal Communications Services *(Narrowband PCS)* are PCS services operating in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands. PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 4,211 active *Narrowband PCS* licenses. The Commission's small business size standards with respect to *Narrowband PCS* involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses. One of the winning bidders claiming a small business status classification in these *Narrowband PCS* license auctions had an active license as of December 2021.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Wireless Communications Services. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules (47 CFR part 27). Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

700 MHz Guard Band Licensees. The 700 MHz Guard Band encompasses spectrum in 746–747/776–777 MHz and 762–764/792–794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December, 2021, there were approximately 224 active 700 MHz Guard Band licenses. The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses. None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Lower 700 MHz Band Licenses. The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and

controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Upper 700 MHz Band Licenses. The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December, 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Advanced Wireless Services (AWS)—(1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3); 2000–2020 MHz and 2180–2200 MHz (AWS–4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as December, 2021, there were approximately 4,472 active AWS licenses. The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses, 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to

these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as December, 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active license as of December, 2021.

The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

The Educational Broadcasting Services. Cable-based educational broadcasting services fall under the broad category of the Wired Telecommunications Carriers industry. The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including Voice over internet Protocol (VoIP) services; wired (cable) audio and video programming distribution; and wired broadband internet services.''

The SBA small business size standard for this industry classifies businesses having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this total, 2,964 firms operated with fewer than 250 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. Additionally, according to Commission data as of December, 2021, there were 4,477 active EBS licenses. The Commission estimates that the majority of these licenses are held by non-profit educational institutions and school districts and are likely small entities.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

Software Publishers. This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only. The SBA small business size standard for this industry classifies businesses having annual receipts of $41.5 million or less as small. U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year. Of this number 7,226 firms had revenue of less than $25 million. Based on this data, we conclude that a majority of firms in this industry are small.

Noncommercial Educational (NCE) and Public Broadcast Stations. Noncommercial educational broadcast stations and public broadcast stations are television or radio broadcast stations which under the Commission's rules are eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and are owned and operated by a public agency or nonprofit private foundation, corporation, or association; or are owned and operated by a municipality which transmits only noncommercial programs for education purposes.

The SBA small business size standards and U.S. Census Bureau data classify radio stations and television broadcasting separately and both categories may include both noncommercial and commercial stations. The SBA small business size standard for both radio stations and television broadcasting classify firms having $41.5 million or less in annual receipts as small. For Radio Stations, U.S. Census Bureau data for 2017 show that 1,879 of the 2,963 firms that operated during that year had revenue of less than $25 million per year. For

Television Broadcasting, U.S. Census Bureau data for 2017 show that 657 of the 744 firms that operated for the entire year had revenue of less than $25,000,000. While the U.S. Census Bureau data does not indicate the number of non-commercial stations, we estimate that under the applicable SBA size standard the majority of noncommercial educational broadcast stations and public broadcast stations are small entities.

According to Commission data as of September 2021, there were 4,595 licensed noncommercial educational radio and television stations. There were also 2,276 low power television stations, including Class A stations (LPTV) and 3,106 TV translator stations. The Commission does not compile and otherwise does not have access to financial information for these stations that permit it to determine how many stations qualify as small entities under the SBA small business size standards. However, given the nature of these services, we will presume that all noncommercial educational and public broadcast stations qualify as small entities under the above SBA small business size standards.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

We expect the actions proposed in the *Further Notice,* if adopted, will impose additional reporting, recordkeeping and/or other compliance obligations on small as well as other entities who report to the Commission on the performance of their WEA service. The *Further Notice* seeks to refresh the record to develop metrics for WEA performance and reporting. Specifically, we seek comment on whether Participating CMS Providers should report to the Commission on the reliability, speed, and accuracy of their WEA service, and if so, on when and how the reports should be provided to the Commission, on how Participating CMS Providers should gather that data necessary to compile those performance reports, and on how WEA reports should quantify these key performance metrics. We also inquire whether there are other or additional measures of WEA's performance that are relevant to emergency management agencies and the public that the Commission should consider as a reporting requirement.

In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance for small entities and is not in a position to determine whether, if adopted, compliance with any WEA performance reporting or other requirements will require small entities to hire professionals. The Commission sought detailed comment on the costs of WEA performance reporting in the *2016 WEA R&O and FNPRM,* but did not receive any responsive comments on this issue. However, in 2021, the Commission estimated that the total annual cost of compliance with its WEA election requirements for the industry would be $1 million, which was approved by the Office of Management and Budget. This cost estimate included the total effort required by Participating CMS Providers to assess the extent of their readiness to participate in WEA and report such to new and existing subscribers and the Commission. Accordingly regarding costs, the *Further Notice* seeks comment on: (1) The costs associated with Participating CMS Providers' production of WEA performance reports, (2) whether its prior $1 million estimate is a reasonable cost ceiling for CMS Providers to generate and submit WEA performance tests because both lines of effort entail reporting and analysis of WEA-related network infrastructure, (3) whether in the alternative, the cost to establish and report on the results of E911 location accuracy testing would be a more accurate analog to the cost of reporting on WEA's performance, and (4) whether standards revisions or software and firmware updates to CMS network equipment and mobile devices may be necessary to log WEA performance data. We expect the comments we receive to include information addressing costs which will help the Commission identify and evaluate relevant issues for small entities, including compliance costs and other burdens that may result from any WEA performance reporting requirements that may be adopted in this proceeding, before adopting final rules.

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

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

The Commission seeks comment on steps that it could take to limit the burden of WEA performance reporting. It seeks comment on the extent to which the Commission could limit the overall economic impact of WEA performance reporting by providing increased flexibility for businesses identified as small by the Small Business Administration or by limiting the applicability of the requirement to only the three nationwide CMS Providers.

Building on the Commission's prior proposals and its objective to refresh the record to develop metrics for WEA performance and reporting, in the *Further Notice* the Commission does not propose to set minimum performance benchmarks which could adversely affect small entities. Instead, we seek to identify key reporting metrics that will help stakeholders develop an understanding of WEA end-to-end performance. The Commission also seeks comment on steps that it could take to limit the burden of WEA performance reporting as a general matter, which could help minimize the economic impact of any adopted WEA performance reporting requirements on small entities. Further, specifically targeting small entities, we seek comment on the extent to which the Commission could limit the overall economic impact of WEA performance reporting by providing increased flexibility for businesses identified as small by the SBA, or by limiting the applicability of the requirement to only the three nationwide CMS Providers.

In the *Further Notice,* the Commission also identifies alternative approaches on several matters that might minimize the economic impact for small entities. While seeking comment on how to define reliability, speed, and accuracy for WEA, the Commission inquires whether the definitions it proposed in the *2016 WEA R&O and FNPRM* best capture the definitions for reliability, speed, and accuracy of WEA. As part of this inquiry, in the alternative we seek comment on: (1) Whether WEA's reliability should be defined as the proportion of devices within the targeted area while the alert is active that successfully displayed the alert, (2) whether WEA's speed should be measured as the difference between the time that an alert is initiated by an authorized alert originator and the time that the alert is displayed at the mobile device, (3) whether WEA's accuracy should be defined as the proportion of alert recipients that received the alert within and further than 0.1 miles from

the target area, and (4) whether reliability, speed, and accuracy are the most pertinent measures of WEA's performance to emergency management agencies and the public.

Similarly, the Commission seeks comment in the *Further Notice* on how Participating CMS Providers should measure the performance of their WEA service for the purpose of generating WEA performance reports noting that in the *2016 WEA R&O and FNPRM* we previously proposed that Participating CMS Providers be required to submit WEA performance reports based on aggregated data from all WEA activations during the reporting period. In the alternative, we inquire whether the Commission should: (1) Allow performance reports to be based on discrete WEA tests conducted by Participating CMS Providers in partnership with federal, state, or local emergency management agencies in a representative sample of dense urban, urban, suburban and rural geographic environments, or (2) require WEA performance reports to be based on aggregated data from real-time WEA use and how this would be implemented. Regarding how and when performance reports should be provided to the Commission, as an alternative to our 2016 proposal to require Participating CMS Providers to report on the performance of their WEA service annually, or to require a single report and additional reports only in response to ''material'' network upgrades, in the *Further Notice* as a step to limit the burden of reporting while still gaining visibility into end-to-end WEA performance, we inquire whether to require Participating CMS Providers to submit multiple reports, such as a series of three reports, and whether the submission of performance reports should coincide with any particular developments or milestones. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *Further Notice.*

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Initial Paperwork Reduction Act of 1995 Analysis

The *Further Notice* may contain potential new or revised information collection requirements. Therefore, we seek comment on potential new or revised information collections subject to the Paperwork Reduction Act of 1995. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the general public and the Office of Management and Budget to comment on the information collection requirements, as required by the Paperwork Reducation Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Comments and Reply Comments

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998), *https://transition.fcc.gov/Bueaus/OGC/Orders/1998/fcc98056.pdf.*

Ex Parte Rules

This *Further Notice* 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.

Ordering Clauses

Accordingly, *it is ordered,* pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 301(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, as well as by sections 602(a),(b),(c), (f), 603, 604, 605, and 606 of the WARN Act, as amended, 47 U.S.C. 1202(a),(b),(c), (f), 1203, 1204, 1205, and 1206, that the *Further Notice* in PS Docket No. 15–91 and 15–94 *is hereby adopted.*

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

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–10408 Filed 5–19–22; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 87, No. 98
Friday, May 20, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0025]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Federal Plant Pest and Noxious Weed Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the Federal plant pest and noxious weeds regulations.

DATES: We will consider all comments that we receive on or before July 19, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Enter APHIS–2022–0025 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0025, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the Federal plant pest and noxious weeds regulations, contact Dr. Colin Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits Branch, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2237. For information about the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Federal Plant Pest and Noxious Weeds Regulations.

OMB Control Number: 0579–0054.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (the Act, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, exportation, or interstate movement of plants, plant products, biological control organisms, noxious weeds, articles, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of plant pests or noxious weeds into the United States or their dissemination within the United States. The associated regulations that were issued by the Animal and Plant Health Inspection Service (APHIS) are located in 7 CFR parts 330 and 360.

These regulations contain information collection activities that include, but are not limited to, applications, amendments, withdrawals, cancellations, and appeals for permits; cooperative agreements and compliance agreements; consultations; site assessments; inspections; certifications; notifications of intent, appeals, amendments, and cancellations; labeling of boxes, containers, and bags; emergency action notifications; notices of arrival; and recordkeeping. These information collection activities allow APHIS to evaluate the risks associated with the importation or interstate movement of plant pests, noxious weeds, and soil, and also assist with developing risk mitigations, if necessary, for the importation or interstate movement of plant pests, noxious weeds, and soil.

In addition to the above information collection activities, we are adding to this collection petitions to add or remove plant pests to exemption and plant pest lists, which are currently approved by the Office of Management and Budget (OMB) under control number 0579–0187, Plant Pest Regulations; Update of Provisions. When OMB approves this combined information collection package (0579–0054), APHIS will discontinue 0579–0187.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.24 hours per response.

Respondents: Importers and shippers of plant pests, noxious weeds, and other regulated articles; owners/operators of regulated garbage-handling facilities; State plant health officials; Tribal groups; and individuals.

Estimated annual number of respondents: 4,765.

Estimated annual number of responses per respondent: 16.

Estimated annual number of responses: 78,350.

Estimated total annual burden on respondents: 18,886 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of May 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–10874 Filed 5–19–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2022–0007]

Information Collection Requests; Urban Agriculture and Innovative Production (UAIP) Grant Program; Composting and Food Waste Reduction (CFWR) Cooperative Agreements

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, the NRCS is requesting comments from all interested individuals and organizations on two information collection requests associated with the UAIP Grant Program and the CFWR Cooperative Agreements, respectively.

DATES: We will consider comments that we receive by July 19, 2022.

ADDRESSES: NRCS prefers that the comments are submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. NRCS–2022–0007, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID NRCS–2022–0007. Follow the online instructions for submitting comments.
- *Mail, Hand-Delivery, or Courier:* Brian Guse, Room 4083–S NRCS, USDA, 1400 Independence Avenue SW, Stop 1600, Washington, DC 20250.

In your comments, specify the docket ID NRCS–2022–0007. All comments received, including those received by mail, will be posted without change and will be publicly available on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Guse; telephone: (202) 641–7249; email: *urbanagriculture@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA's TARGET Center at (202) 720–2600 (voice only) or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Title: Urban Agriculture and Innovative Production (UAIP).

OMB Control Number: 0578–0032.

Type of Request: Extension.

Abstract: The Agriculture Improvement Act of 2018 (2018 Farm Bill, Pub L. 115–334) authorized the Farm Production and Conservation (FPAC) mission area and NRCS to award competitive grants to local units of government, school districts, and tribal communities to support the development of urban agriculture and innovative production with the goal of improving access to local foods in areas where access to fresh, healthy food is limited or unavailable. In FY 2020 and FY 2021, the first 2 years of the program, NRCS granted 31 awards totaling just over $7.9 million. To improve the ability of communities nationwide to implement projects that improve access to local foods, the UAIP program is substantially increasing its public investment through additional funding and awards in FY 2022, leveraging additional funding provided by the American Rescue Plan of 2021 (Pub L. 117–2). The grant recipients (applicants) are required to sign the notice of award and provide documents such as the project summary, Negotiated Indirect Cost Rate Agreement (NICRA), de minimus rate agreement, and annual progress reports. We received Office of Management and Budget (OMB) clearance to electronically submit required forms through *Grants.gov* (SF–270, SF–424, and SF–425).

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

Estimate of annual burden: Public reporting burden for the collection of information is estimated to average 7.55 hours per response.

Respondents: Grant recipients.

Estimated number of respondents: 897.

Estimated number of responses per respondent: 1.

Estimated total annual number of responses: 897.

Estimated average time per response: 7.55 hours.

Estimated total annual burden hours: 6,773 hours.

Title: Composting and Food Waste Reduction (CFWR).

OMB Control Number: 0578–0033.

Type of Request: Extension.

Abstract: The 2018 Farm Bill authorized the FPAC mission area and NRCS to carry out pilot projects under which local and municipal governments enter into cooperative agreements to develop and test strategies for planning and implementing municipal composting plans and food waste reduction plans. In FY 2020 and FY 2021, the first 2 years of the program, NRCS granted 37 awards totaling just over $3 million. To improve the ability of communities nationwide to implement projects that increase compost, improve soil quality, and reduce food waste, the CFWR program is substantially increasing its public investment by funding awards during FY 2022, leveraging additional funding provided by the American Rescue Plan of 2021 (Pub L. 117–2). Although no new information is being collected beyond prior-year requests, NRCS anticipates an additional public burden due to an increase in applications received and awards made. The grant recipients are required to sign the notice of award and provide documents such as the project summary, NICRA, de minimus rate agreement, and annual progress reports. We received OMB clearance to electronically submit required forms through *Grants.gov* (SF–270, SF–424 and SF–425).

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

Estimate of annual burden: Public reporting burden for the collection of information is estimated to average 7.39 hours per response.

Respondents: Grant recipients.

Estimated number of respondents: 724.

Estimated number of responses per respondent: 1.

Estimated total annual number of responses: 724.

Estimated average time per response: 7.39 hours.

Estimated total annual burden hours: 5,353 hours.

We are requesting comments on all aspects of the information collections to help us:

(1) Evaluate whether the proposed collection of information is necessary for the agency to function properly, including whether the information will be useful for practical applications;

(2) Evaluate the accuracy of the agency's estimated burden for the collection of information, including the validity of the methodology used and assumptions made;

(3) Evaluate the quality, utility, and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond using appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology.

All comments received in response to this notice, including names and addresses provided, will be made a matter of public record. Comments will be summarized and included in the request for OMB approval of the information collection.

Louis Aspey,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 2022–10914 Filed 5–19–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket #RUS–22–Electric–0014]

Next Era Energy Resources, LLC, Notice of Availability of a Record of Decision

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), an agency within the Department of Agriculture (USDA), has issued a Record of Decision (ROD) to meet its responsibilities in accordance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA, RUS Environmental Policies and Procedure, and other applicable environmental requirements related to providing financial assistance for Next Era Energy Resources, LLC's (NEER or the Applicant) proposed Skeleton Creek Solar and Battery Storage Project (Project) in Oklahoma. The Administrator of RUS has signed the ROD, which was effective upon signing. This ROD concludes RUS environmental review process in accordance with NEPA and RUS, Environmental Policies and Procedures. The ultimate decision as to loan approval depends on the conclusion of the environmental review process plus financial and engineering analyses. Issuance of the ROD will allow these reviews to proceed. The ROD is not a decision on the NEER's loan application and is not an approval of the expenditure of federal funds.

DATES: The Administrator of the Rural Utilities Service signed the Record of Decision on May 16, 2022.

ADDRESSES: For further information, or to request copies of the ROD, contact Kristen Bastis, Archeologist, *SkeletonCreekSolarPublicComments@usda.gov.* The ROD is also available at RUS website at *https://www.rd.usda.gov/environmentalstudy/skeleton-creek-solar-and-battery-storage-project-garfield-county-oklahoma.*

FOR FURTHER INFORMATION CONTACT: For further information, or to request copies of the ROD, contact Kristen Bastis, Archeologist, USDA, Rural Utilities Service, 1400 Independence Ave. SW, Mail Stop 1570, Washington, DC 20250, by phone at 202–692–4910, or email at *SkeletonCreekSolarPublicComments@usda.gov.*

SUPPLEMENTARY INFORMATION: The Applicant is a utility company with more than 180 MW of battery energy storage systems in operation across the United States and Canada. Since the Applicant entered into a Power Purchase Agreement (PPA) with Western Farmers Electric Cooperative (WFEC) for a 250-megawatt (MW) solar array and a 200-MW battery storage system, the Project's purpose and need is focused on meeting the PPA. The Project would allow the Applicant to provide the additional solar and battery generation capacity needed by WFEC to achieve this goal within the service territories of their member cooperatives. Specifically, the Project would provide a source of non-dispatchable power via solar panels that increase capacity during moderate to high power requirement periods, whereas battery storage would provide a source of dispatchable power that increases the reliability of generated power to the grid. The pairing of battery storage with solar panels would further allow WFEC to meet peak demand needs without adding additional fossil fuel consumption to the system and provide safe, adequate, reliable power at the lowest reasonable cost. In addition, the Project would help WFEC and the Southwest Power Pool to continue to comply with Oklahoma legislative declarations to facilitate the delivery of renewable energy.

The Project consists of a 250–MW solar array, and a 200-MW/800-MWh storage facility in Garfield County, Oklahoma. The Project consists of four major components: Photovoltaic solar arrays, energy storage facilities, linear facilities, and transmission interconnection facilities (Proposed Action). The energy storage facilities consist of batteries, solar trackers, and solar power inverters. Linear facilities include a network of internal access roads, communication cables or lines, and a distribution power network for construction and operations control systems. The transmission interconnection facilities include a substation/switchyard that interconnects to the existing Oklahoma Gas and Electric Company (OG&E) 345-kV Woodring Substation via a gen-tie line. These components are explained in detail in the Final Environmental Impact Statement (FEIS).

RUS is authorized under the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) to make loans and loan guarantees to finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacements required to furnish and improve electric service in rural areas, as well as demand-side management, electricity conservation programs, and on- and off-grid renewable electricity systems. NEER intends to request financial assistance from RUS for the Project. Along with other technical and financial considerations, completing the environmental review process is one of RUS's requirements in processing NEER's application.

RUS is serving as the lead Federal agency, as defined at 40 CFR 1501.7, for preparation of the FEIS. Cooperating agencies for this Project include the United States Army Corps of Engineers (USACE), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA). The United States Fish and Wildlife Service (USFWS) is a participating agency for this Project. The USACE will review the Applicant's permit application, as required by Section 404 under the Clean Water Act. The USFWS will determine the likelihood of Project effects on listed species, as required under Section 7 of the Endangered Species Act.

RUS prepared a Final Environmental Impact Statement (FEIS) and published a notice of availability in the **Federal Register** on April 7, 2022, 87 FR 20387, to analyze the impacts of its respective Federal actions and the proposed Project in accordance with NEPA, the CEQ's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1970).

RUS determined that its action regarding the proposed Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic

Properties'' (36 CFR part 800) and as part of its broad environmental review process, RUS must take into account the effect of the Project on historic properties. The National Historic Preservation Act (NHPA), Section 106 review is integrated with the NEPA review of cultural and historic resources in the FEIS in accordance with the guiding regulations of each law (40 CFR 1500–1508; 36 CFR 800.8). Thirty-nine tribes were invited to participate in the NHPA, Section 106 review process, attend the public scoping and Draft EIS meetings, and provide relevant information for inclusion in the EIS. Cultural and historic resources surveys within the area of potential effect identified one newly recorded historical archaeological site and 20 aboveground historical resources.

The structure associated with the archaeological site is no longer extant and extensive disturbances from agricultural practices have impacted the vertical and horizontal integrity of the site. The site had no discernable features or diagnostic material that contribute to the research potential of the site. Therefore, RUS determined that the archaeological site is not eligible for the National Register of Historic Places (NRHP). Based on the photographic documentation and available research, one aboveground historic resource is eligible for the NRHP under Criterion C. However, due to the location of aboveground historic resource relative to the Project location (roughly 1 mile east), and the proposed maximum Project height, the Project will not be visible, and RUS determined that the Project would have no adverse effect. The potential still exists that post-review discoveries of archaeological resources could be identified during Project construction, and these would be addressed by RUS in accordance with the NHPA Section 106 regulations for post-review discoveries (36 CFR 800.13).

All substantive public comments associated with the FEIS have been taken into consideration and addressed in the ROD. Based on consideration of the environmental impacts of the Project and comments received throughout the agency and public review process, RUS has determined that the Proposed Action as described above best meets the purpose and need for the Project. RUS finds that the evaluation of reasonable alternatives is consistent with NEPA and RUS Environmental Policies and Procedures. Details regarding RUS regulatory decision and compliance with applicable regulations are included in the ROD.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–10795 Filed 5–19–22; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Arizona Advisory Committee (Committee) to the Commission will hold a meeting via Webex on Friday, June 3, 2022, from 11:00 a.m. to 12:30 p.m. Arizona Time, for the purpose of discussing potential civil rights topics to study.

DATES: The meeting will be held on:

- Friday, June 3, 2022, from 11:00 a.m.–12:30 p.m. MST.

Access Information: Friday, June 3rd at 11:00 a.m. Arizona Time—Register at: *https://tinyurl.com/45e8ppz8.*

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, (DFO) at *kfajota@usccr.gov* or by phone at (434) 515–2395.

SUPPLEMENTARY INFORMATION: Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Kayla Fajota (DFO) at *kfajota@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of Minutes
IV. Discussion and Possible Vote: Healthcare Disparities
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: May 16, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–10833 Filed 5–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–904, A–542–804, A–549–844, A–489–846]

Certain Steel Nails From India, Sri Lanka, Thailand, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 20, 2022.

FOR FURTHER INFORMATION CONTACT: David Lindgren (India), Allison Hollander (Sri Lanka), Laurel LaCivita and Matthew Palmer (Thailand), or David Crespo (Republic of Turkey (Turkey)), AD/CVD Operations, Office I, II, or III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1671, (202) 482–2805, (202) 482–4243, (202) 482–1678, or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2022, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of certain steel nails (steel nails) from India, Sri Lanka, Thailand, and Turkey.[1] Currently, the

[1] *See Certain Steel Nails from India, Sri Lanka, Thailand, and the Republic of Turkey: Initiation of*

preliminary determinations are due no later than June 8, 2022.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days of the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On May 9, 2022, Mid Continent Steel & Wire, Inc. (the petitioner) submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.[2] The petitioner stated that it requests postponement because: (1) Commerce has not yet received complete responses to its initial and supplemental questionnaires from the respondents in these investigations; and (2) the petitioner has identified deficiencies in the responses already provided by the respondents that must be remedied prior to Commerce's issuance of its preliminary determinations.[3]

For the reasons stated above, and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), is postponing the deadline for these preliminary determinations by 50 days (*i.e.,* 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than July 28, 2022. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations in these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 16, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–10934 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–DS–P

Less-Than-Fair-Value Investigations, 87 FR 3965 (January 26, 2022).

[2] *See* Petitioner's Letter, ''Certain Steel Nails from India, Sri Lanka, Thailand and Turkey—Petitioner's Request for Postponement of Preliminary Determinations,'' dated May 9, 2022.

[3] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–144]

Freight Rail Coupler Systems and Certain Components Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of freight rail coupler systems and certain components thereof (freight rail couplers) from the People's Republic of China (China) during the period of investigation January 1, 2020, through December 31, 2020.

DATES: Applicable May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is the Coalition of Freight Coupler Producers. In addition to the Government of China, the mandatory respondent in this investigation is Chongqing Tongyao Transportation Equipment Co. (Chongqing Tongyao).

On March 7, 2022, Commerce published in the **Federal Register** the *Preliminary Determination* of this investigation.[1] The deadline for the final determination of this investigation is May 16, 2022.

On April 11, 2022, we issued a post-preliminary decision memorandum addressing a scope issue raised in the context of this and the companion less-than-fair-value (LTFV) investigations, in which we preliminarily found that it was unnecessary to alter the scope stated in the *Initiation Notice.*[2] We received case briefs addressing this preliminary scope decision from two importers of subject merchandise, Strato Inc. (Strato) and Wabtec Corporation (Wabtec), on April 18, 2022,[3] and rebuttal comments from the petitioner on April 22, 2022.[4]

We received no comments or case briefs addressing any of the other findings in the *Preliminary Determination;* therefore, there is no unpublished Issues and Decision Memorandum accompanying this notice.

Period of Investigation

The period of investigation is January 1, 2020, through December 31, 2020.

Scope of the Investigation

The products covered by this investigation are freight rail coupler systems and certain components from China. For a complete description of the scope of this investigation, *see* the appendix.

Scope Comments

In Commerce's *Preliminary Determination,*[5] we set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope) in scope case briefs or other written comments on scope issues. As noted above, the petitioner and two interested parties, Strato and Wabtec, commented on the scope of the investigation as it appeared in the *Initiation Notice,*[6] and Post-Preliminary Scope Decision Memorandum. For a summary of the product coverage comments and

[1] *See Freight Rail Coupler Systems and Certain Components Thereof: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 12662 (March 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Antidumping and Countervailing Duty Investigations of Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China: Post-Preliminary Scope Decision Memorandum,'' dated April 11, 2022 (Post-Preliminary Scope Decision Memorandum); *see also Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 86 FR 58878 (October 25, 2021) (*Initiation Notice*).

[3] *See* Strato's Letter, ''Strato Scope Case Brief''; and Wabtec's Letter, ''Case Brief On Post-Preliminary Scope Decision,'' both dated April 18, 2022.

[4] *See* Petitioner's Letter, ''Rebuttal Brief,'' dated April 25, 2022.

[5] *See Preliminary Determination,* 87 FR at 12663.

[6] *See Initiation Notice.*

rebuttal comments, and an analysis of all comments received, *see* the final scope memorandum, which will be issued prior to, or in conjunction with, the final determination in the companion LTFV investigation from China.[7] For the reasons discussed in the final scope memorandum, Commerce is not modifying the scope language as it appeared in the *Initiation Notice. See* the final ''Scope of the Investigation'' in the appendix to this notice.

Analysis of Subsidy Programs—Adverse Facts Available (AFA)

For purposes of this final determination, we relied solely on facts available pursuant to section 776 of the Tariff Act of 1930, as amended (the Act), because neither the Government of China nor the selected mandatory respondent, Chongqing Tongyao, participated in this investigation. Furthermore, as stated in our *Preliminary Determination,* CRRC Corporation Limited, CRRC Qiqihar Co., Ltd., China Railway Materials Group Co., Ltd., Shaanxi Haiduo Railway Technology Development Co., Ltd., China Railway Materials Group Co., Ltd., and Shaanxi Haiduo Railway Technology Development Co., Ltd. (collectively, non-participating companies) also withheld necessary information that was requested of them by Commerce, failed to provide information within the deadlines established, and significantly impeded this proceeding by failing to respond to Commerce's quantity and value questionnaires. Therefore, because the mandatory respondent, the non-participating companies, and the Government of China did not cooperate to the best of their abilities in responding to our requests for information in this investigation, we drew adverse inferences in selecting from among the facts otherwise available, in accordance with sections 776(a)–(b) of the Act. Consistent with the *Preliminary Determination,*[8] we continue to apply AFA to determine the appropriate subsidy rates for this investigation. No interested party submitted comments on the subsidy rates selected in the *Preliminary Determination.* Thus, we made no changes to the subsidy rates for the final determination. A detailed discussion of our application of AFA is provided in the *Preliminary Determination.*[9]

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the selection of the all-others rate on the countervailable subsidy rate established for the mandatory respondent, in accordance with section 703(d) of the Act.[10] Consistent with section 705(c)(5)(A)(ii) of the Act, we made no changes to the selection of the all-others rate for this final determination.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (*ad valorem*) (percent)
Chongqing Tongyao Transportation Equipment Co	265.99
CRRC Corporation Limited	265.99
CRRC Qiqihar Co., Ltd	265.99
China Railway Materials Group Co., Ltd	265.99
Shaanxi Haiduo Railway Technology Development Co., Ltd	265.99
All Others	265.99

Disclosure

The subsidy rate calculations in the *Preliminary Determination* were based on AFA.[11] As noted above, there are no changes to the calculations for this final determination. Thus, no additional disclosure is necessary.

Continuation of Suspension of Liquidation

In accordance with section 705(c)(4)(A) of the Act, Commerce intends to instruct U.S. U.S. Customs and Border Protection (CBP) to continue to suspend the liquidation of all appropriate entries of subject merchandise, as described in the appendix of this notice, entered, or withdrawn from warehouse, for consumption on or after March 7, 2022, which is the date of publication of the affirmative *Preliminary Determination* in the **Federal Register**, at the cash deposit rates indicated above. These suspension of liquidation instructions will remain in effect until further notice.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we intend to issue a countervailing duty order, continue to require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we intend to notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of freight rail couplers from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of freight rail couplers from China no later than 45 days after our final determination.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded or canceled, as Commerce determines to be appropriate. If the ITC determines that such injury does exist, Commerce intends to issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Order (APO)

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

[7] The deadline for Commerce's final determination in the companion LTFV investigation of freight rail coupler systems and certain components from China is May 23, 2022.

[8] *See Preliminary Determination* PDM at 5–16.

[9] *Id.*

[10] *See Preliminary Determination,* 87 FR at 12663.

[11] *Id.,* 87 FR at 12662–63.

Dated: May 16, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers freight rail car coupler systems and certain components thereof. Freight rail car coupler systems are composed of, at minimum, four main components (knuckles, coupler bodies, coupler yokes, and follower blocks, as specified below) but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The components covered by the investigation include: (1) E coupler bodies; (2) E/F coupler bodies; (3) F coupler bodies; (4) E yokes; (5) F yokes; (6) E knuckles; (7) F knuckles; (8) E type follower blocks; and (9) F type follower blocks, as set forth by the Association of American Railroads (AAR). The freight rail coupler components are included within the scope of the investigation when imported individually, or in some combination thereof, such as in the form of a coupler fit (a coupler body and knuckle assembled together), independent from a coupler system.

Subject freight rail car coupler systems and components are included within the scope whether finished or unfinished, whether imported individually or with other subject or non-subject components, whether assembled or unassembled, whether mounted or unmounted, or if joined with non-subject merchandise, such as other non-subject system parts or a completed rail car. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various components. When a subject coupler system or subject components are mounted on or to other non-subject merchandise, such as a rail car, only the coupler system or subject components are covered by the scope.

The finished products covered by the scope of this investigation meet or exceed the AAR specifications of M–211, ''Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts'' or AAR M–215 ''Coupling Systems,'' or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject coupler systems and components, whether fully assembled, unfinished or finished, or attached to a rail car, is the country where the subject coupler components were cast or forged. Subject merchandise includes coupler components as defined above that have been further processed or further assembled, including those coupler components attached to a rail car in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various components. The inclusion, attachment, joining, or assembly of non-subject components with subject components or coupler systems either in the country of manufacture of the in-scope product or in a third country does not remove the subject components or coupler systems from the scope.

The coupler systems that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished rail cars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the investigation is dispositive.

[FR Doc. 2022–10933 Filed 5–19–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–908]

Barium Chloride From India: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2022, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value investigation of imports of barium chloride from India.[1] Currently the preliminary determination is due no later than June 21, 2022.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930 (as amended) (the Act) requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On April 22, 2022, the petitioner[2] submitted a timely request that Commerce postpone the preliminary determination in this LTFV investigation.[3] The petitioner stated that it requests postponement because Commerce is still collecting information from the respondent, and the petitioner will need additional time to review the responses and prepare comments for Commerce's consideration.[4]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.,* 190 days after the date on which the investigation was initiated). As a result, Commerce will issue its preliminary determination no later than August 10, 2022. In accordance with section 735(a)(1) of the Act and 19 CFR 351.201(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 16, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–10932 Filed 5–19–22; 8:45 am]

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[1] *See Barium Chloride from India: Initiation of Less-Than-Fair-Value Investigation,* 87 FR 7100 (February 8, 2022).

[2] The petitioner is Chemical Products Corporation.

[3] *See* Petitioner's Letter, ''Antidumping Investigation of Barium Chloride from India: Petitioner's Request for Extension of Preliminary Determination,'' dated April 22, 2022.

[4] *Id.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; SURF Fellow Housing Application

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 26, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: SURF Fellow Housing Application.

OMB Control Number: 0693–0084.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 220.

Average Hours per Response: 30 minutes.

Burden Hours: 110 hours.

Needs and Uses: The purpose of this collection is to gather information requested on behalf of the NIST Summer Undergraduate Research Fellowship (SURF) Program for both Gaithersburg and Boulder locations. Students participating in the program receive a fellowship which includes lodging arranged by the agency. To coordinate the lodging, information is submitted by accepted students which require lodging during the program dates. The student information is utilized for roommate matching based on gender and common interests. The information includes identification of accepted laboratory, housing requirement (yes or no), first name, last name, dates requesting housing, gender, roommate identification, name of academic institution of enrollment, preferences (night owl, early bird, neatness, smoking,), and special requests.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain benefits.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0084.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–10917 Filed 5–19–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC010]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Offshore From Massachusetts to New Jersey for Vineyard Northeast, LLC

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible Renewal.

SUMMARY: NMFS has received a request from Vineyard Northeast, LLC (Vineyard Northeast) for authorization to take marine mammals incidental to marine site characterization surveys offshore from Massachusetts to New Jersey, including the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS–A 0522 and OCS–A 0544 (Lease Areas) and potential offshore export cable corridor (OECC) routes to landfall locations. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than June 21, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Esch@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25 megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Carter Esch, Office of Protected Resources, NMFS, (301) 427–8421. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who

engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

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

National Environmental Policy Act

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

Summary of Request

On December 17, 2021, NMFS received a request from Vineyard Northeast for an IHA to take marine mammals incidental to marine site characterization surveys offshore from Massachusetts to New Jersey, in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS–A 0522 and OCS–A 0544 (Lease Areas) and potential offshore export cable corridor (OECC) routes to landfall locations. Following NMFS' review of the draft application, a revised version was submitted on February 15, 2022, and again on April 4, 2022. The April 4, 2022, revised version was deemed adequate and complete on April 18, 2022. Vineyard Northeast's request is for take of 19 species (with 20 managed stocks) of marine mammals, by Level B harassment only. Neither Vineyard Northeast nor NMFS expects serious injury or mortality to result from this activity and, therefore, and IHA is appropriate.

NMFS previously issued an IHA (85 FR 42357; July 14, 2020) and a renewal of that IHA (86 FR 38296; July 20, 2021) to Vineyard Wind, LLC (Vineyard Wind) for similar marine site characterization surveys. Vineyard Wind has split into several corporate entities which now include Vineyard Wind, Vineyard Wind 1, LLC (Vineyard Wind 1), and Vineyard Northeast. NMFS issued an IHA for similar surveys to Vineyard Wind 1 on July 28, 2021 (86 FR 40469). Although the surveys analyzed in this proposed IHA to Vineyard Northeast would occur in an area that overlaps with a portion of the project areas included in the previous Vineyard Wind IHA and Renewal IHA, and Vineyard Wind 1 IHA (and potentially a renewal, if appropriate), this proposed IHA would be issued to a separate corporate entity (Vineyard Northeast). The proposed IHA would be effective June 22, 2022, through June 21, 2023.

Description of Proposed Activity

Overview

As part of its overall marine site characterization survey operations, Vineyard Northeast proposes to conduct high-resolution geophysical (HRG) surveys in the Lease Areas and along potential OECC's from northern Massachusetts to southern New Jersey. (Figure 1)

The purpose of the marine site characterization surveys is to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of planned offshore wind facility development areas. Surveys are also conducted to inform and support engineering design and to map unexploded ordnance. Underwater sound resulting from Vineyard Northeast's proposed site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

Vineyard Northeast anticipates that HRG survey activities would occur on approximately 869 vessel days, with an assumed daily survey distance of 80 km per vessel. This schedule is based on assumed 24-hour operations. Each day that a vessel surveys approximately 80 km within 24 hours would count as a single survey day, *e.g.,* two survey vessels operating on the same day would count as two survey days. The use of concurrently surveying vessels would facilitate completion of all 869 vessel days within one year. Vineyard Northeast proposes to begin survey activities upon receipt of an IHA and continue for up to one year (though the actual duration will likely be shorter, particularly given the use of multiple vessels). The IHA would be effective for one year from the date of issuance.

Specific Geographic Region

Vineyard Northeast's proposed HRG survey activities are planned to occur in both Federal offshore waters (including Lease Areas OCS–A 0522 and OCS–A 0544) and along potential OECCs in both Federal and State nearshore waters of Massachusetts, Rhode Island, Connecticut, New York, and New Jersey, as shown in Figure 1. The 536 square kilometer (km^2) (132,370 acre) Lease Area OCS–A 0522 is located approximately 24 kilometers (km) (15 miles; mi) from the southeast corner of Martha's Vineyard, within the Massachusetts Wind Energy Area (WEA). The 174 km^2 (43,056 acre) Lease Area OCS–A 0544 is located approximately 38 km (24 mi) from Long Island, New York, within BOEM's Mid-Atlantic planning area. Surveys outside of the Lease Areas would extend from northern Massachusetts to southern New Jersey, including the Massachusetts/Rhode Island WEA as well as the northern portion of the Mid-Atlantic planning area. Water depths across the proposed Survey Area range from approximately 35 to 60 meters (m) (115 to 197 feet [ft]) in the Lease Areas, and from 2.5 m to >35 m (8 to >115 ft) along the proposed OECCs.

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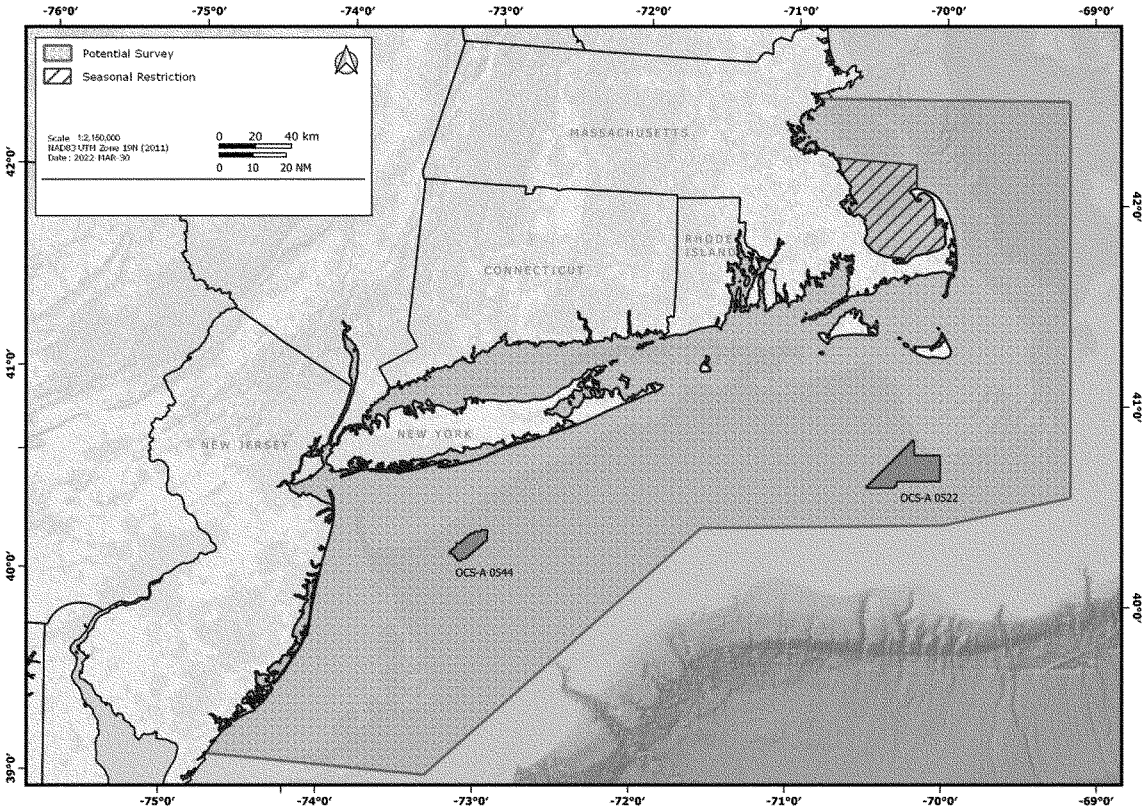

Figure 1-- Proposed Survey Area, including Lease Areas OCS-A 0522 and OCS-A 0544.

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Detailed Description of Specific Activity

Vineyard Northeast proposes to conduct HRG survey operations, including single and multibeam depth sounding, seafloor imaging, and shallow and medium penetration sub-bottom profiling. The HRG surveys may be conducted using any or all of the following equipment types: Side scan sonar, multibeam echosounder, magnetometers and gradiometers, parametric sub-bottom profiler (SBP), compressed high intensity radar pulse (CHIRP) SBP, boomers, or sparkers. Vessels would generally conduct survey effort at a transit speed of approximately 4 knots (kn; 2.1 meters per sec, m/s), which equates to 110 km per 24-hr period. However, based on past survey experience (*i.e.,* knowledge of typical daily downtime due to weather, system malfunctions, etc.), Vineyard Northeast assumes 80 km as the average distance surveyed per 24 hours. On this basis (and as mentioned previously), a total of 869 survey days are expected. However, in nearshore waters (*i.e.,* <30 m), vessels may survey during daylight hours only, with a corresponding assumption that the daily survey distance would be halved (*i.e.,* 40 km). Approximately 35 survey days (*i.e.,* 70 12-hr survey days) are planned for nearshore (*i.e.,* <30 m water depth) waters; surveys conducted on the remaining 834 vessel days in waters >30 m will operate 24 hours per day.

To facilitate completion of all 869 survey days across the large Survey Area (see Figure 1) within one year, Vineyard Northeast anticipates operating multiple vessels simultaneously (*i.e.,* up to two in a Lease Area and up to two along OECC routes, including nearshore Survey Areas). The number of vessels operating at the same time may increase or decrease as the survey campaign progresses.

Acoustic sources planned for use during the proposed HRG survey activities include the following (operating frequencies are presented in hertz (Hz) and kilohertz (kHz)):

- Shallow penetration non-impulsive, non-parametric sub-bottom profilers (*i.e.,* CHIRP SBPs) are used to map the near-surface stratigraphy (top 0 to 5 m [0 to 16 feet (ft)]) of sediment below seabed). A CHIRP system emits sonar pulses that increase in frequency from about 2 to 20 kHz over time. The frequency range can be adjusted to meet project variables. Rather than being towed, these sources are typically mounted on a pole or the hull of the vessel, reducing the likelihood that an animal would be exposed to the signal.
- Medium penetration, impulsive sources (*i.e.,* boomers and sparker) are used to map deeper subsurface stratigraphy. A boomer is a broadband source operating in the 3.5 Hz to 10 kHz frequency range. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz that can penetrate several hundred meters into the seafloor. These sources are typically towed behind the vessel.

Operation of the following survey equipment types is not expected to present reasonable risk of marine mammal take, and will not be discussed further beyond the brief summaries provided below.

- Non-impulsive, parametric SBPs are used for providing high density data in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–100 kHz). The narrow beamwidth

significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater. These sources are typically mounted on the hull of the vessel or deployed from a side pole rather than towed behind the vessel.

• Ultra-short baseline (USBL) positioning systems are used to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and a transponder (or beacon) necessary to produce the acoustic profile. It is a two-component system with a pole-mounted transceiver and one or several transponders mounted on other survey equipment. USBLs are expected to produce extremely small acoustic propagation distances in their typical operating configuration.

• Single and Multibeam echosounders (MBESs) are used to determine water depths and general bottom topography. The proposed MBESs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals.

• Side scan sonar (SSS) is used for seabed sediment classification purposes and to identify natural and man-made acoustic targets on the seafloor. The proposed SSSs all have operating frequencies >180 kHz and are therefore outside the general hearing range of marine mammals.

Table 1 identifies all representative proposed survey equipment that has the potential to result in harassment of marine mammals (*i.e.,* expected to operate at or below 180 kHz). The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Please see Table A–3 in Appendix A of the IHA application for specifications on all active acoustic equipment with the potential for use during Vineyard Northeast's site characterization surveys.

TABLE 1—SUMMARY OF REPRESENTATIVE HRG EQUIPMENT [1]

System	Frequency (kHz)	Beam width (°)	Pulse duration (ms)	Repetition rate (Hz)	In-beam source level (dB)	
					RMS	Pk
Shallow subbottom profiler (non-impulsive):						
EdgeTech Chirp 216	2–16	65	2	3.75	178	182
Deep seismic profiler (impulsive):						
Applied Acoustics AA251 Boomer	0.2–15	180	0.8	2	205	212
GeoMarine Geo Spark 2000 (400 tip)	0.05–3	180	3.4	1	203	213

[1] Edge Tech Chirp 512i used as proxy source for Edge Tech 216, as Chirp 512i has similar operation settings as Chirp 216. SIG ELC 820 Sparker used as proxy for GeoMarine Geo Spark 2000 (400 tip), as SIG ELC 820 has similar operation settings as Geo Spark 2000. See Crocker and Fratantonio (2016) and Table A–3 in Appendix A of Vineyard Northeast's application for more information.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

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

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, NMFS follows Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR, and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represents the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico Stock Assessment (SARs). All values presented in Table 2 are the most recent available at the time of publication and are available in the Draft 2021 SARs (Hayes *et al.,* 2021), available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS LIKELY TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY VINEYARD NORTHEAST'S PROPOSED ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Blue whale [4]	*Balaenoptera musculus*	Western North Atlantic	E/D, Y	402 (unk, 402; 2008	0.8	0
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	E/D, Y	368 (0; 364; 2019)	0.7	7.7
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia	E/D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian Eastern Coastal	-/-, N	21,968 (0.31; 17,002; 2016).	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-, N	39,215 (0.3; 30,627; 2016).	306	29
Orca (killer whale) [4]	*Orcinus Orca*	Western North Atlantic	-/-, N	unk (unk; unk; 2016)	unk	0
False killer whale [4]	*Pseudorca crassidens*	Western North Atlantic	-/-, N	1,791 (0.56; 1,154; 2016)	12	0
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-, N	39,921 (0.27; 32,032; 2016).	320	0
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	-/-, N	93,233 (0.71; 54,443; 2016).	544	227
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Northern Migratory Coastal.	-/D, Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
		Western North Atlantic Offshore	-/-, N	62,851 (0.23; 51,914; 2016).	519	28
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-, N	172,974 (0.21, 145,216, 2016).	1,452	390
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-, N	35,215 (0.19; 30,051; 2016).	301	34
White-beaked dolphin [4]	*Lagenorhynchus albirostris*	Western North Atlantic	-/-, N	536,016 (0.31; 415,344; 2016).	4,153	0
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-/-, N	95,543 (0.31; 74,034; 2016).	851	164
Order Carnivora—Superfamily Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic	-/-, N	61,336 (0.08; 57,637; 2018).	1,729	339
Gray seal [5]	*Halichoerus grypus*	Western North Atlantic	-/-, N	27,300 (0.22; 22,785; 2016).	1,389	4,453

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

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

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] Rare (or not likely to occur) species.

[5] NMFS' gray seal stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual mortality and serious injury (M/SI) value given is for the total stock.

Table 2 includes 15 species (with 16 managed stocks) that temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Vineyard Northeast is also requesting take of four species that are considered rare (or not likely to occur) in the Survey Area (*i.e.,* blue whale, killer whale, false killer whale, and white-beaked dolphin), based on recent detections (acoustic and/or visual) of those species in the Survey Area. In total, Vineyard Northeast is requesting take of 19 species (with 20 managed stocks). In addition to what is included in Sections 3 and 4 of the application, the SARS, and NMFS' website, further detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UME) and important habitat areas) is provided below.

North Atlantic Right Whale

The North Atlantic right whale is considered one of the most critically endangered populations of large whales in the world and has been listed as a Federal endangered species since 1970. The Western Atlantic stock is considered depleted under the MMPA (Hayes *et al.* 2021). There is a recovery plan (NOAA Fisheries 2017) for the North Atlantic right whale, and relatively recently there was a five-year review of the species (NOAA Fisheries 2017). The North Atlantic right whale had only a 2.8 percent recovery rate between 1990 and 2011 (Hayes *et al.* 2021).

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast with the leading category for the cause of death for this UME determined to be ''human interaction,'' specifically from entanglements or vessel strikes. As of May X, 2022, a total of 34 confirmed dead stranded whales (21 in Canada; 13 in the United States) have been documented. The cumulative total number of animals in the North Atlantic right whale UME has been updated to 50 individuals to include both the confirmed mortalities (dead stranded or floaters) (n=34) and seriously injured free-swimming whales (n=16) to better

reflect the confirmed number of whales likely removed from the population during the UME, and more accurately reflect the population impacts. More information about this UME is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event.*

NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMAs) for North Atlantic right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and North Atlantic right whales around their migratory route and calving grounds. The Survey Area overlaps with the Cape Cod Bay (active between January 1 and May 15), Off Race Point (active between March 1 and April 30), Great South Channel (active between April 1 and July 31), and Mid-Atlantic Migratory (active between November 1 and April 30) SMAs.

The proposed Survey Area also partially overlaps with previously identified North Atlantic right whale feeding Biologically Important Areas (BIAs) and part of the migratory corridor BIA for North Atlantic right whales (March–April and November–December) that extends from the coast to the continental shelf break, and from Massachusetts to Florida (LeBrecque *et al.,* 2015). A map showing designated BIAs is available at: *https://cetsound.noaa.gov/biologically-important-area-map.* In addition to currently designated feeding BIAs, Oleson *et al.* (2020) identified the area south of Martha's Vineyard and Nantucket, referred to as ''South of the Islands,'' as a newer, year-round, core North Atlantic right whale foraging habitat. The South of the Islands area is also within the bounds of Vineyard Northeast's Survey Area.

Humpback Whale

NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62260; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the Survey Area. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015). Whales occurring in the Survey Area are considered to be from the West Indies DPS but are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS. Barco *et al.,* 2002 estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 156 known cases (as of May X, 2022). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

The northern and most eastern portions of the proposed Survey Area partially overlap with the humpback whale feeding BIA (March through December), which extends throughout the Gulf of Maine, Stellwagen Bank, and Great South Channel (LeBrecque *et al.,* 2015).

Minke Whale

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 122 strandings (as of May X, 2022). This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

The northern and most eastern portions of the proposed Survey Area partially overlap with one of the minke whale feeding BIAs (March through November), which includes the southern and southwestern section of the Gulf of Maine, including Georges Bank, the Great South Channel, Cape Cod Bay and Massachusetts Bay, Stellwagen Bank, Cape Anne, and Jeffreys Ledge (LeBrecque *et al.,* 2015).

Seals

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers; therefore, the UME investigation now encompasses all seal strandings from Maine to Virginia. Ice seals (harp and hooded seals) have also been stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. A total of 3,152 reported strandings (of all species) had occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Closure of this UME is pending. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and

other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, *cephalorhynchid, Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fifteen species of marine mammal species (13 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities and four rare, or not likely to occur, species (all cetacean) may be encountered during the proposed survey activities. Please refer back to Table 2. Of the cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.,* all mysticete species), ten are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring within the same specified geographical region (*e.g.,* 85 FR 21198, April 16, 2020; 85 FR 42357, July 14, 2020; 85 FR 63508, October 8, 2020; 85 FR 71058, November 6, 2020; 86 FR 21289, April 22, 2021; 86 FR 38296, July 20, 2021; 86 FR 40469, July 28, 2021; 87 FR 13975, March 11, 2022; 87 FR 24103, April 22, 2022). No significant new information is available, and we refer the reader to these documents rather than repeating the details here.

The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by Vineyard Northeast's activities. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Background on Active Acoustic Sound Sources and Acoustic Terminology

This subsection contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to the summary of the potential effects of the specified activity on marine mammals. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude. Therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1-m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa²-s) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner like ripples on the surface of a pond and may be directed either in a beam or in beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. Several sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency dependent. As a result of the dependence on many varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly regarding hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sparkers and boomers produce pulsed signals with energy in the frequency ranges specified in Table 1. The amplitude of the acoustic wave emitted from sparker sources is equal in all directions (*i.e.,* omnidirectional), while other sources planned for use during the proposed surveys have some degree of directionality to the beam, as specified in Table 1. Finally, CHIRP SBPs should be considered non-impulsive, intermittent sources.

Summary on Specific Potential Effects of Acoustic Sound Sources

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.* 2007).

Animals in the vicinity of Vineyard Northeast's proposed HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include relatively low source levels (178 to 205 dB re 1 μPa m), and generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and that the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the Edge Tech 216 Chirp planned for use (Table 1) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for most HRG survey equipment types planned for use (Table 1) and the brief period when an individual mammal is likely to be exposed.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are normally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of Vineyard Northeast's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor proposed to be authorized. Consideration of the

anticipated effectiveness of the mitigation measures (*i.e.,* pre-start clearance and shutdown measures), discussed in detail below in the Proposed Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably expected outcome of the survey activity. As previously described, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for impulsive sources (*i.e.,* boomers, sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRP SBPs) evaluated here for Vineyard Northeast's proposed activity.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Vineyard Northeast's proposed activity includes the use of impulsive (*i.e.,* boomers and sparkers) and non-impulsive (*e.g.,* CHIRP SBPs) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise from the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see Vineyard Northeast's application for a quantitative Level A exposure analysis exercise. The results indicated that maximum estimated distances to Level A harassment isopleths were less than 5 m for all sources and hearing groups, with the exception of an estimated 53 m distance to the Level A harassment isopleth for high-frequency cetaceans (*i.e.,* harbor porpoises) during use of the Applied Acoustics AA251 Boomer (see Table 1 for source characteristics). Vineyard Northeast did not request authorization of take by Level A harassment and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate distances to harassment isopleths. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the proposed surveys and the source parameters associated with each type of equipment. Appendix A of Vineyard Northeast's IHA application provides detailed information on the acoustic source parameters used to calculate distances to regulatory thresholds.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Vineyard Northeast that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics AA251 Boomer would produce the largest distance to the Level B harassment isopleth (178 m). Estimated distances to the Level B harassment isopleth for all source types evaluated here, including the boomer, are provided in Table 4. Although Vineyard Northeast does not expect to use the AA251 Boomer source on all planned survey days, it proposes to assume, for purposes of analysis, that the boomer sources would be used on all survey days and across all hours within a given survey day. This is a conservative approach, as the actual sources used on individual survey days, or during a portion of a survey day, may produce smaller distances to the Level B harassment isopleth.

TABLE 4—DISTANCES TO LEVEL B HARASSMENT ISOPLETH

Equipment	Distance to Level B harassment isopleth (m)
Edge Tech Chirp 216	4.3
GeoMarine Geo Spark 2000 (400 tip)	141
Applied Acoustics AA 251 Boomer	178

Marine Mammal Occurrence

In this section, we provide the information about presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018, 2021) represent the best available information regarding marine mammal densities in the Survey Area. The density data presented by Roberts *et al.* (2016, 2017, 2018, 2021) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.*

Density estimates for all species within the Survey Area were derived from habitat-based density modeling results reported by Roberts *et al.* (2016; 2017; 2018; 2021). Those data provide abundance estimates for species or species guild within 10 km x 10 km grid cells (100 km^2) or, in the case of North Atlantic right whale densities, within 5 km x 5 km grid cells, on a monthly or annual basis, depending on the species. Using a GIS (ESRI 2017), the proposed Survey Area and the North Atlantic right whale Cape Cod Bay SMA polygon shown in Figure 1 were used to select grid cells from the Roberts *et al.* (2016; 2017; 2018; 2021) data that contain the most recent monthly or annual estimates for each species for the months of May through December. For the months of January through April, only the proposed Survey Area polygon was used to select density grid cells since it excludes waters within Cape Cod Bay, where no surveys will occur while the Cape Cod Bay SMA is active from January 1 through May 15. The average monthly abundance for each species was calculated as the mean value of all grid cells within the Survey Area and then converted to density (individuals/1 km^2) by dividing by 100 km^2. Finally, an average annual density was calculated by taking the mean across all 12 months for each species. See Table 8 in Vineyard Northeast's IHA application for all density information.

When determining requested take numbers, Vineyard Northeast also considered average group sizes based on Protected Species Observer (PSO) sighting reports from previous surveys in the region.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 178 m distance associated with boomers) to the Level B harassment criterion and the estimated trackline distance traveled per day by a given survey vessel (*i.e.,* 80 km) are then used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel.

The ZOI is a representation of the maximum extent of the ensonified area around a HRG sound source over a 24-hr period. The ZOI for each piece of equipment operating at or below 180 kHz was calculated per the following formula:

$$ZOI = (Distance/day \times 2r) + \pi r^2$$

Where r is the linear distance from the source to the harassment isopleth.

The largest daily ZOI (28.6 km^2), associated with the proposed use of boomers, was applied to all planned survey days.

Potential Level B density-based harassment exposures are estimated by multiplying the average annual density of each species within the Survey Area by the daily ZOI. That product is then multiplied by the number of planned survey days (869), and the product is rounded to the nearest whole number. These results are shown in Table 5.

For other less common species, the predicted densities from Roberts *et al.* (2016; 2017; 2018; 2021) are very low and the resulting density-based estimate is less than a single animal or a typical group size for the species. In such cases, the density-based exposure estimate is increased to the mean group size for the species to account for a chance encounter during an activity. Mean group sizes for each species were calculated from recent aerial and/or vessel-based surveys (Kraus *et al.,* 2016; Palka *et al.* 2017) as shown in Table 5 (below) and Table 10 of the IHA application.

The larger of the two estimates from the approaches described above, density-based exposure estimates or mean group size, was selected as the amount of requested take as shown in Table 5. Additionally, based on observational data collected during prior HRG surveys in this area, the density of common dolphins predicted by the Roberts *et al.* (2018) model does not appear to adequately reflect the number of common dolphins that may be encountered during the planned surveys. Data collected by PSOs on survey vessels operating in 2020–2021 showed that an average of approximately 16 common dolphins may be observed within 200 m of a vessel (the approximate Level B harassment isopleth distance) per survey day (Vineyard-Wind 2021). Multiplying the anticipated 869 survey days by 16 common dolphins per day results in an estimated take of 13,904 common dolphins, so this has been used as the requested take of common dolphins shown in Table 5.

The estimated monthly density of seals provided in Roberts *et al.* (2018) includes all seal species present in the region as a single guild. To split the resulting ''seal'' density-based exposure estimate by species, Vineyard Northeast multiplied the estimate by the proportion of the combined abundance attributable to each species. Specifically, Vineyard Northeast summed the SAR N_{best} abundance estimates (Hayes *et al.* 2021) for the two species (gray seal = 27,300, harbor seal = 61,336; total = 88,636) and divided the total by the estimate for each species to get the proportion of the total for each species (gray seal = 0.308; harbor seal = 0.692). The total estimated exposure from the ''seal'' density provide by Roberts *et al.* (2018) was then multiplied by these proportions to get the species-specific density-based exposure estimates.

Given that most of the surveying will occur offshore (*i.e.,* water depths >30 m), bottlenose dolphins encountered in the Survey Area would likely belong to the Western North Atlantic Offshore stock; therefore, all takes are being requested from this stock. However, it is possible that a few bottlenose dolphins encountered during nearshore surveys off the coast of New Jersey could be from the North Atlantic Northern Migratory Coastal stock. Similarly, the distributions of short- and long-finned pilot whales based on sighting data from the Ocean Biodiversity Information System database (OBIS 2021) indicate that pilot whale sightings in the Survey Area would most likely be long-finned pilot whales, so all requested pilot whale takes are for long-finned pilot whales.

Species considered to be rare or not expected to occur in the Survey Area were not included in Vineyard Northeast's previous exposure estimates because the densities would be too low to provide meaningful results. Nonetheless, species considered to be rare are occasionally encountered. For example, white-beaked dolphins were observed in both 2019 and 2020 during marine site characterization surveys in the Survey Area (Vineyard Wind 2019, 2020), with the sighting of white-beaked dolphins in 2019 consisting of 30 animals. Other rare species encountered in the Survey Area during previous surveys include the false killer whale in 2019 (5 individuals) and 2021 (1 individual) (Vineyard Wind 2019, 2021), and orca (killer whale) in 2022 (2 individuals; data not yet submitted). Vineyard Northeast is requesting take of each of these three species, based on the largest number of individuals observed within one year (Table 5).

Finally, recent deployments of passive acoustic devices in the New York Bight yielded detections of blue whale vocalizations approximately 20 nautical miles (nm) (37 km) southeast of the entrance to New York Harbor during the months of January, February, and March (Muirhead *et al.* 2018); blue whale vocalizations have also been recorded off the coast of Rhode Island during acoustic surveys (Kraus *et al.* 2016). More recently, during three years of monthly aerial surveys in the New York Bight (2017–2020), Zoidis *et al.* (2021) reported 3 sightings of blue whales, totaling 5 individuals. Although sightings of blue whales in the Survey Area are rare, in light of these recent observations of blue whales, Vineyard Northeast is requesting take of one blue whale based on the average group size (Palka *et al.,* 2017) (Table 5).

TABLE 5—SUMMARY OF TAKE NUMBERS PROPOSED FOR AUTHORIZATION

Species	Annual average density (km^2)	Density-based exposure estimate	Mean group size [1]	Takes by Level B harassment requested	Abundance	Proposed takes as percent of stock (%)
Blue whale [2]	0.00000	0.2	1.0	1	402	0.2
Fin whale	0.00149	54.0	1.8	55	6,802	0.8
Humpback whale	0.00084	32.5	2.0	33	1,396	2.4
Minke whale	0.00062	29.0	1.2	30	21,968	0.1
North Atlantic right whale	0.00164	27.7	2.4	28	368	7.6
Sei whale	0.00005	3.4	1.6	4	6,292	0.1
Sperm whale	0.00006	8.4	1.5	9	4,349	0.2
Orca (killer whale) [2]	.....	.....	.....	2	Unk	0.0
False killer whale [2]	.....	.....	.....	5	1,791	0.3
Atlantic spotted dolphin	0.0008	13.6	29.0	29	39,921	0.1
Atlantic white-sided dolphin	0.02226	791.1	27.9	792	92,233	0.9
Bottlenose dolphin (Western North Atlantic offshore stock)	0.0403	507.1	7.8	508	62,851	0.8
Bottlenose dolphin (Western North Atlantic northern migratory coastal stock)	.....	.....	.....	.....	.....	.....
Common dolphin	0.0544	816.4	34.9	24,480	172,974	0.1
Long-finned pilot whale	0.00459	285.1	8.4	286	39,215	0.7
White-beaked dolphin [2]	.....	.....	.....	30	536,016	0.0
Risso's dolphin	0.00012	70.5	5.4	71	35,493	0.2
Harbor porpoise	0.02858	1431.3	2.7	1,432	95,543	0.1
Gray seal	0.09784	294.2	0.4	295	27,131	1.0
Harbor seal		661.1	1.0	662	75,834	0.9

[1] Mean group size based on Kraus *et al.,* 2016 (fin, humpback, minke, North Atlantic right, sei, and pilot whales; Atlantic white-sided, bottlenose, and common dolphins; harbor porpoise) or Palka *et al.,* 2017 (blue and sperm whales; Atlantic spotted and Risso's dolphin; harbor and gray seals).
[2] Rare (or unlikely to occur) species.

The take numbers shown in Table 5 are those requested by Vineyard Northeast. NMFS concurs with the requested take numbers and proposes to authorize them.

Proposed Mitigation

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

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

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

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity,

personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

NMFS proposes the following mitigation measures be implemented during Vineyard Northeast's proposed marine site characterization surveys. Pursuant to section 7 of the ESA, Vineyard Northeast would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Shutdown Zones and Level B Harassment Zone

Marine mammal shutdown zones (SZs) would be established around the HRG survey equipment and monitored by PSOs:

- 500-m SZ for North Atlantic right whales;
- 100-m SZ for all other marine mammals.

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training provided to the survey team.

Pre-Start Clearance

Marine mammal clearance zones (CZs) would be established around the HRG survey equipment and monitored by PSOs:

- 500-m CZ for all ESA-listed marine mammals; and
- 100-m CZ for all other marine mammals.

Vineyard Northeast would implement a 30-minute pre-start clearance period prior to initiation of ramp-up of specified HRG equipment. During this period, CZs would be monitored by PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective CZ. If a marine mammal is observed within its CZ during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective CZ or until an additional time has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for HRG survey equipment capable of adjustment of energy levels at the start or restart of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities to provide additional protection to marine mammals in or near the Survey Area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. When technically feasible, the power would then be gradually turned up and other acoustic sources would be added.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective CZ. Ramp-up will continue if the animal has been observed exiting its respective CZ or until an additional period has elapsed with no additional sightings (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Activation of survey equipment through ramp-up procedures may not occur when visual observation of the pre-start clearance/shutdown zone is not expected to be effective using the appropriate visual technology (*i.e.,* during inclement conditions such as heavy rain or fog).

Shutdown Procedures

An immediate shutdown of the specified HRG survey equipment would be required if a marine mammal is sighted entering or within its respective SZ. The vessel operator must comply immediately with any call for shutdown by the PSO. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective SZ or until an additional time has elapsed (*i.e.,* 15 minutes for harbor porpoise, 30 minutes for all other species).

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the applicable Level B harassment zone (Table 4), shutdown would occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective SZs. If the acoustic source is shut down for a period longer than 30 minutes, then pre-start clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement would be waived for pinnipeds and for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*. Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. Furthermore, if there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped detected in the shutdown zone and belongs to a genus other than those specified.

Shutdown, pre-start clearance, and ramp-up procedures would not be required during HRG survey operations using only non-impulsive sources (*e.g.,* echosounders), other than non-parametric sub-bottom profilers (*e.g.,* CHIRP SBPs).

Vessel Strike Avoidance

Vineyard Northeast must ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below).

Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a North Atlantic right whale, other whale (defined in this context as sperm whales or baleen whales other than North Atlantic right whales), or other marine mammal.

- Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert at the start of every PSO shift, for situational awareness regarding the presence of North Atlantic right whales throughout the Survey Area, and for the establishment of Slow Zones (including visual-detection-triggered dynamic management areas (DMAs) and acoustically-triggered slow zones) within or near the Survey Area.
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes, including SMAs and DMAs when in effect;
- All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 knots or less at all times;
- All vessels must reduce their speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- All vessels must maintain a minimum separation distance of 500 m from North Atlantic right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10 knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 100 m from all non-ESA listed whales,
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Seasonal Restrictions

Vineyard Northeast proposes to refrain from conducting survey activities using HRG equipment operating at or below 180 kHz from January 1 through May 15 within the North Atlantic right whale SMA in Cape Cod Bay.

Crew Training

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

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

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

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

Proposed Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. Vineyard Northeast would employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of

approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters. Section 5 of the draft IHA contains further details regarding PSO approval.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including shutdown zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established shutdown zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals to the vessel operator as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of a specified HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to shutdown zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort Sea State (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Esch@noaa.gov*. The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends; vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-start clearance survey, ramp-up, shutdown, end of operations, etc.).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during

surveys or during vessel transit, Vineyard Northeast would report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866) 755–6622) within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16.

In the event that Vineyard Northeast personnel discover an injured or dead marine mammal, Vineyard Northeast would report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Vineyard Northeast would report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator as soon as feasible. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

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

To avoid repetition, our analysis applies to all the species listed in Table 5, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential Level B harassment takes would be in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur, even absent mitigation, given the nature of the operations and the estimated size of the Level A harassment zones.

In addition to being temporary, the maximum behavioral harassment zone radius is 178 m (associated with the Applied Acoustics AA251 Boomer). When estimating Level B harassment take numbers, Vineyard Northeast made the conservative assumption that this maximum zone size applied to all 869 survey days when, in reality, the Applied Acoustics AA251 Boomer would not be used throughout the entire 24 hours of every proposed survey day. The other acoustic sources with the potential to result in take of marine mammals produced Level B harassment zones with even smaller radii (141 m, Edge Tech CHIRP 216; 4 m, GeoMarine Geo Spark 2000). Therefore, the ensonified area surrounding each acoustic source is relatively small compared to the overall distribution of the animals in the area and their use of the habitat.

The planned Survey Area encompasses, or is in close proximity to, feeding BIAs for North Atlantic right whales (February–April/April–June), humpback whales (March–December), fin whales (March–October), sei whales (May–November), and minke whales (March–November), as well as the migratory BIA for North Atlantic right whales (November 1–April 30) (LaBrecque *et al.,* 2015). Most of these feeding BIAs are extensive and sufficiently large (*e.g.,* 705 km^2 and 3,149 km^2 for North Atlantic right whales; 47,701 km^2 for humpback whales; 2,933 km^2 for fin whales; 56,609 km^2 for sei whales), and the acoustic footprint of the planned survey is sufficiently small that feeding opportunities for these species would not be reduced appreciably. In addition, feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed

throughout the Survey Area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed Survey Area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is currently an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of North Atlantic right whales.

The proposed Survey Area partially overlaps with the migratory corridor BIA and migratory route SMA for North Atlantic right whales, which extends from Massachusetts to Florida, from the coast to beyond the shelf break. That the spatial acoustic footprint of the proposed survey is very small relative to the spatial extent of the available migratory habitat supports the expectation that North Atlantic right whale migration will not be impacted by the proposed survey. Required vessel strike avoidance measures will also decrease risk of ship strike during migration. Additionally, Vineyard Northeast would be required to adhere to a 10-knot speed restriction in the migratory corridor SMA, and in any DMA(s), should NMFS establish one (or more) in the Survey Area.

The most northern and northeastern portions of the proposed Survey Area overlap with Cape Cod Bay (January 1–May 15), Off Race Point (March 1–April 30), and Great South Channel (April 1–July 31) SMAs. Vineyard Northeast's proposed seasonal restriction on survey activities in Cape Cod Bay (which is also part of a feeding BIA (February 1–April 30) and designated critical foraging habitat for North Atlantic right whales) when the SMA is active minimizes potential impacts on the species' foraging when densities of North Atlantic right whales and their prey are expected to be highest in that section of the Survey Area. The seasonal restriction also minimizes the likelihood that survey activities would occur during the Off Race Point SMA, which overlaps in time with and is in close proximity to the Cape Cod Bay SMA. Finally, although the eastern edge of Survey Area partially overlaps with the western-most portion of the Great South Channel feeding BIA, SMA, and critical foraging habit, the relatively small size of the ensonified area relative to the foraging habitat available to North Atlantic right whales, it is unlikely that foraging opportunities and behavior would be adversely affected by survey operations.

The slow survey speed (approximately 4 knots) and required vessel strike avoidance measures will decrease risk of ship strike such that no ship strike is expected to occur during Vineyard Northeast's proposed activities. The 500-m shutdown zone for North Atlantic right whales is conservative (considering the distance to the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* boomer) is estimated to be 178 m) and thereby minimizes the potential for behavioral harassment of this species.

Again, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. The proposed behavioral harassment takes of North Atlantic right whale are not expected to exacerbate or compound upon the ongoing UME. The limited North Atlantic right whale behavioral harassment takes proposed for authorization are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. As stated previously, it is unlikely that North Atlantic right whale prey availability would be adversely affected given the relatively small size of the ensonified area during Vineyard Northeast's proposed survey activities. Accordingly, NMFS does not anticipate potential take of North Atlantic right whales that would result from Vineyard Northeast's proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted above, there are several active UMEs occurring in the vicinity of Vineyard Northeast's proposed Survey Area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 61,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2021). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021).

The required mitigation measures are expected to reduce the number and/or severity of proposed takes for all species listed in Table 5, including those with active UMEs, to the level of least practicable adverse impact. In particular, ramp-up procedures would provide animals in the vicinity of the survey vessel the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. As discussed previously, take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use. Implementation of the required mitigation would further reduce this

potential. Therefore, NMFS is not proposing any Level A harassment for authorization.

NMFS expects that takes would be in the form of short-term behavioral harassment by way of temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

Biologically Important Areas for Other Species

As previously discussed, impacts from the proposed project are expected to be localized to the specific area of activity and only during periods of time where Vineyard Northeast's acoustic sources are active. While areas of biological importance to foraging fin whales, sei whales, minke whales, and humpback whales exist within the proposed Survey Area, NMFS does not expect this proposed action to affect these areas or any species' ability to utilize prey resources within the BIAs, given the nature of the survey activity, and the combination of the mitigation and monitoring measures being required of Vineyard Northeast.

Several major haul-out sites exist for harbor seals within the Survey Area along the New Jersey coast (*e.g.,* Great Bay, Sandy Hook, and Barnegat Inlet), New York Coast (*e.g.,* Montauk Island), and Rhode Island coast (*e.g.,* Narragansett Bay), and for gray and harbor seals along the Massachusetts coast (*e.g.,* Cape Cod, Monomoy Island) (DiGiovanni and Sabrosky 2010). However, as hauled-out seals would be out of the water, no in-water effects are expected.

Preliminary Determinations

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

- No mortality or serious injury is anticipated or proposed to be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Any foraging interruptions are expected to be short term and unlikely to be cause significant impacts;
- Impacts on marine mammal habitat and species that serve as prey for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available;
- Take is anticipated to be by Level B behavioral harassment only, consisting of brief startling reactions and/or temporary avoidance of the Survey Area;
- Survey activities would occur in such a comparatively small portion of the BIA for North Atlantic right whale migration, including a small area of designated critical habitat, that any avoidance of the area due to survey activities would not affect migration. In addition, the mitigation measure to shut down at 500 m to minimize potential for Level B behavioral harassment would limit both the number and severity of take of the species.
- Similarly, due to the relatively small footprint of the survey activities in relation to the size of BIAs for North Atlantic right, humpback, fin, sei, and minke whale foraging, the survey activities would not affect foraging behavior of these species; and
- Proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize the intensity of potential impacts to marine mammals.

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

Small Numbers

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

NMFS proposes to authorize incidental take (by Level B harassment only) of 19 marine mammal species (with 20 managed stocks). The total amount of takes proposed for authorization relative to the best available population abundance is less than 8 percent for all stocks, less than 3 percent for 19 stocks, and less than 1 percent for 18 stocks (Table 5). Therefore, NMFS preliminarily finds that small numbers of marine mammals may be taken relative to the estimated overall population abundances for those stocks.

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

Unmitigable Adverse Impact Analysis and Determination

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

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, blue, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed

June 29, 2021; revised September 2021). NMFS GARFO concurred with this determination.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Vineyard Northeast authorizing take, by Level B harassment incidental to conducting marine site characterization surveys off the coast from Massachusetts to New Jersey from June 22, 2022, through June 21, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed site characterization surveys. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this proposed IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for Renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for Renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: May 17, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC052]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Fishing Industry Advisory Committee (FIAC), American Samoa Fishery Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP), Non-Commercial Fishing Advisory Committee (NCFAC) Meeting, Mariana Archipelago FEP—Guam AP, Mariana Archipelago FEP—Commonwealth of the Northern Mariana Islands (CNMI) AP, and the Hawaii Archipelago FEP AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between June 6 and June 10, 2022. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held by web conference via Webex. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The FIAC will meet on Monday, June 6, from 1 p.m. to 4 p.m., American Samoa Archipelago FEP AP will meet on Tuesday, June 7, 2022, from 6 p.m. to 8 p.m., the NCFAC will meet on Wednesday, June 8, 2022 from 1 p.m. to 3:30 p.m., the Mariana Archipelago FEP—Guam AP will meet on Thursday, June 9, 2022, from 6:30 p.m. to 8:30 p.m., the Mariana Archipelago FEP–CNMI AP will meet on Friday, June 10, 2022, from 9 a.m. to 11 a.m., and the Hawaii Archipelago FEP AP will meet on Friday, June 10, 2022, from 9 a.m. to 12 noon. All times listed are local island times except for the FIAC and NCFAC which is in Hawaii Standard Time.

Public Comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the FIAC Meeting

Monday, June 6, 2022, 1 p.m.–4 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Status Report on September 2021 FIAC Recommendations
3. 2023 US Territorial Bigeye Tuna (BET) Catch/Effort and Allocation Limit Specifications
4. Hawaii and American Samoa Small Boat Survey
5. NOAA Seafood Direct Marketing Project
6. US Military Notice of Hazardous Operations
7. Update on American Samoa Albacore Performance & Diversification
8. NMFS Appropriations
9. Permanent Advisory Committee to the Western and Central Pacific Fisheries Commission
10. Equity and Environmental Justice
    A. Western Pacific (WP) and Council Coordinating Committee (CCC) Report on EEJ in Fisheries Management
    B. NMFS Draft EEJ Strategy
11. Young Fishermen's Development Act
12. Outcomes from May 2022 CCC Meeting
13. Roundtable Update on Fishing/Market Issues/Impacts (billfish, transportation, etc.)

14. Other Issues
15. Public Comment
16. Discussion and Recommendations

Schedule and Agenda for the American Samoa Archipelago AP Meeting

Tuesday, June 7, 2022, 6 p.m.–8 p.m. (American Samoa Standard Time)

1. Welcome and Introductions
2. Review of Last AP Meeting and Recommendations
3. American Samoa (AS) Fishery Issues and Activities
   A. Review of Draft Bottomfish Biological Opinion
   B. 2023 US Territorial BET Catch/Effort Limit and Allocation Specification
   C. 2021 Annual Stock Assessment and Fishery Evaluation (SAFE) Reports
   D. Review of 2021 Bottomfish Management Unit Species (BMUS)
   E. Coronavirus Aid, Relief and Economic Security Act Update
4. Equity and Environmental Justice
   A. WP and CCC Report on EEJ in Fisheries Management
   B. NMFS Draft EEJ Strategy
5. 2022 Marine Fisheries Advisory Committee (MAFAC) Report
6. 2021 American Samoa Small-Boat Study
7. American Samoa Biosampling Program Update
8. 2022 AP Activities Plan
   A. Update on Sustainable Fisheries Fund (SFF) Projects
   B. Education and Outreach
9. Feedback From The Fleet
   A. AS Fishermen Observations
   B. AP Fishery Issues and Activities
10. Public Comment
11. Discussion and Recommendations
12. Other Business

Schedule and Agenda for the NCFAC

Wednesday, June 8, 2022, 1 p.m.–3:30 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Review of Late NCFAC Meeting and Recommendations
3. Council Issues
   A. Sector Allocation
   B. Proposed Northwestern Hawaiian Islands (NWHI) Fishing Regulations
   C. Marine Planning Discussion
   D. Forage Fish Act Discussion
4. Report of National Recreational Fishing Summit
5. Non-Commercial Data Collection
   A. Marine Recreational Information Program Regional Implementation Plan Update
   B. Non-Commercial Annual Report Update
   C. Discussion on Data Collection
6. Equity and Environmental Justice
   A. WP and CCC Report on EEJ in Fisheries Management
   B. NMFS Draft EEJ Strategy
7. Fishermen Observation
   A. Changes in the fisheries this year to date
   B. Changes in the ecosystem this year to date
8. Non-Commercial Fishing Activities, Issues, and Efforts
9. Public Comment
10. Discussion and Recommendations
11. Other Business

Schedule and Agenda for the Mariana Archipelago—Guam AP Meeting

Thursday, June 9, 2022, 6:30 p.m.–8:30 p.m. (Marianas Standard Time)

1. Welcome and Introductions
2. Review of Last AP Meeting and Recommendations
3. Guam Fishery Issues and Activities
   A. Review of Draft Bottomfish Biological Opinion
   B. 2023 US Territorial BET Catch/Effort Limit and Allocation Specification
   C. 2021 Annual SAFE Reports
   D. Review of 2021 BMUS
   E. Catchit Logit (CILI) Updates
4. Equity and Environmental Justice
   A. WP and CCC Report on EEJ in Fisheries Management
   B. NMFS Draft EEJ Strategy
5. 2022 MAFAC Report
6. 2022 Advisory Panel Activities Plan
7. Feedback From The Fleet
   A. Guam Fishermen Observations
   B. AP Fishery Issues and Activities
8. Public Comment
9. Discussion and Recommendations
10. Other Business

Schedule and Agenda for the Mariana Archipelago—CNMI AP Meeting

Friday, June 10, 2022, 9 a.m.–11 a.m. (Marianas Standard Time)

1. Welcome and Introductions
2. Review of Last AP Meeting and Recommendations
3. CNMI Fishery Issues and Activities
   A. Review of Draft Bottomfish Biological Opinion
   B. 2023 US Territorial BET Catch/Effort Limit and Allocation Specification
   C. 2021 Annual SAFE Reports
   D. CILI Updates
4. Equity and Environmental Justice
   A. WP and CCC Report on EEJ in Fisheries Management
   B. NMFS Draft EEJ Strategy
5. 2022 MAFAC Report
6. 2022 Advisory Panel Activities Plan
   A. AP Outreach and Education
7. Feedback From The Fleet
   A. CNMI Fishermen Observations
   B. AP Fishery Issues and Activities
8. Public Comment
9. Discussion and Recommendations
10. Other Business

Schedule and Agenda for the Hawaii Archipelago AP Meeting

Friday, June 10, 2022, 9 a.m.–12 noon (Hawaii Standard Time)

1. Welcome and Introductions
2. Review of Last AP Meeting and Recommendations
3. Council Issues
   A. Proposed NWHI Fishing Regulations
   B. Review of Draft Bottomfish Biological Opinion
   C. Green Turtle Management Update
   D. 2021 Annual SAFE Reports
4. Equity and Environmental Justice
   A. WP and CCC Report on EEJ in Fisheries Management
   B. NMFS Draft EEJ Strategy
5. 2022 MAFAC Report
6. 2021 Hawaii Small-Boat Study
7. AP Plan and Working Group Reports
   A. Smart Fish Aggregation Devices
   B. FishMaps
8. Feedback from the Fleet
   A. Hawaii Fishermen Observations
   B. AP Fishery Issues and Activities
9. Public Comment
10. Discussion and Recommendations
11. Other Business

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 17, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–10893 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC048]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council

including a joint session with the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Program (ISFMP) Policy Board.

DATES: The meetings will be held Tuesday, June 7 through Thursday, June 9, 2022. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting address: The meeting will be held at the Hyatt Place Long Island/East End (431 East Main Street, Riverhead, NY 11901); telephone: (631) 208–0002.

This meeting will be conducted in a hybrid format, with options for both in-person and webinar participation. Webinar registration details will be available on the Council's website at *https://www.mafmc.org/briefing/june-2022*.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Tuesday, June 7, 2022

Update on Northeast Regional Habitat Assessment Products

Aquaculture Update
- Review the draft MAFMC Aquaculture Policy and Aquaculture in the Mid-Atlantic Region Background Document
- Consider approval of MAFMC Aquaculture Policy

New Jersey Ocean Acidification Monitoring Newtork
- (Dr. Grace Saba, Rutgers University)

2023 Atlantic Surfclam and Ocean Quahog Specifications
- Review recommendations for 2023 specifications
- Recommend changes to 2023 specifications if necessary

Equity and Environmental Justice Strategy Presentation
- (Sharon Benjamin, NOAA Fisheries)

Summer Flounder Management Strategy Evaluation Update
- (Dr. Gavin Fay, UMass Dartmouth, and Dr. Lou Carr-Harris, NEFSC)
- Review of Summer Flounder Management Strategy Evaluation model development and outputs

Council Meeting With the ASMFC ISFMP Policy Board

Recreational Harvest Control Rule Framework/Addenda for Summer Flounder, Scup, Black Sea Bass, and Bluefish Final Action
- Review public comments
- Review SSC evaluation
- Review recommendations from Advisory Panel, FMAT/PDT, and Council staff
- Consider final action

Wednesday, June 8, 2022

Mackerel Rebuilding 2.0 Amendment Final Action
- Review RH/S cap and 2023–25 Mackerel specifications
- Recommend changes to 2023–25 Mackerel specifications if necessary
- Consider final action

2023 Longfin Squid Specifications
- Review recommendations for 2023 specifications
- Recommend changes to 2023 specifications if necessary

2023–25 Chub Mackerel Specifications
- Review recommendations from the SSC, Monitoring Committee, Advisory Panel, and Staff
- Adopt specifications for 2023–25

Unmanaged Commercial Landings Report
- Review annual report on landings of unmanaged species

NEFSC Shad and River Herring Update
- Review spatial revenue analyses from NEFSC related to River Herring and Shad bycatch

Atlantic Large Whale Take Reduction Plan Phase II
- Update on Phase II of the Atlantic Large Whale Take Reduction Plan and request for input

Atlantic Sturgeon Bycatch Draft Action Plan
- Update and request for input

Research Set-Aside Program Redevelopment
- Review Committee recommendations
- Consider Council action

Thursday, June 9, 2022

Business Session
- Committee Reports (SSC); Executive Director's Report; Organization Reports; and Liaison Reports

Other Business and General Public Comment

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: May 17, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–10891 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC051]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet June 6, 2022, through June 14, 2022. The meetings will be a hybrid conference.

DATES: The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the Auditorium on Monday, June 6, 2022, and continue through Wednesday, June 8, 2022. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Chum/Silver room on Tuesday, June 7, 2022, and continue through Friday, June 10, 2022. The Council will begin at 8 a.m. in the Auditorium on Thursday, June 9, 2022, and continue through Tuesday, June 14, 2022. All times listed are Alaska Time.

ADDRESSES: The meetings will be a hybrid conference. The in-person component of the meeting will be held at the Harrigan Centennial Hall, Sitka, AK 99835, or join the meeting online through the links at *https://www.npfmc.org/upcoming-council-meetings.*

Council address: North Pacific Fishery Management Council, 1007 W

3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via webconference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; email: *diana.evans@noaa.gov;* telephone: (907) 271–2809. For technical support, please contact our Council administrative staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, June 6, 2022, Through Wednesday, June 8, 2022

The SSC agenda will include the following issues:

(1) Central GOA (Gulf of Alaska) rockfish adjustments—Final Action
(2) BSAI (Bering Sea Aleutian Islands) Pacific cod small boat access—Initial Review
(3) BSAI Crab—(a) Aleutian Islands golden king crab ABC/OFL, SAFE (Stock Assessment and Fishery Evaluation) report, Crab Plan Team report
(4) Trawl EM (Electronic Monitoring) analysis—Initial Review
(5) Observer Program—(a) Annual Report for 2021—Review
(6) Salmon Reports—review (a) Salmon research (AFSC, ADFG), Chinook and chum stock status; (b) Chinook/chum genetics reports for BS, GOA; (c) Chinook AEQ (Adult equivalent) update and chum impact recommendations; (d) salmon excluder EFP (exempted fishing permit) final report

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2935* prior to the meeting, along with meeting materials.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer-review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Tuesday, June 7, 2022, Through Friday, June 10, 2022

The Advisory Panel agenda will include the following issues:

(1) BSAI Crab—(a) Aleutian Islands golden king crab ABC/OFL, SAFE report, Crab Plan Team report; (b) adopt alternatives for snow crab rebuilding plan analysis
(2) Central GOA rockfish adjustments—Final Action
(3) BSAI Pacific cod small boat access—Initial Review
(4) Trawl EM analysis—Initial Review, Trawl EM Committee report, Enforcement Committee report
(5) Observer Program—(a) Annual Report for 2021—Review, FMAC (Fishery Monitoring Advisory Committee) report, Enforcement Committee report; (b) PCFMAC (Partial Coverage Fishery Monitoring Advisory Committee) report on partial coverage cost efficiencies—Review
(6) Salmon reports—review (a) Salmon research (AFSC, ADFG), Chinook and chum stock status; (b) Chinook/chum genetics reports for BS, GOA; (c) Chinook AEQ update and chum impact recommendations
(7) IFQ (Individual fishing quota) Committee Report
(8) Staff Tasking

Thursday, June 9, 2022, Through Tuesday, June 14, 2022

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) B Reports (Executive Director, NMFS Management, NOAA GC, NOAA enforcement, ADF&G, USCG, USFWS, NPRB (North Pacific Research Board)
(2) Central GOA rockfish adjustments—Final Action
(3) BSAI Pacific cod small boat access—Initial Review
(4) BSAI Crab—(a) Aleutian Islands golden king crab ABC/OFL, SAFE report, Crab Plan Team report; (b) adopt alternatives for snow crab rebuilding plan analysis
(5) Trawl EM analysis—Initial Review, Trawl EM Committee report, Enforcement Committee report
(6) SCC report in full
(7) AP report in full
(8) Observer Program—(a) Annual Report for 2021—Review, FMAC (Fishery Monitoring Advisory Committee) report, Enforcement Committee report; (b) PCFMAC (Partial Coverage Fishery Monitoring Advisory Committee) report on partial coverage cost efficiencies—Review
(9) Salmon reports—review (a) Salmon research (AFSC, ADFG), Chinook and chum stock status; (b) Chinook/chum genetics reports for BS, GOA; (c) Chinook AEQ update and chum impact recommendations; (d) industry reports including pollock IPA reports, Sea Share, and salmon excluder EFP final report
(10) National Marine Sanctuary program update on St. Paul sanctuary nomination
(11) IFQ (Individual fishing quota) Committee Report
(12) Staff Tasking

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://www.npfmc.org/upcoming-council-meetings.* For technical support please contact our administrative staff, email: *npfmc.admin@noaa.gov.*

If you are attending the meeting in-person, please refer to the COVID avoidance protocols on our website, *https://www.npfmc.org/upcoming-council-meetings/.*

Public Comment

Public comment letters will be accepted and should be submitted electronically through the links at *https://www.npfmc.org/upcoming-council-meetings.* The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The written comment period is open from May 20, 2022, to June 3, 2022, and closes at 12 p.m. Alaska Time on Friday, June 3, 2022.

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

Dated: May 17, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–10892 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Florida Fishing and Boating Survey

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; correction.

SUMMARY: On May 6, 2022, the Department of Commerce, published a 60-day public comment period notice in the **Federal Register** with FR Document Number 2022–09819 (Pages 27134–27135) seeking public comments for an information collection entitled, ''Florida Fishing and Boating Survey.'' This

document is being modified with new information in the ABSTRACT and DATA sections, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this correction, contact Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

Abstract

This request is for a revision and extension of a currently approved information collection and is sponsored by NOAA's Southeast Fisheries Science Center (SEFSC).

The objective of the data collection effort under OMB Control Number 0648–0769 is to understand how Florida anglers respond to changes in trip costs and/or fishing regulations in the Gulf of Mexico and Atlantic Ocean. The population to be surveyed consists of those anglers who fish in the Gulf of Mexico or Atlantic Ocean from Florida for reef fish species. The sample will be drawn from the list of Florida anglers with the State Reef Fish Angler license designation and matched to the state of Florida's boat registration list. The sample is targeted to anglers who fish for reef species who fish from a boat given that most reef species occur offshore.

Data

Type of Review: Regular submission, revision and extension of a current information collection.

Estimated Number of Respondents: 2,000.

Estimated Total Annual Burden Hours: 100.

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–10918 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB747]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Coast Guard's Floating Dock Extension Project at Base Ketchikan, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the United States Coast Guard (USCG) for authorization to take marine mammals incidental to the floating dock extension construction project in Ketchikan, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than June 21, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Corcoran@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least

practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

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

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On March 9th, 2021, NMFS received a request from the USCG for an IHA to take marine mammals incidental to the construction of the floating dock extension at Base Ketchikan, Alaska. Following NMFS' review of the request, USCG provided additional information on July 22, 2021, and again on March 7, 2022. The application was deemed adequate and complete on the latter date. USCG's request is for take of ten species of marine mammals by Level B harassment and, for a subset of three species, by Level A harassment. Neither USCG nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The USCG requests an Incidental Harassment Authorization (IHA) for activities associated with the construction of the Floating Dock Extension Project in the Tongass Narrows at Coast Guard Base Ketchikan (Base Ketchikan) in Ketchikan, Alaska. The proposed project will cover a 12-month window during which approximately 30 days of pile-installation activity will occur. The project involves the installation of ten, 24-inch steel guide piles for a third floating dock section. Three different installation methods will be used including the Down-the-Hole (DTH) system to create rock sockets for new piles, vibratory installation of piles, and final pile proofing with a limited use of impact pile driving. Sounds resulting from pile installation and drilling may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment.

Dates and Duration

The proposed IHA would be effective from July 1, 2022 through June 30, 2023. The total expected work duration would be 15 construction days (5 days of DTH, 5 days of vibratory pile installation, and 5 days of impact pile driving) with an additional 15 day buffer to account for days where work is paused (*e.g.,* inclement weather), for a total work window of 30 days. The USCG plans to conduct all work during daylight hours.

Specific Geographic Region

The proposed activity will occur in the Tongass Narrows at Base Ketchikan in Ketchikan, Alaska (Figure 1). Base Ketchikan is located on the southwestern end of Revillagigedo Island, approximately 235 miles south of Juneau and 90 miles north of Prince Rupert, British Columbia. The Base is about 1 mile south of downtown Ketchikan, on the industrial limits of the city, and on the East Channel of the Tongass Narrows. The waters of the Tongass Narrows are heavily used by the public including cruise ships, commercial fishing vessels, and private craft and sea planes, which contribute significantly to the ambient acoustic environment in the Narrows.

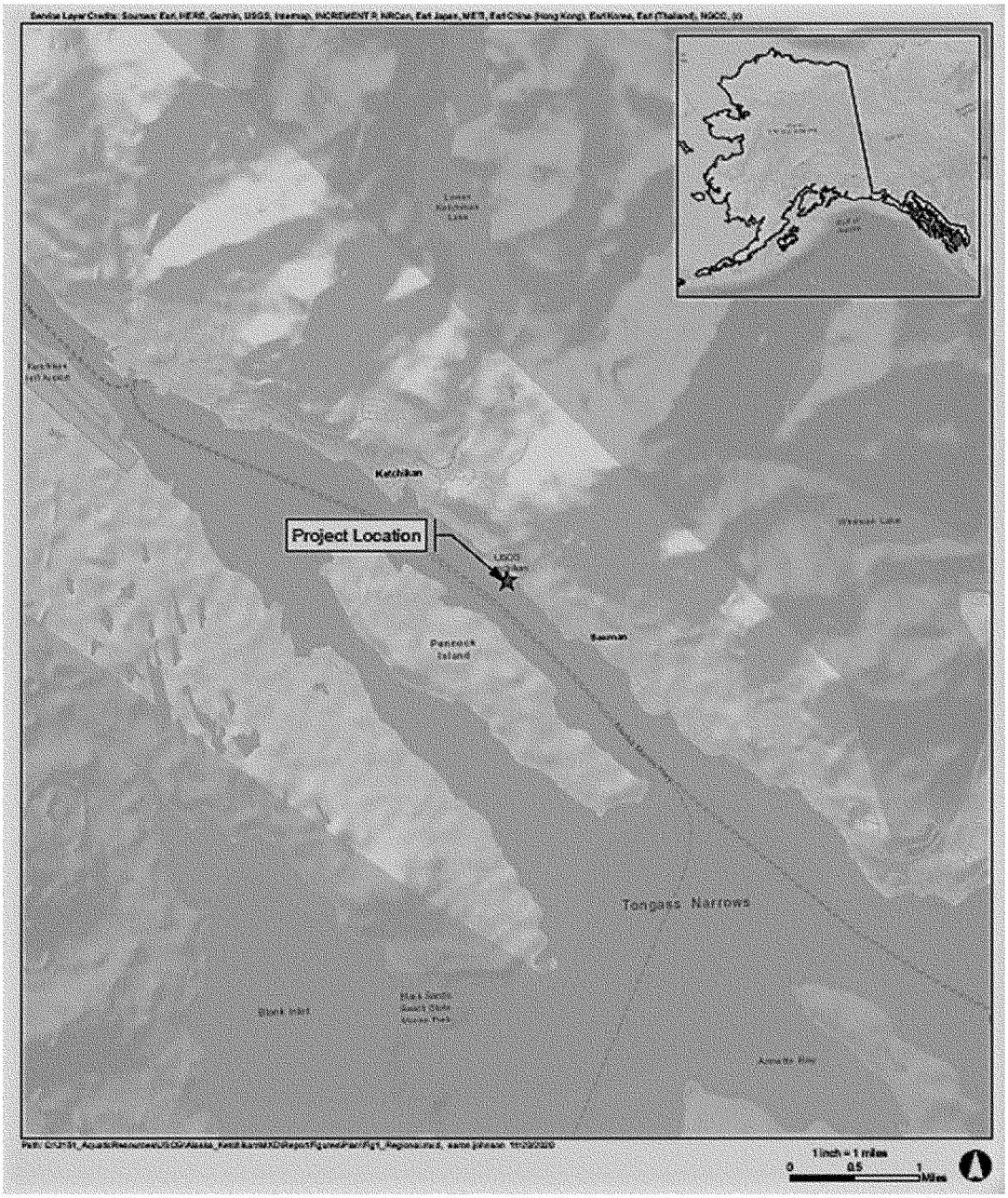

Figure 1. Map illustrating the proposed project location at USCG Base Ketchikan.

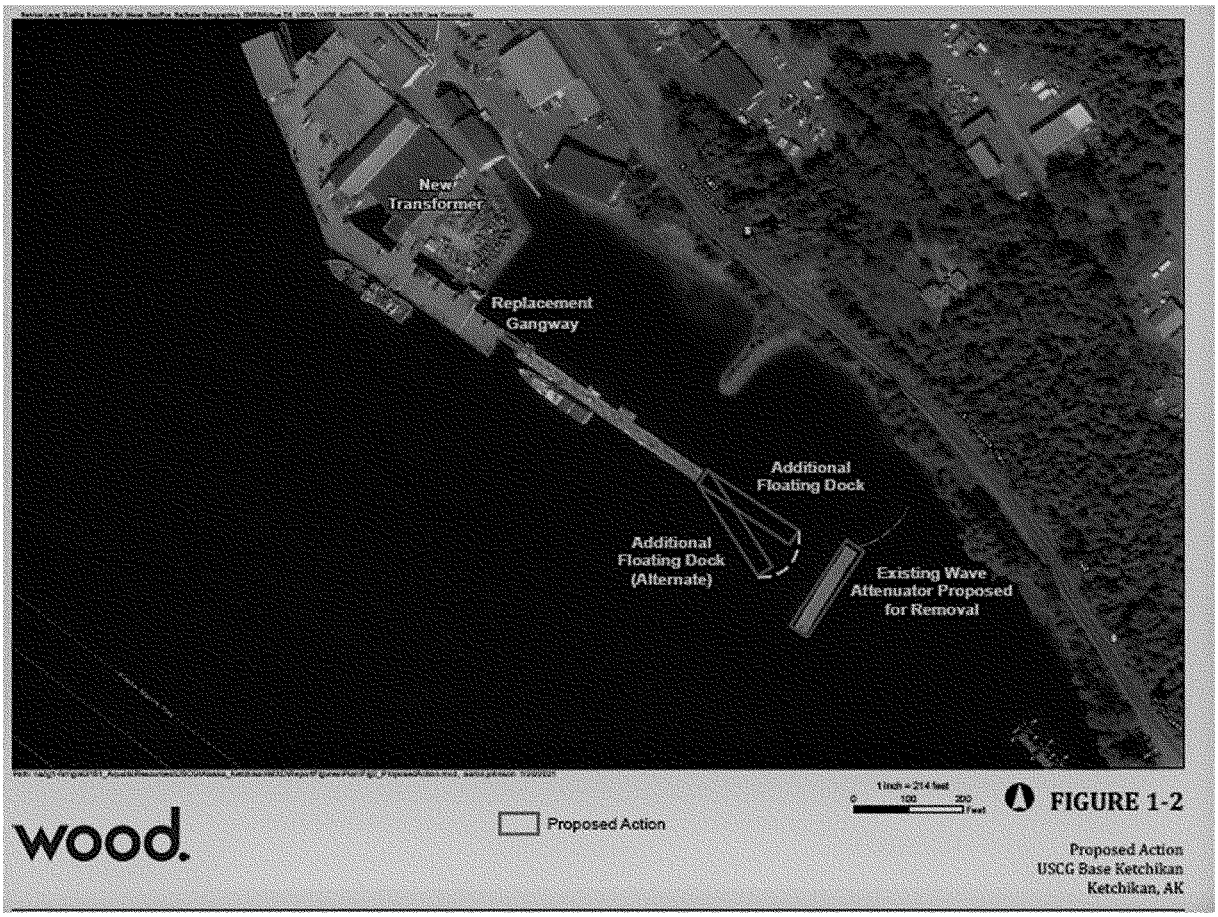

Figure 2. Map of USCG Base Ketchikan and proposed floating dock extension components and actions.

Detailed Description of Specific Activity

USCG plans to install ten steel guide piles for a third floating dock section at Base Ketchikan to support the homeporting of a third Fast Response Cutter (FRC) (Figure 2). The piles would be installed over a period of 30 days, allotting five construction days to each of the three methods of installation, in addition to 15 additional buffer days to account for unforeseen interruptions (*e.g.,* inclement weather). These methods include DTH, vibratory pile installation and impact driving pile proofing (see Table 1).

The use of DTH will depend on the overburden thickness and bedrock bottom conditions beneath the proposed floating dock extension (see Figure 2). If needed, the DTH system will be used to pre-drill sockets for each guide pile that will be installed. Neighboring projects in the Tongass Narrows have reported ten feet of overburden requiring 20-foot deep sockets to be drilled for pile installation. USCG expects conditions to be similar at the proposed project site. Once rock sockets are drilled, 24-inch steel piles would be inserted using a vibratory hammer. An impact pile driver would then be used to proof the newly installed piles which would then be stabilized using concrete in the pile socket. Floating stick bar booms will be deployed around the active work area to provide a complete barrier to floating debris.

Additional actions occurring under the proposed action that are not anticipated to generate in-water noise resulting in marine mammal harassment include the removal of the existing wave attenuator southeast of the proposed floating dock extension (Figure 2). Removal of the existing wave attenuator will include removal of stockless anchors vertically off the seafloor and floating the concrete wave attenuator to a recycling/disposal location. Once the piles are installed, the floating dock would be placed around the 10 guide piles followed by ancillary infrastructure (*e.g.,* electricity, water, sewage, communications) to support the docked cutters. NMFS does not expect, that these ancillary activities will harm or harass marine mammals and no incidental takes are expected as a result of these activities. Therefore, these activities are not discussed further in this document.

TABLE 1—PILE INSTALLATION METHODS AND DURATIONS

Installation method	Duration/impacts per pile	Piles driven/day	Estimated days
DTH	60 minutes	2	5.
Vibratory pile installation	6 minutes	2	5.
Impact driving pile proofing	5 impacts	2	5 (10 strikes).
Total			15 (30) [1]

[1] The total expected work duration is 15 days with an additional 15 day buffer to account for days where work is paused (*e.g.,* inclement weather) for a total work window of 30 days.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

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

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2021 Draft SARs (*e.g.,* Muto et al., 2021). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2021 draft SARs (Muto et al., 2021). 2020 SARs (Muto et al., 2021) and draft 2021 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific Stock.	-,-,N	26,960 (0.05, 25,849, 2016)	801	131
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeanglinae*	Central North Pacific Stock.	-,-,Y	10,103 (0.3, 7,890, 2006)	83	26
Minke whale	*Balaenoptera acutorostrata*	Alaska Stock	-,-,N	N/A (N/A, N/A, N/A) [4]	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orca orcinus*	Alaska Resident	-,-,N	2,347 (N/A, 2347, 2012)	24	1
		Northern Resident	-,-,N	302 (N/A, 302, 2018)	2.2	0.2
		West Coast Transient	-,-,N	349 (N/A, 349, 2018)	3.5	0.4
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	North Pacific Stock	-,-,N	26,880 (N/A, N/A,1990)	UND	0
Family Phocoenidae (porpoises):						
Dall's porpoise [6]	*Phocoenoides dalli*	Alaska Stock	-,-,N	15,432 (0.097,13,110,2015)	131	37
Harbor porpoise [7]	*Phocoena phocoena*	Southeast Alaska Stock	-,-,Y	1302 (0.21, 1057, 2019)	11	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern Stock	-,-,N	43,201 (N/A, 43,201, 2017)	2,592	112

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Family Phocidae (earless seals):						
Harbor seal	*Phoca vituline richardii*	Clarence Strait Stock	-,-,N	27,659 (N/A, 24,854, 2015)	746	40
Northern Elephant seal	*Mirounga angustirostris*	California Breeding Stock	-,-,N	187,386 (N/A, 85,369, 2013)	5,122	5.3

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

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

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

[4] No population estimates have been made for the number of minke whales in the entire North Pacific. Some information is available on the numbers of minke whales on some areas of Alaska, but in the 2009, 2013 and 2015 offshore surveys, so few minke whales were seen during the surveys that a population estimate for the species in this area could not be determined (Rone *et al.,* 2017). Therefore, this information is N/A (not available).

[6] Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated Nmin and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

[7] Abundance estimates assumed that detection probability on the trackline was perfect; work is underway on a corrected estimate. Additionally, preliminary data results based on eDNA analysis show genetic differentiation between harbor porpoise in the northern and southern regions on the inland waters of southeast Alaska. Geographic delineation is not yet known. Data to evaluate population structure for harbor porpoise in Southeast Alaska have been collected and are currently being analyzed. Should the analysis identify different population structure than is currently reflected in the Alaska SARs, NMFS will consider how to best revise stock designations in the future.

As indicated above, all ten species (with twelve managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. Fin whale could potentially occur in the area, however there are no known sightings nearby and USCG would shut down activity if the whale enters the harassment zones. Therefore, given the former and the rarity of the species, take is not expected to occur and they are not discussed further.

In addition, the northern sea otter (*Enhydra lutris kenyoni)* may be found in the Tongass Narrows. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Steller Sea Lion

Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Steller sea lions were subsequently partitioned into the western and eastern Distinct Population Segments (DPSs; western and eastern stocks) in 1997 (62 FR 24345; May 5, 1997). The eastern DPS remained classified as threatened until it was delisted in November 2013. The current minimum abundance estimate for the eastern DPS of Steller sea lions is 43,201 individuals (Muto *et al.,* 2021). The western DPS (those individuals west of the 144°W longitude or Cape Suckling, Alaska) was upgraded to endangered status following separation of the DPSs, and it remains endangered today. There is regular movement of both DPSs across this 144°W longitude boundary (Jemison *et al.,* 2013), however, due to the distance from this DPS boundary, it is likely that only eastern DPS Steller sea lions are present in the project area. Therefore, animals potentially affected by the project are assumed to be part of the eastern DPS. Sea lions from the western DPS, are not likely to be affected by the proposed activity and are not discussed further.

There are several mapped and regularly monitored long-term Steller sea lion haulouts surrounding Ketchikan, such as West Rocks (36 mi/58 km) or Nose point (37 mi/60 km), but none are known to occur within Tongass Narrows (Fritz *et al.,* 2015). The nearest known Steller sea lion haulout is located approximately 21 mi (34 km) west/northwest of Ketchikan on Grindall Island. None of these haulouts would be affected by the proposed activity. Summer counts of adult and juvenile sea lions at on Grindall Island from 2000 through 2015 have averaged approximately 191 individuals, with a range from 6 in 2009 to 378 in 2008. Only two winter surveys of this haulout have occurred. No sea lion pups have been observed at this haulout during surveys. Although this is a limited sample, it suggests that abundance may be consistent year-round at the Grindall Island haulout.

No systematic studies of sea lion abundance or distribution have occurred in Tongass Narrows. Anecdotal reports suggest that Steller sea lions may be found in Tongass Narrows year-round, with an increase in abundance from March to early May during the herring spawning season, and another increase in late summer associated with salmon runs. Overall sea lion presence in Tongass Narrows tends to be lower in summer than in winter (FHWA, 2017). During summer, Steller sea lions may aggregate outside the project area, at rookery and haulout sites. Monitoring during construction of the Ketchikan Ferry Terminal in summer (July 16 through August 17, 2016) did not record any Steller sea lions (ADOT&PF, 2015); however, monitoring during construction of the Ward Cove Dock, approximately 11 km northwest of the proposed project site, recorded 181 individual sea lions between February and September 2020 (Power Systems & Supplies of Alaska, 2020). Most sightings occurred in February (45 sightings of 88 sea lions) and March (34 sightings of 45 sea lions); the fewest number of sightings were observed in May (1 sighting of 1 sea lion) (Power Systems & Supplies of Alaska, 2020).

Sea lions are known to transit through Tongass Narrows while pursing prey. Steller sea lions are known to follow fishing vessels, and may congregate in small numbers at seafood processing facilities and hatcheries or at the mouths of rivers and creeks containing hatcheries, where large numbers of salmon congregate in late summer. Three seafood processing facilities are located east of the proposed berth location on Revillagigedo Island, and two salmon hatcheries operated by the Alaska Department of Fish & Game (ADF&G) are located east of the project area. Steller sea lions may aggregate near the mouth of Ketchikan Creek, where a hatchery upstream supports a summer salmon run. The Creek mouth

is more than 4 km (2.5 mi) form both ferry berth sites, and is positioned behind the cruise ship terminal and within the small boat harbor of Ketchikan. In addition to these locations, anecdotal information from a local kayaking company suggests that there are Steller sea lions present at Gravina Point, near the southwest entrance to Tongass Narrows, about 3 mi (~5 km) southwest of the project site.

A total of 181 Steller sea lions were sighted on 44 separate days during all months of the Ward Cove Cruise Ship Dock construction project (February–September, 2020) (Power Systems and Supplies of Alaska, 2020). Most sightings occurred in February and March and the fewest sightings were in May. Sightings were of single individuals, pairs, and herds of up to 10 individuals. They were identified as traveling, foraging, swimming, chuffing, milling, looking, sinking, spyhopping, and playing.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Alaska. They haul out on rocks, reefs, beaches, and drifting glacial ice. They are opportunistic feeders and often adjust their distribution to take advantage of locally and seasonally abundant prey (Womble *et al.,* 2009, Allen and Angliss, 2015).

Harbor seals occurring in the project area belong to the Clarence Strait stock. Distribution of the Clarence Strait stock ranges from the east coast of Prince of Wales Island from Cape Chacon north through Clarence Strait to Point Baker and along the east coast of Mitkof and Kupreanof Islands north to Bay Point, including Ernest Sound, Behm Canal, and Pearse Canal (Muto *et al.,* 2021). In the project area, they tend to be more abundant during spring, summer and fall months when salmon are present in Ward Creek. Anecdotal evidence indicates that harbor seals typically occur in groups of 1–3 animals in Ward Cove with a few sightings per day (Spokely, 2019). They were not observed in Tongass Narrows during a combined 63.5 hours of marine mammal monitoring that took place in 2001 and 2016 (OSSA, 2001, Turnagain, 2016). There are no known harbor seal haulouts within the project area. According to the list of harbor seal haulout locations, the closest listed haulouts are located off the tip of Gravina Island, approximately 8 km (5 mi) northwest of Ward Cove (AFSC, 2018), however none overlap with the proposed project area.

Killer Whale

Killer whales have been observed in all the world's oceans, but the highest densities occur in colder and more productive waters found at high latitudes (NMFS, 2016). Killer whales occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (NMFS, 2016).

Based on data regarding association patterns, acoustics, movements, and genetic differences, eight killer whale stocks are now recognized within the Pacific U.S. Exclusive Economic Zone (U.S. EEZ). This proposed IHA considers only the Eastern North Pacific Alaska Resident stock (Alaska Resident stock), the Eastern North Pacific Northern Resident stock (Northern Resident Stock), and the West Coast Transient stock, as all other stocks do not overlap with the proposed project area (Muto *et al.,* 2021).

There are three distinct ecotypes, or forms, of killer whales recognized: Resident, Transient, and Offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Surveys between 1991 and 2007 encountered resident killer whales during all seasons throughout Southeast Alaska. Both residents and transients were common in a variety of habitats and all major waterways, including protected bays and inlets. There does not appear to be strong seasonal variation in abundance or distributed of killer whales, but there was substantial variability between years (Dahlheim *et al.,* 2009). Spatial distribution has been shown to vary among the different ecotypes, with resident and, to a lesser extent, transient killer whales more commonly observed along the continental shelf, and offshore killer whales more commonly observed in pelagic waters (Rice *et al.,* 2021).

No systematic studies of killer whales have been conducted in or around Tongass Narrows. Killer whales have been observed in Tongass Narrows year-round and are most common during the summer Chinook salmon run (May–July). During the Chinook salmon run, Ketchikan residents have reported pods of up to 20–30 whales (84 FR 36891; July 30, 2019). Typical pod sizes observed within the project vicinity range from 1 to 10 animals and the frequency of killer whales passing through the action area is estimated to be once per month (Frietag, 2017). Anecdotal reports suggest that large pods of killer whales (as many as 80 individuals, but generally between 25 and 40 individuals) are not uncommon in May, June, and July when the king salmon are running. During the rest of the year, killer whales occur irregularly in pods of 6 to 12 or more individuals.

Transient killer whales are often found in long-term stable social units (pods) of 1 to 16 whales. Average pod sizes in Southeast Alaska were 6.0 in spring, 5.0 in summer and 3.9 in fall. Pod sizes of transient whales are generally smaller than those of resident social groups. Resident killer whales occur in larger pods, ranging from 7 to 70 whales that are seen in association with one another more than 50 percent of the time (Dahlheim *et al.,* 2009).

Although killer whales may occur in large numbers, they generally form large pods and would incur fewer work stoppages than their numbers suggest since stoppages correlate more with the number of pods than the number of individuals. Killer whales tend to transit through Tongass Narrows, and do not linger in the project area.

Marine mammal observations in Tongass Narrows during 2020 and 2021 support an estimate of approximately one group of killer whales a month in the project area. During 7 months of monitoring (October 2020–February 2021; May–June 2021), there were five killer whale sightings in 4 months (November, February, May, and June) totaling 22 animals and sightings occurred on 5 out of 88 days of monitoring (DOT&PF, 2020, 2021a, 2021b, 2021c, 2021d). Pod sizes ranged from two to eight animals. During the COK's monitoring for the Rock Pinnacle Removal project in December 2019 and January 2020, no killer whales were observed. Over eight months of monitoring at the Ward Cove Cruise Ship Dock in occurred in 2020, and killer whales were only observed on two days in March (Power Systems and Supplies of Alaska, 2020). These observations included a sighting of one pod of two killer whales and a second pod of five individuals travelling through the project area.

Pacific White-Sided Dolphin

Pacific white-sided dolphins are a pelagic species inhabiting temperate waters of the North Pacific Ocean and along the coasts of California, Oregon, Washington, and Alaska (Muto *et al.,* 2021). Despite their distribution mostly in deep, offshore waters, they may also be found over the continental shelf and near shore waters, including inland waters of Southeast Alaska (Ferrero and Walker, 1996). They are managed as two distinct stocks: The California/Oregon/Washington stock, and the North Pacific stock (north of 45 N, including Alaska). The North Pacific stock ranges from

Canada into Alaska, and is thus the only stock that is found within the project area (Muto *et al.,* 2021).

Pacific white-sided dolphins prey on squid and small schooling fish such as capelin, sardines, and herring (Morton, 2006). They are known to work in groups to herd schools of fish and can dive underwater for up to 6 minutes to feed (Morton, 2006). Group sizes have been reported to range from 40 to over 1,000 animals, but groups of between 10 and 100 individuals occur most commonly (Stacey and Baird, 1991; NMFS no date). Seasonal movements of Pacific white-sided dolphins are not well understood, but there is evidence of both north-south seasonal movement (Leatherwood *et al.,* 1984) and inshore-offshore seasonal movement (Stacey and Baird, 1991).

Scientific studies and data are lacking relative to the presence or abundance of Pacific white-sided dolphins in or near Tongass Narrows. Although they generally prefer deeper and more-offshore waters, anecdotal reports suggest that Pacific white-sided dolphins have previously been observed in Tongass Narrows, although they have not been observed entering Tongass Narrows or nearby inter-island waterways in 15–20 years.

Pacific white-sided dolphins are rare in the inside passageways of Southeast Alaska. Most observations occur off the outer coast or in inland waterways near entrances to the open ocean. According to Muto *et al.,* (2018), aerial surveys in 1997 sighted one group of 164 Pacific white-sided dolphins in Dixon entrance to the south of Tongass Narrows. Surveys in April and May from 1991 to 1993 identified Pacific white-sided dolphins in Revillagigedo Channel, Behm Canal, and Clarence Strait (Dahlheim and Towell 1994). There areas are contiguous within the open ocean waters of the Dixon Entrance. This observational data, combined with anecdotal information, indicates there is a rare, however, slight potential for Pacific white-sided dolphins to occur in the project area.

During marine mammal monitoring of the Tongass Narrows in 2020 and 2021, no Pacific white-sided dolphins were observed on 88 days of observations across 7 months (October 2020–February 2021; May–June 2021), which supports anecdotal evidence that sightings of this species are rare (DOT&PF, 2020, 2021a, 2021b, 2021c, 2021d). There were also no sightings of Pacific white-sided dolphins during the COK Rock Pinnacle Blasting Project during monitoring surveys conducted in December 2019 and January 2020 (Sitkiewicz, 2020) or during monitoring surveys conducted between February-September 2020 as part of the Ward Cove Cruise Ship Dock project (Power Systems and Supplies of Alaska, 2020).

Dall's Porpoise

Dall's porpoises are found throughout the North Pacific, from southern Japan to southern California north to the Bering Sea. All Dall's porpoises in Alaska are members of the Alaska stock. This species can be found in offshore, inshore, and nearshore habitats.

Jefferson *et al.,* (2019) presents historical survey data showing few sightings in the Ketchikan area. The mean group size in Southeast Alaska is estimated at approximately three individuals (Dahlheim *et al.,* 2009, Jefferson *et al.,* 2019), although Freitag (2017, as cited in 83 FR 37473) suggested group sizes near Ketchikan range from 10 to 15 individuals. Anecdotal reports suggest that Dall's porpoises are found northwest of Ketchikan near the Guard Islands, where waters are deeper, as well as in deeper waters southeast of Tongass Narrows. This species has a tendency to bow-ride with vessels and may occur in the action area incidentally a few times per year. In March and April 2020, 8 individuals were identified across two sighting events during the Ward Cove Cruise Ship Dock Project (Power Systems and Supplies of Alaska, 2020). No sightings were observed from December 2019–January 2020 during the COK Rock Pinnacle Blasting Project (Sitkiewics, 2020).

Harbor Porpoise

In the eastern North Pacific Ocean, the harbor porpoise ranges from Point Barrow, along the Alaska coast, and down the west coast of North America to Point Conception, California. The Southeast Alaska stock ranges from Cape Suckling to the Canadian border (Muto *et al.,* 2021). Harbor porpoises frequent primarily coastal waters in Southeast Alaska (Dahlheim *et al.,* 2009) and occur most frequently in waters less than 100 m (328 ft) deep (Dahlhleim *et al.,* 2015). They are not attracted to areas with elevated levels of vessel activity and noise such as Tongass Narrows.

Studies of harbor porpoises reported no evidence of seasonal changes in distribution for the inland waters of Southeast Alaska (Dahlheim *et al.,* 2015). Ketchikan area densities are expected to be low. This is supported by anecdotal estimates. There were no sightings of harbor porpoises recorded during the December 2019–January 2020 COK Rock Pinnacle Blasting Project (Sitkiewics, 2020). However, 15 individual harbor porpoises were sighted across three separate sighting events in March and April 2020 during the Ward Cove Cruise Ship Dock Project (Power Systems and Supplies of Alaska, 2020). Therefore, harbor porpoises are expected to be present in the action area only a few times per year.

Elephant Seals

Northern elephant seals breed and give birth in California and Baja California, primarily on offshore islands (Stewart *et al.,* 1994). Spatial segregation in foraging areas between males and females is evident from satellite tag data (Le Beouf *et al.,* 2000). Males migrate to the Gulf of Alaska and western Aleutian Islands along the continental shelf to feed on benthic prey, while females migrate to pelagic areas in the Gulf of Alaska and the central North Pacific to feed on pelagic prey (Le Beouf *et al.,* 2000). Elephant seals spend a majority of their time at sea (average of 74.7 days during post breeding migration and an average of 218.5 days during the post-molting migration) (Robinson *et al.,* 2012). Although northern elephant seals are known to visit the Gulf of Alaska to feed, they are rarely found on the beaches of Alaska. However, recent anecdotal evidence suggests that their range is expanding northward, and one elephant seal has repeatedly been spotted within Ketchikan in and around local docks (ASE, 2022).

Humpback Whale

The humpback whale is found worldwide in all oceans. Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 DPSs with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. Humpback whales found in the project area are predominantly members of the Hawaii DPS, which is not listed under the ESA. However, based on a comprehensive photo-identification study, members of the Mexico DPS, which is listed as threatened, have a small potential to occur in Southeast Alaska as well. Members of different DPSs are known to intermix on feeding grounds; therefore, all waters off the coast of Alaska should be considered to have ESA-listed humpback whales. Approximately 1 percent of all humpback whales in Southeast Alaska and northern British Columbia are members of the listed Mexico DPS, while all others are members of the non-listed Hawaii DPS (Wade *et al.,* 2021). Therefore, in consultation with the Alaska Regional Office, NMFS believes

that the listed DPS of humpback whales is not likely to be encountered near the project area and, if perchance they are, required mitigation will be required of USCG to avoid take of the ESA listed DPS of humpback whales.

The DPSs of humpback whales that were identified through the ESA listing process do not equate to the existing MMPA stocks. The stock delineations of humpback whales under the MMPA are currently under review. Until this review is complete, NMFS considers humpback whales in Southeast Alaska to be part of the Central North Pacific stock, with a status of endangered under the ESA and designations of strategic and depleted under the MMPA (Muto *et al.,* 2021).

Humpback whales experienced large population declines due to commercial whaling operations in the early 20th century. Barlow (2003) estimated the population of humpback whales at approximately 1,200 animals in 1966. The population in the North Pacific grew between 6,000 and 8,000 by the mid-1990s. Current threats to humpback whales include vessel strikes, spills, climate change, and commercial fishing operations (Muto *et al.,* 2021).

Humpback whales are found throughout Southeast Alaska in a variety of marine environments, including open-ocean, near-shore waters, and areas within strong tidal currents (Dahlheim *et al.,* 2009). Most humpback whales are migratory and spend winters in the breeding grounds off either Hawaii or Mexico. Humpback whales generally arrive in Southeast Alaska in March and return to their wintering grounds in November. Some humpback whales depart late or arrive early to feeding grounds, and therefore the species occurs in the Southeast Alaska region year-round (Straley, 1990, Straley *et al.,* 2018). Across the region, there have been no recent estimates of humpback whale density.

No systematic studies have documented humpback whale abundance near Ketchikan. Anecdotal information suggests that this species is present in low numbers year-round in Tongass Narrows, with the highest abundance during summer and fall. Anecdotal reports suggest that humpback whales are seen only once or twice per month, while more recently it has been suggested that the occurrence is more regular, such as once per week on average, and more seasonal. Humpbacks observed in Tongass Narrows are generally alone or in groups of one to three individuals. In August 2017, a group of 6 individuals was observed passing through Tongass Narrows several times per day, for several days in a row.

The City of Ketchikan (COK) Rock Pinnacle project, which was located approximately 2.25 kilometers (km) north of USCG's proposed project site, reported one humpback whale sighting of one individual during the project (December 2019 through January 2020). During the Ward Cove Cruise Ship Dock Construction, located approximately 11 km northwest of the proposed project site, 28 sightings of humpbacks were made on eighteen days of in water work that occurred between February and September 2020, with at least one humpback being recorded every month. A total of 42 individuals were recorded and group sizes ranged from 1 to 6 (Power Systems & Supplies of Alaska, 2020). Humpback whales were sighted on 17 days out of 88 days of monitoring in Tongass Narrows in 2020 and 2021 (DOT&PF 2020, 2021a, 2021b, 2021c, 2021d). There were no sightings in January or February, but humpback whales were observed each month from October to December 2020 and May to June 2021. During November 2020, a single known individual (by fluke pattern) was observed repeatedly, accounting for 14 of the 26 sighting events that month (DOT&PF, 2020). During monitoring, humpback whales were observed on average once a week.

Southeast Alaska is considered an important area for feeding humpback whales between March and May (Ellison *et al.,* 2012), though not currently designated as critical habitat (86 FR 21082; April 21, 2021). In Alaska, humpback whales filter feed on tiny crustaceans, plankton, and small fish such as walleye Pollock, Pacific sand lance, herring, eulachon (*Thaleichthys pacificus*), and capelin (Witteveen *et al.,* 2012).

Minke Whale

Minke whales are found throughout the northern hemisphere in polar, temperate, and tropical waters. The population status of minke whales is considered stable throughout most of their range. Historically, commercial whaling reduced the population size of this species, but given their small size, they were never a primary target of whaling and did not experience the severe population declines as did larger cetaceans.

Minke whales are found in all Alaska waters. Minke whales in Southeast Alaska are part of the Alaska stock (Muto *et al.,* 2021). Research in Southeast Alaska have consistently identified individuals throughout inland waters in low numbers (Dahlheim *et al.,* 2009). All sightings were of single minke whales, except for a single sighting of multiple minke whales. Surveys took place in spring, summer, and fall, and minke whales were present in low numbers in all seasons and years. No information appears to be available on the winter occurrence of minke whales in Southeast Alaska.

There are no known occurrences of minke whales within the project area. Since their ranges extend into the project area and they have been observed in southeast Alaska, including in Clarence Strait (Dahlheim *et al.,* 2009), it is possible the species could occur near the project area. No minke whales were reported during the COK Rock Pinnacle Blasting Project (Sitkiewicz, 2020). During marine mammal monitoring of Tongass Narrows in 2020 and 2021, there were no minke whales observed over 88 days of observations across 7 months (October 2020–February 2021; May–June 2021) (DOT&PF 2020, 2021a, 2021b, 2021c, 2021d).

In Alaska, the minke whale diet consists primarily of euphausiids and walleye Pollock. Minke whales are generally found in shallow, coastal waters within 200 m of shore (Zerbini *et al.,* 2006) and are almost always solitary or in small groups of 2 to 3. In Alaska, seasonal movements are associated with feeding areas that are generally located at the edge of the pack ice (NMFS, 2014).

Gray Whale

Gray whales are distributed throughout the North Pacific Ocean and are found primarily in shallow coastal waters (Muto *et al.,* 2021). Gray whales in the Eastern North Pacific stock range from the southern Gulf of California, Mexico to the arctic waters of the Bering and Chukchi Seas. Gray whales are generally solitary creatures and travel together alone or in small groups.

Gray whales are rare in the action area and unlikely to occur in Tongass Narrows. They were not observed during the Dahlheim *et al.,* (2009) surveys of Alaska's inland waters with surveys conducted in the spring, summer and fall months. No gray whales were reported during COK Rock Pinnacle Blasting Project (Sitkiewicz, 2020) or Ward Cove (Power Systems & Supplies of Alaska, 2020). However, a gray whale could migrate through or near the project area during November especially.

There is an ongoing Unusual Mortality Event (UME) involving gray whales on the Pacific Coast (*https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2021-gray-*

whale-unusual-mortality-event-along-west-coast-and). Almost half of the standings in the United States have been in Alaska. A definitive cause has not been found for the UME but many of the animals show signs of emaciation.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2,007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Acoustic effects on marine mammals during the specified activity can occur from impact pile driving, vibratory driving and DTH. The effects of underwater noise from USCG's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the action area.

Description of Sound Source

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, impact and vibratory pile driving, and drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018a). Non-impulsive sounds (*e.g.,* aircraft, machinery operations

such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Three types of hammers would be used on this project: Impact, vibratory, and DTH. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). Rock socketing involves using DTH equipment to create a hole in the bedrock inside of which the pile is placed to give it lateral and longitudinal strength. The sounds produced by the DTH method contain both a continuous non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and non-impulsive sound source types simultaneously.

The likely or possible impacts of USCG's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving or drilling is the primary means by which marine mammals may be harassed from the USCG's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving or drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving or drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in decibels (dB). A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling

through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles for this project requires a combination of drilling, impact pile driving and vibratory pile driving. For this project, these activities would not occur at the same time and there would be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals

(*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul-out regularly on man-made objects we believe that incidents of take resulting solely from airborne sound are unlikely due to the sheltered proximity between the proposed project area and these haulout sites (over 20 miles (32.19 km)). There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The USCG's construction activities could have localized, temporary impacts on marine mammal habitat and their pretty by increasing in-water sound pressure levels and slightly decreasing water quality. However, since the focus of the proposed action is pile driving and drilling, no net habitat loss is expect as the floating dock will be a small extension of the current dock, replacing the location of the existing wave attenuator (see Figure 2). Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During DTH, impact and vibratory pile driving, elevated levels of underwater noise would ensonify the project area where both fish and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6 meter) radius around the pile (Everitt *et al.,* 1980). The sediments of the project site will settle out rapidly when disturbed. Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Local strong currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except for the actual footprint of the floating dock extension. The total seafloor area likely impacted by the project is relatively small compared to the available habitat in Southeast Alaska and does not include any Biologically Important Areas or other habitat of known importance. The area is highly influenced by anthropogenic activities. Additionally, the total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impact area provides marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, etc.). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator

avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Popper *et al.,* 2015).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish in the project area. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 ft (3 m) or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates, any effects on forage fish are expected to be minor or negligible. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in Tongass Narrows are routinely exposed to substantial levels of suspended sediment from natural and anthropogenic sources.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

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

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and DTH) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for porpoises and harbor seals, due to the cryptic nature of these species in context of larger predicted auditory injury zones. Auditory injury is unlikely to occur for low- and mid-frequency species and otariids, based on the relatively small predicted zones for the latter two groups and because of the expected ease of detection for the former group. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals

would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. USCG's activity includes the use of continuous (vibratory hammer and DTH) and impulsive (DTH and impact pile-driving), and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). USCG's proposed activity includes the use of impulsive (impact pile-driving and DTH) and non-impulsive (vibratory hammer and DTH) sources.

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, vibratory pile removal, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (Table 5).

TABLE 5—OBSERVED SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Activity	Peak SPL (re 1 μPa (rms))	RMS SPL (re 1 μPa (rms))	SEL (re 1 μPa (rms))	Source
DTH (24-inch Steel Pipe)	184	167	159	Heyvaert & Reyff, 2021.
Vibratory (24-inch Steel Pipe) *	175	162	160	Denes *et al.,* 2016.
Impact (24-Inch Steel Pipe)	207	194	178	Caltrans 2020.

Note: SELss = single strike sound exposure level; RMS = root mean square.

* Source levels proposed here differ from those used in USCG's application.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory and impact pile driving, vibratory removal and DTH, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet are reported in Table 1 and source levels used in the User Spreadsheet are reported in Table 5. Resulting isopleths are reported in Table 6.

TABLE 6—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Activity	Level A harassment isopleths (PTS) (meters)					Level B harassment isopleths (m)
	LF	MF	HF	Phocids	Otariids	
DTH (24-inch Steel Pipe)	434.1	15.4	517.1	232.3	16.9	13,594
Vibratory (24-inch Steel Pipe)	1	0.1	1.5	0.6	0.1	*6,310
Impact (24-Inch Steel Pipe)	21.5	0.8	25.6	11.5	0.8	1,848

* Differs from USCG's application due to difference in source level use. See Table 5.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We also describe how the information provided above is brought together to produce a quantitative take estimate.

Available information regarding marine mammal occurrence and abundance in the vicinity of USCG Base Ketchikan includes monitoring reports from prior incidental take authorizations (the Tongass Narrows project (85 FR 673; January 7, 2020)) and ESA consultations on additional projects and is described below for each species. A summary of proposed take is in Table 7.

Steller Sea Lions

Steller sea lions are anticipated to occur in the vicinity of Base Ketchikan in the Tongass Narrows. As Base Ketchikan is far enough east of the line dividing the Eastern and Western stocks, only members of the Eastern Stock of Steller sea lions are anticipated to occur at Base Ketchikan. Sightings of Steller sea lions are expected to occur once a day with the total number of Steller sea lions in the project area reaching up to 10 animals. The project involves 30 days of potential in-water work. Therefore, we estimate total take at 10 sea lions × 30 days = 300 takes at the Level B harassment level. Because the shutdown zone is small and Steller sea lions are not cryptic, we believe the Level A harassment shutdown zone can be fully implemented by Protected Species Observers (PSOs) and no Level A harassment take is proposed for authorization.

Harbor Seal

Harbor seals are anticipated to occur in the project area once per day. The typical number of harbor seals observed in the project area is up to 12 animals per day. We estimate total take at 12 seals × 30 days of activity = 360 takes. Because of the relatively large Level A harassment zones for impact pile driving and DTH, and because harbor seals are small and cryptic species that could sometimes remain undetected within the estimated harassment zones for a duration sufficient to experience PTS, we propose to authorize 10 takes (1 seal per day for the expected 10 days of impact pile driving and DTH) by Level A harassment, and 350 takes by Level B harassment, equaling the total proposed authorized take to 360.

Dall's Porpoise

Previous construction project monitoring in the Ketchikan area reported approximately two Dall's porpoises per day (NMFS, 2021). Therefore, we estimate total take at 2 porpoises per day × 30 days = 60 takes. Forty of these takes are expected to be Level B harassment takes. Because Dall's porpoises are small and cryptic species and could sometimes remain undetected within the estimated harassment zones for a duration sufficient to experience PTS, we proposed to authorize 20 takes by Level A harassment.

Harbor Porpoise

Harbor porpoises are expected to occur in the project area no more than three times per month and the typical group size for harbor porpoises in the project area is 5 animals. The project involves 30 days (1 month) of in-water work where take could occur. Therefore, we estimate total take at 5 porpoises × 3 sightings = 15 takes. Because harbor porpoises are small and cryptic species and could remain undetected within the estimated harassment zones for a duration sufficient to experience PTS, we propose to authorize 5 takes by Level A harassment and 10 takes by Level B harassment.

Pacific White-Sided Dolphin

Previous construction project monitoring in the Ketchikan area reported approximately 2.86 Pacific white-sided dolphins per day (reported value of 20 dolphins over one week of monitoring) (NMFS, 2021). Therefore we estimate 2.86 dolphins × 30 days = 86 takes. All of these takes are expected to be by Level B harassment as we believe the Level A shutdown zones can be fully implemented by PSOs due to their large group size, short dive duration, and easy detection of Pacific white-sided dolphins, in addition to the smaller size of the shutdown zones.

Killer Whale

Killer whales are expected to occur in the project area no more than once per month. Typically a group size for killer whales in the project area is conservatively estimated at 10 animals, which equates to 0.4 animals per day. Therefore, we estimate total take at 0.4 whales × 30 days = 12 takes. All of these takes are expected to be Level B harassment takes as we believe the Level A shutdown zones can be fully

implemented by PSOs because of the large size of the animal, short dive duration, and obvious behavior of killer whales, in additional to the small size of the shutdown zones.

Gray Whale

Gray whales are expected to occur no more than once per month. Typical group size for gray whales in the project area is two animals. Therefore, we conservatively propose to authorize a single group size for the full 30 days of activity. All of these takes are expected to be by Level B harassment as we believe the Level A harassment shutdown zone can be fully implemented by PSOs because of the large size of the animal, short dive duration, and obvious behaviors of gray whales.

Minke Whales

Minke whales have not been previously observed in the project area but have a potential to occur. They are often solitary animals. Therefore, we conservatively propose to authorize a single take of minke whales. This one estimated take is expected to be by Level B harassment as we believe the Level A shutdown zones can be fully implemented by PSOs because of the large size of the animal, the short dive duration, and obvious behaviors of minke whales.

Northern Elephant Seals

Members of the California breeding stock spend most of their time at sea and are known to migrate to the Gulf of Alaska to feed on benthic prey. Recent anecdotal evidence has suggested that an animal may be present near Base Ketchikan and repeated sightings of that individual have been spotted near Ketchikan docks. Elephant seals are known to dive for extended periods of time and it is possible that one individual may be encountered within the Level B harassment zone. Therefore one estimated take by Level B harassment per day is proposed to be authorized, bring the total proposed authorized take of Elephant seals to 30. We believe the entire Level A shutdown zone can be fully implemented given their large size and obvious behaviors of elephant seals.

Humpback Whales

Members of the Western North Pacific stock have the potential to occur at Base Ketchikan. Previous construction project monitoring in the Ketchikan area reported approximately 0.571 whales per day during those activities (NMFS, 2021). Therefore, we estimate total take at 0.571 whales per day × 30 days = 17 takes by Level B harassment only. We do not anticipate any takes by Level A harassment as we believe the Level A shutdown zone can be fully implemented by PSOs because of their larger size, short dive duration, and obvious behaviors of humpback whales.

Given data in Wade *et al.,* (2021) discussed above on the relative frequencies of the Hawaii and Mexico DPS humpback whales in the project area, only 2 percent of the local population is expected to comprise of the Mexico DPS, equating to 0.34 of the 17 humpback whale takes proposed for authorization. Therefore, no takes of Mexico DPS whales are expected to occur.

TABLE 7—PROPOSED AUTHORIZED AMOUNT OF TAKING

Species	Stock	Level A	Level B	Total	Percent of stock
Humpback whale	Central North Pacific	0	17	17	0.17
Minke whale	Alaska	0	1	1	N/A
Killer whale	Alaska Resident	0	12	12	0.51
	Northern Resident				3.97
	West Coast Transient				3.44
Pacific-white sided dolphin	North Pacific	0	86	86	0.32
Harbor porpoise	Southeast Alaska	5	10	15	0.13
Dall's porpoise	Alaska Stock	20	40	60	0.46
Gray whale	Eastern North Pacific	0	2	2	0.01
Harbor seal	Clarence Strait	10	340	360	1.30
Northern Elephant Seal	California Breeding Stock	0	30	30	0.00
Steller sea lion	Eastern	0	300	300	0.69

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

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

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

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

To ensure no take of any ESA listed whales, there are a number of mitigation measures proposed by USCG that go beyond, or are in addition to, typical mitigation measures we would

otherwise require for this project, as determined through informal ESA Section 7 consultation. The mitigation measures are proposed in the IHA:

• Avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions (note that NMFS expects that a 10 m shutdown zone is sufficient to avoid direct physical interaction with marine mammals, but USCG has conservatively proposed a 20 m shutdown zone to avoid physical interaction for in-water activities);

• Ensure that construction supervisors and crews, the monitoring team, and relevant USCG staff are trained prior to the start of all pile driving and DTH activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;

• Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;

• For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal and DTH will shut down immediately when the animals are sighted;

• Employ a minimum of three PSOs for all DTH and pile driving activities, where one PSO is assigned to the active pile driving or DTH site to monitor shutdown zones and as much of the Level B harassment zones as possible. Two additional PSOs are required to start at the project site and travel along the Tongass Narrows, counting all humpback whales present, until they have reached the edge of the respective Level B harassment zone. At this point, the PSOs will identify suitable observation points from which to observe the width of Tongass Narrows for the duration of DTH and pile driving activities. For the largest zones, these are expected to be on South Tongass Highway near Mountain Point and North Tongass Highway just northwest of the intersection with Carlanna Creek.

• The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible during activity;

• Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH activity (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving or DTH activity;

• If in-water work ceases for more than 30 minutes, USCG will conduct pre-clearance monitoring of both the Level B harassment zone and the shutdown zone;

• Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 8 are clear of marine mammals. Pile driving and DTH may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;

• If a marine mammal is observed entering or within the shutdown zones indicated in Table 8, pile driving and DTH must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (Table 8) or 15 minutes have passed without re-detection of the animal (30 minutes for large cetaceans);

• For humpback whales, if the boundaries of the harassment zone have not been monitored continuously during a work stoppage, the entire harassment zone will be surveyed again to ensure that no humpback whales have entered the harassment zone that were not previously accounted for; and

• In water activities will take place only: Between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort Sea State of 4 or less; when the entire shutdown zone and adjacent waters are visible (*e.g.,* monitoring effectiveness in not reduced due to rain, fog, snow, etc.). Pile driving may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.

The following specific mitigation measures will also apply to USCG's in-water construction activities:

Establishment of Level A Harassment and Shutdown Zones—For all pile driving/removal and DTH activities, USCG will establish a shutdown zone (Table 8). The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones vary based on activity type and duration and marine mammal hearing group (Table 8). All shutdown zones are based on the Level A harassment isopleth for the associated activity. The placement of PSOs during all construction activities (described in detail in the Proposed Monitoring and Reporting Section) will ensure that the entire shutdown zones are visible during pile installation.

TABLE 8—PROPOSED SHUTDOWN ZONES AND LEVEL B HARASSMENT ISOPLETHS

Activity	Shutdown zone (m)					Level B harassment zone (m)
	Low-frequency	Mid-frequency	High-frequency	Phocid	Otariid	
Vibratory	20	20	20	20	20	13,594
DTH	440	20	520	240	20	6,310
Impact	30	20	30	20	20	1,848

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

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

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

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

Visual Monitoring

Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance to the following:

- PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued IHA. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued IHA. Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. PSOs must be approved by NMFS prior to beginning any activity subject to this IHA; and
- PSOs must record all observations of marine mammals regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

USCG must employ three PSOs during all pile driving and DTH activities. A minimum of one PSO (the lead PSO) must be assigned to the active pile driving or DTH location to monitor the shutdown zones and as much of the Level B harassment zones as possible. Two additional PSOs are also required. The additional PSOs will start at the project site and travel along Tongass Narrows, counting all humpback whales present, until they have reached the edge of the respective Level B harassment zone. At this point, the PSOs will identify suitable observation points from which to observe the width of Tongass Narrows for the duration of DTH and pile driving activities. For the largest zones, these are expected to be on the South Tongass Highway near Mountain Point and north Tongass Highway just northwest of the intersection with Carlanna Creek. If visibility deteriorates so that the entire width of Tongass Narrows at the harassment zone boundary is not visible, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales entering or are within the harassment zone are detected by PSOs.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact, vibratory or DTH) and the total equipment duration for vibratory removal or DTH for each pile or hole or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting; Time of sighting; Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring

at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, etc.); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the harassment zones and shutdown zones; by species;
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensured, and resulting changes in behavior of the animal(s), if any; and
- If visibility degrades to where PSO(s) cannot view the entire harassment zones, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales entering or within the harassment zone are detected by PSOs.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, USCG must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

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

To avoid repetition, our analysis applies to all species listed in Table 2 for which take could occur, given that NMFS expects the anticipated effects of the proposed pile driving/removal and DTH on different marine mammal stocks to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Pile driving and DTH activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment and, for some species, Level A harassment from underwater sounds generated by pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The Level A harassment zones identified in Table 6 are based upon an animal exposed to impact pile driving or DTH up to two piles per day. Given the short duration to impact drive or vibe, or use DTH drilling, each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely give marine mammal movement in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stock, take would occur within a limited, confined area (adjacent to the project site) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removals, and DTH at the sites in Tongass Narrows are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal and DTH would occur for only a portion of the project's duration, any harassment occurring would be temporary. Additionally, many of the species present in region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporary present species would be

exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

For all species except humpback whales, there are no known Biologically Important Areas (BIAs) near the project area that would be impacted by USCG's planned activities. For humpback whales, the whole Southeast of Alaska is a seasonal BIA from March through November (Ferguson *et al.,* 2015), however, Tongass Narrows and the Clarence Strait are not important portions of this habitat due to human development and presence. The Tongass Narrows is also a small passageway and represents a very small portion of the total available habitat. In addition, while the southeast Alaska is considered an important area for feeding humpback whales between March and May (Ellison *et al.,* 2012), it is not currently designated as critical habitat for humpback whales (86 FR 21082; April 21, 2021).

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

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

- No mortality is anticipated or authorized.
- Authorized Level A harassment would be very small amounts and of low degree;
- The only known area of specific biological importance covers a broad area of southeast Alaska for humpback whales, and the project area is a very small portion of that BIA. No other known areas of particular biological importance to any of the affected species or stocks are impacted by the activity, including ESA-designated critical habitat;
- For all species, the Tongass Narrows is a very small and peripheral part of their range;
- USCG would implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS;
- Monitoring reports from similar work in the Tongass Narrows have documented little to no effect on individuals of the same species impacted by the specified activity.

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

Small Numbers

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

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for all species (in fact, take of individuals is less than five percent of the abundance of the affected stocks, see Table 7). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

The most recent estimate for the Alaska stock of Dall's porpoise was 13,110 animals however this number just accounts for a portion of the stock's range. Therefore, the 60 takes of this stock proposed for authorization is believed to be an even smaller portion of the overall stock abundance.

Likewise, the Southeast Alaska stock of harbor porpoise has no official NMFS abundance estimate as the most recent estimate is greater than eight years old. The most recent estimate was 11,146 animal (Muto *et al.,* 2021) and it is highly unlikely this number has drastically declined. Therefore, the 15 takes of this stock proposed for authorization clearly represent small numbers of this stock.

There is no current or historical estimate of the Alaska minke whale stock, but there are known to be over 1,000 minke whales in the Gulf of Alaska (Muto *et al.,* 2018) so the 1 take proposed for authorization clearly represents small numbers of this stock. Additionally, the range of the Alaska stock of minke whales is extensive, stretching from the Canadian Pacific coast to the Chukchi Sea, and USCG's project area impacts a very small portion of this range. Therefore, the singular take of minke whale proposed for authorization is small relative to estimated survey abundance, even if each proposed take occurred to a new individual.

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

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Alaska Native hunters in the Ketchikan vicinity do not traditionally harvest cetaceans (Muto *et al.,* 2021). To date, there are no reports of subsistence takes of killer whale, Pacific white-sided dolphin, harbor porpoise, or Dall's porpoise within Alaska (Muto *et al.,* 2021). Harbor seals are the most commonly targeted marine mammal that is hunted by Alaska Native subsistence hunters within the Ketchikan area. In 2012, an estimated 595 harbor seals were taken for subsistence uses, with 22

of those occurring in Ketchikan (Wolfe *et al.,* 2013). Statewide data are no longer being consistently collected for subsistence harvest of Steller sea lions, however subarea collect does occur periodically. In 2012, hunters in Southeast Alaska took an estimated nine sea lions for subsistence use (Wolfe *et al.,* 2013). Sea lions were taken in two communities (Hoonah and Sitka) by three hunters. There are no known haulout locations in the project area. Both the harbor seal and Steller sea lion may be temporarily displaced from the action are However, neither the local population nor any individual pinniped are likely to be adversely impacted by the proposed action beyond noise-induced harassment or slight injury. The proposed project is anticipated to have no long-term impacts on either species' populations, or their habitats. No long-term impacts on the availability of marine mammals for subsistence uses is anticipated.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from USCG's proposed activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the United States Coast Guard for construction associated with the floating dock extension project in Ketchikan, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the U.S. Coast Guard's construction of a floating dock at Base Ketchikan We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: May 16, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–10938 Filed 5–19–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC043]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 75 Shore Mode Topical Working Group scoping webinar for Gulf of Mexico gray snapper.

SUMMARY: The SEDAR 75 assessment of Gulf of Mexico gray snapper will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 75 scoping webinar for the Shore Mode Topical Working Group will be held June 15, 2022, from 10 a.m. until 12 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; phone: (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and

Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the scoping webinar are as follows:

Participants will discuss what data may be available for use in the assessment of Gulf of Mexico gray snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: May 17, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–10889 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC019]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Echo Offshore, LLC (Echo) and its designees for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from May 15, 2022, through November 30, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during

geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Echo plans to conduct a high-resolution seismic survey in the South Pelto Lease Block 8. Echo plans to simultaneously use a single, 20-cubic inch airgun along with three additional high-resolution sources: Sidescan sonar, a CHIRP sub-bottom profiler, and a single-beam echosounder. Please see Echo's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Echo in the LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

The survey is planned to occur for 1 day during a 5-day window. As sources will be used simultaneously, exposure modeling results were generated using the single airgun proxy, as it produced the greater value for each species (as opposed to the high-resolution geophysical proxy, involving use of the same package of three additional instruments planned for use by Echo. Because the results assume use of a 90-in^3 airgun, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take) due to differences in the sound source planned for use by Echo, as compared to those modeled for the rule. The survey is planned for 1 day in Zone 2 during the summer.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a.
Kogia sp	0	4,373	n/a.
Beaked whales	0	3,768	n/a.
Bottlenose dolphin	27	176,108	0.0.
Short-finned pilot whale	0	1,981	n/a.
Sperm whale	0	2,207	n/a.
Atlantic spotted dolphin	[4] 26	74,785	0.0.
Clymene dolphin	0	11,895	n/a.
False killer whale	0	3,204	n/a.
Fraser's dolphin	0	1,665	n/a.
Killer whale	0	267	n/a.
Melon-headed whale	0	7,003	n/a.
Pantropical spotted dolphin	0	102,361	n/a.
Pygmy killer whale	0	2,126	n/a.
Risso's dolphin	0	3,764	n/a.
Rough-toothed dolphin	0	4,853	n/a.
Spinner dolphin	0	25,114	n/a.
Striped dolphin	0	5,229	n/a.

[1] Scalar ratios were not applied in this case due to brief survey duration.

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] Modeled take of 6 increased to account for potential encounter with group of average size (Maze-Foley and Mullin, 2006).

Based on the analysis contained herein of Echo's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Echo authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: May 17, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–10936 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC042]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California

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

ACTION: Notice; issuance of Letter of Authorization (LOA).

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, NMFS issued an LOA to the St. George Reef Lighthouse Preservation Society (Society) to take marine mammals incidental to conducting aircraft operations, lighthouse renovation, light maintenance activities, and tour operations on the St. George Reef Lighthouse Station (Station) on Northwest Seal Rock (NWSR).

DATES: This authorization is effective from May 15, 2022 through May 14, 2023.

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

SUPPLEMENTARY INFORMATION:

Background

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

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary

NMFS issued regulations governing the take of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*), and northern fur seals (*Callorhinus ursinus*), by Level B harassment only, incidental to lighthouse maintenance and preservation activities at NWSR, offshore of Crescent City, CA on April 15, 2022 (87 FR 22484). These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during the specified activities. As further detailed in the regulations (50 CFR 217.57), adaptive management measures allow NMFS to modify or renew LOAs as necessary if doing so creates a reasonable likelihood of more effective mitigation and monitoring.

This LOA for the first year of the Society's activities is valid from May 15, 2022 through May 14, 2023. The LOA includes the requirement for quarterly monitoring report submissions to ensure that implementation and compliance will be successful. NMFS will reevaluate the Society's implementation and compliance in accordance with the terms of the regulations and the one-year LOA before issuing any additional LOAs to the Society.

Authorization

NMFS has issued an LOA (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-lighthouse-repair-and-tour-operations-northwest-seal-rock*) to the Society for the potential harassment of small numbers of four marine mammal species incidental to conducting aircraft operations, lighthouse renovation, light maintenance activities, and tour operations at NWSR, provided the mitigation, monitoring and reporting requirements of the rulemaking are incorporated.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–10937 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC047]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold online and in-person public meetings.

DATES: The Pacific Council and its advisory entities will meet June 8–14, 2022 in a hybrid format with most meetings held in-person. The Pacific Council and groundfish Advisory Body meetings will be held in a hybrid of remote and in-person participation. The Scientific and Statistical Committee will meet by webinar only. The Pacific Council meeting will begin on Thursday, June 9, 2022, at 8 a.m. Pacific Daylight Time (PDT), reconvening at 8 a.m. on Friday, June 10 through Tuesday, June 14, 2022. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Thursday, June 9, to address national security matters, international negotiations, litigation, or personnel matters including appointments to advisory bodies. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its groundfish advisory entities will be held at the Hilton Vancouver Hotel, 301 West Sixth Street, Vancouver, WA 98660; telephone: (360) 993–4500. Meetings will be held in in-person, online, and hybrid formats. Specific meeting information, including directions on joining meetings, connecting to the live stream broadcast, and system requirements will be provided in the meeting materials on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2418 or (866) 806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The June 2022 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PDT Thursday, June 9, 2022, and through Tuesday, June 14, 2022. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance June 2022 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Friday, May 20, 2022.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Administrative Matters

1. Council Coordination Committee Meeting Report
2. Financial Disclosure and Recusal Policy
3. Marine Planning
4. Fiscal Matters
5. Legislative Matters
6. Approval of Council Meeting Records
7. Membership Appointments and Council Operating Procedures
8. Future Council Meeting Agenda and Workload Planning

D. Coastal Pelagic Species Management

1. Central Subpopulation of Northern Anchovy Assessment and Harvest Specifications
2. Stock Assessment Terms of Reference
3. Essential Fish Habitat Review—Phase 2 Action Plan

E. Habitat Issues

1. Current Habitat Issues

F. Groundfish Management

1. National Marine Fisheries Service Report
2. Limited Entry Fixed Gear Catch Share Program Review
3. Stock Assessment Plan and Terms of Reference—Final Action
4. Stock Definitions—Scoping
5. Sablefish Gear Switching
6. Exempted Fishing Permits, Harvest Specifications, and Management Measures for 2023–24 Fisheries—Final Action
7. Inseason Adjustments—Final Action

G. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. International Management Activities
3. Exempted Fishing Permits
4. Drift Gillnet Fishery Hard Caps

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Friday, May 20, 2022.

Schedule of Ancillary Meetings

Day 1—Wednesday, June 8, 2022

Coastal Pelagic Species Advisory Subpanel 8 a.m.
Coastal Pelagic Species Management Team 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Habitat Committee 8 a.m.
Scientific and Statistical Committee 8 a.m.
Legislative Committee 10 a.m.
Budget Committee 1 p.m.
Enforcement Consultants 2 p.m.

Day 2—Thursday, June 9, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Coastal Pelagic Species Advisory Subpanel 8 a.m.
Coastal Pelagic Species Management Team 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Habitat Committee 8 a.m.
Highly Migratory Species Management Team 8 a.m.

Scientific and Statistical Committee 8 a.m.
Enforcement Consultants As Necessary

Day 3—Friday, June 10, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 4—Saturday, June 11, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 5—Sunday, June 12, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 6—Monday, June 13, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 7—Tuesday, June 14, 2022

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: May 17, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–10890 Filed 5–19–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) from the Procurement List that were be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: June 19, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
MR 1014—Pad, Scrubber, Specialty
MR 1015—Scrubber, Grout, Non-Scratch, Blue
MR 1090—Scrub Brush with Eraser, Utility
MR 1092—Scrub Brush with Eraser, Palm
MR 1094—Refill, Scrub Brush with Eraser, Palm, 2PK

Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Contracting Activity: Military Resale-Defense Commissary Agency

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2022–10877 Filed 5–19–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0056]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: Emergency 5-day information collection notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 and its implementing regulations, this document provides notice that DoD is submitting an Information Collection Request to the Office of Management and Budget (OMB) to satisfy the requirements in a section of the FY 2022 National Defense Authorization Act (NDAA), which requires the Secretary of Defense to conduct a study to identify initial entry points through which military family members may seek information or support relating to domestic abuse or child abuse and neglect. DoD requests emergency processing and OMB authorization to collect the information after publication of this notice for a period of six months.

DATES: Comments must be received by May 25, 2022.

ADDRESSES: The Department has requested emergency processing from OMB for this information collection request by 5 days after publication of this notice. Interested parties can access the supporting materials and collection instrument as well as submit comments and recommendations to OMB at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 5-day Review—Open for Public Comments'' or by using the search function. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: Information collection is required to

satisfy the requirements in Section 549 of the Fiscal Year (FY) 2022 National Defense Authorization Act (NDAA), which requires the Secretary of Defense to conduct a study to identify initial entry points through which military family members may seek information or support relating to domestic abuse or child abuse and neglect. The study is an environmental scan and is not intended to be an exhaustive investigation. Military Community Advocacy, Military Community and Family Policy, has authorized Deloitte Consulting to collect information in response to this congressionally mandated task as stipulated in Technical Direction Document 0008, under the Common Services Effort core contract (Contract Number HDQMWR–20–F–0035). The information collection will contribute to DoD and the United States Congress' objective and efforts to improve the prevention of and response to family and interpersonal violence and maladaptive behavior. The end result will be an itemized list of existing Armed Forces or DoD initial entry points through which military family members may seek information or support relating to domestic abuse and child abuse and neglect and the identification of other existing or potential routes through which such family members may seek information or support. The Secretary of Defense will provide these results to the Committees on Armed Services of the Senate and the House of Representatives not later than one year after the date of enactment of the FY 2022 NDAA.

Title; Associated Form; and OMB Number: Military Community and Family Policy Family Advocacy Program Initial Entry Point Environmental Scan; OMB Control Number 0704–IEPS.

Type of Request: Emergency.

Number of Respondents: 180.

Responses per Respondent: 1.

Annual Responses: 180.

Average Burden per Response: 7.5 minutes.

Annual Burden Hours: 22.5 hours.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information collected has practical utility; (2) the accuracy of DoD's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: May 17, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10916 Filed 5–19–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0066]

Agency Information Collection Activities; Comment Request; Higher Education Emergency Relief Fund (HEERF) (a)(2) Construction, Renovation, & Real Property Projects Prior Approval Request Form

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is requesting the Office of Management and Budget (OMB) to conduct an emergency review of a new information collection.

DATES: The Department requested emergency processing from OMB for this information collection request on May 16, 2022. As a result, the Department is providing the public with the opportunity to comment under the full comment period. Interested persons are invited to submit comments on or before July 19, 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–2022–SCC–0066. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Epps, 202–453–6337.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Higher Education Emergency Relief Fund (HEERF) (a)(2) Construction, Renovation, & Real Property Projects Prior Approval Request Form.

OMB Control Number: 1840–0861.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 1,200.

Total Estimated Number of Annual Burden Hours: 600.

Abstract: The Consolidated Appropriations Act, 2022 (Pub. L. 117–103) signed by the President on March 15, 2022, provides new flexibilities and

requirements around using HEERF (a)(2) grant funds for construction, renovation, and real property projects as a result of Congress expanding the allowable uses of funds under the HEERF (a)(2) programs. This collection includes the required prior approval form that must be completed by eligible institutions seeking to use (a)(2) funds for this purpose.

The Department requested emergency processing to be able to process the prior approval requests institutions are required to submit to commence a construction, renovation or real property project in a timely manner. Due to the potential lengthened timeline associated with the construction, renovation, and real property projects, the Department has determined that it is necessary to obtain the required information from the institutions to use the (a)(2) funding stream for this purpose as required by Uniform Guidance. Without approval of the HEERF (a)(2) Prior Approval Request Form, institutions will be forced to delay the construction, renovation and real property projects which ''prevent, prepare for, and respond to coronavirus.'' Any delay in the submission of requests could jeopardize the timelines as institutions will not have sufficient time to complete the construction, renovation, and real property projects prior to Account Closing Regulation, which is September 30, 2028. This means all remaining funds unspent by institutions must be returned to the U.S. Department of Treasury.

Dated: May 16, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–10818 Filed 5–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0017]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Student Aid (FSA) Feedback System

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before June 21, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–570–8414.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Student Aid (FSA) Feedback System.

OMB Control Number: 1845–0141.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 43,200.

Total Estimated Number of Annual Burden Hours: 7,344.

Abstract: This is a request for extension of the current information collection of the FSA Feedback System, OMB Control 1845–0141. On March 10, 2015, the White House issued a Student Aid Bill of Rights. Among the objectives identified was the creation of a centralized complaint system that is now resident and supported via the Federal Student Aid/Customer Engagement Management System. The purpose of the Customer Engagement Management System (CEMS) is to meet the objective: ''Create a Responsive Student Feedback System: The Secretary of Education will create a new website by July 1, 2016, to give students and borrowers a simple and straightforward way to file complaints and provide feedback about federal student loan lenders, servicers, collections agencies, and institutions of higher education. Students and borrowers will be able to ensure that their complaints will be directed to the right party for timely resolution, and the Department of Education will be able to more quickly respond to issues and strengthen its efforts to protect the integrity of the student financial aid programs.''

Dated: May 17, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–10929 Filed 5–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Child Care Access Means Parents in School Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Child Care Access Means Parents in School (CCAMPIS) Program, Assistance Listing Number 84.335A. This notice relates to the approved information collection under OMB control number 1840–0737.

DATES:

Applications Available: May 20, 2022.

Deadline for Transmittal of Applications: July 11, 2022.

Deadline for Intergovernmental Review: September 7, 2022.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phaseout of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Harold L. Wells, II, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C240, Washington, DC 20202–4260. Telephone: (202) 453–6131. Email: *Harold.Wells@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CCAMPIS Program supports the participation of low-income parents in postsecondary education by providing campus-based child care services.

Priorities: This notice contains two absolute priorities, one competitive preference priority, and three invitational priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 419N(d) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070e(d). The competitive preference priority is from the Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Note: Applicants must include in the one-page abstract submitted with the application a statement indicating whether the competitive preference priority is addressed. If the applicant has addressed the competitive preference priority, this information must also be listed on the CCAMPIS Program Profile form.

Absolute Priorities: For FY 2022, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both priorities.

These priorities are:

Absolute Priority 1: Projects that are designed to leverage significant local or institutional resources, including in-kind contributions, to support the activities assisted under section 419N of the HEA.

Absolute Priority 2: Projects that are designed to utilize a sliding fee scale for child care services provided under section 419N of the HEA in order to support a high number of low-income parents pursuing postsecondary education at the institution.

Competitive Preference Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points to an application, depending on how well the application meets this priority.

The priority is:

Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change (up to 5 points).

Projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students in coordinating efforts with Federal, State, or local agencies, or community-based organizations, that support students, to address child care.

Background: The Department encourages applicants to coordinate with agencies and organizations to leverage funding available through Federal, State, or local government, or community-based organizations, to support student parents in meeting early learning needs. For example, the American Rescue Plan provided an additional $15 billion for the Child Care and Development Block Grant Program (CCDBG) and an additional $24 billion for Child Care Stabilization Grants administered by the United States Department of Health and Human Services (HHS). CCDBG provides child care assistance for low-income families, and the Child Care Stabilization Grants can be used to provide relief from copayments and tuition payments to families enrolled in the provider's program, prioritizing families struggling to make such payments. In addition, the Child and Adult Care Food Program administered by the United States Department of Agriculture (USDA) provides meal reimbursements for eligible child care centers. Applicants could also propose to establish partnerships with other publicly-funded child care centers to help student parents on waiting lists access other child care centers with available space.

Invitational Priorities: For FY 2022, and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

The priorities are:

Invitational Priority 1: Supporting Students Who Are Single Parents.

Projects that propose to serve children of student-parents who are single parents. An applicant should describe in its application how it will use institutional funds, in addition to child care assistance provided by CCAMPIS funds, to provide resources that will enhance the educational, personal, and financial growth of students who are single parents.

Background: According to the Institute for Women's Policy Research (IWPR), there are nearly 2.1 million single mothers in college today, many of whom are women of color.[1] These mothers face nearly insurmountable odds against finishing their degrees, even as many of them are pursuing higher education in order to lift their families out of poverty. Only 8 percent of single mothers who start college earn an associate or bachelor's degree within 6 years, compared with about half of women who are not mothers.

The IWPR research also finds that supports such as free child care, financial assistance, and social skills training would allow more student parents to graduate. According to the IWPR, offering free child care to a single mother pursuing a bachelor's degree improves success rates for community college students. Free child care may allow many student parents to finish school more quickly, meaning they would require fewer years of support and likely spend more years earning higher wages. One recent study shows that students who utilize a campus child care center had more than triple

[1] Institute for Women's Policy Research (IWPR) analysis of data from the U.S. Department of Education (September 2017), National Center for Education Statistics. National Postsecondary Student Aid Study and the Integrated Postsecondary Aid Survey (IPEDS). Retrieved from *https://iwpr.org/iwpr-issues/student-parent-success-initiative/single-mothers-in-college-growing-enrollment-financial-challenges-and-the-benefits-of-attainment/.*

the rate of on-time completion as parents who did not use a center.[2]

Invitational Priority 2: Increasing campus-based child care for infants and toddlers.

Projects that increase the number of campus-based child care openings for infants and toddlers.

Background: Rising child care costs and reduced capacity of the Early Childhood Education sector to provide child care due, in part, to workforce shortages, are causing families to choose between school and work. In a recent interview conducted by National Public Radio (NPR), parents reported that their rent and child care costs are equal.[3]

Safe child care for young children is inherently expensive because, among other reasons, one caregiver should not care for three or four infants at a time.[4] Moreover, the U.S. spends less public money on early childhood education and care than most other wealthy nations, according to the Organization for Economic Co-operation and Development.[5]

During the coronavirus pandemic, many existing child care centers shut down completely or reduced their enrollment numbers for safety reasons. As the economy has opened back up, child care centers, like many businesses, are struggling to find workers, particularly because child care centers cannot typically afford the same employee incentives as bigger businesses, such as hiring bonuses. According to a new poll[6] conducted by National Public Radio, the Robert Wood Johnson Foundation, and the Harvard T.H. Chan School of Public Health, 34 percent of families with young children faced serious problems finding child care in recent months when adults were required to work or go to school. In a survey of 7,500 early childhood educators conducted by the National Association for the Education of Young Children (NAEYC), four of five respondents reported having staff shortages, with 15% of respondents reporting a ''major shortage.'' The survey further revealed that, on average, the Centers surveyed were operating at 71% of their licensed capacity. According to the survey results, the primary barrier to recruitment and retention of early childhood educators is the low wages offered in the field.[7]

While some parents may rather work in the office and attend classes in person, they may feel compelled to work from home and take online classes so they can also provide care to their children. The journey to degree completion can become longer as parents reduce their course load in order to be able to properly care for their children. This in turn impedes their potential to increase their income because of the extended time to degree completion. Through this priority, the Department encourages applicants to propose strategies to increase the number of child care openings on campus, particularly for infants and toddlers, including through strategies to address workforce shortages.

Invitational Priority 3: Providing Wrap-Around Services for Low-Income Parents in Postsecondary Education.

Projects that propose to develop high-impact community engagement strategies and partner with community organizations in order to leverage institutional and community resources to provide wrap-around services that address the comprehensive needs of low-income parents in postsecondary education, such as public benefits and additional financial aid to cover textbook costs, transportation costs, mental health services, faculty mentoring, tutoring, peer support groups, and emergency grants.

Background: Poverty reduces a student's opportunity to enter, persist, and complete higher education. Students from low-income backgrounds are more likely to delay enrollment, enroll in college part-time, or drop out.[8] The Coronavirus crisis has caused many students to delay enrollment in college,[9] and colleges and universities struggle to address the financial needs of enrolled students. Financial aid supports such as Pell Grants provide important resources for under-resourced students to access college, but additional supports are needed to ensure students persist and complete their education. Studies in New York and Ohio, for example, show that comprehensive supports such as leadership opportunities, career development, and removal of key financial barriers designed to help community college students stay enrolled and graduate have doubled 3-year graduation rates for those students.[10]

Application Requirements: For FY 2022, and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements from section 419N(c) of the HEA:

(a) An institution of higher education desiring a grant under this competition must submit an application that—

(1) Demonstrates that the institution is an eligible institution, as defined in section 419N(b)(4) of the HEA;

(2) Specifies the amount of funds requested;

(3) Demonstrates the need of low-income students (as defined in this notice) at the institution for campus-based child care services by including in the application—

(i) Information regarding student demographics;

(ii) An assessment of child care capacity on or near campus;

(iii) Information regarding the existence of waiting lists for existing child care;

(iv) Information regarding additional needs created by concentrations of poverty or by geographic isolation; and

(v) Other relevant data;

(4) Contains a description of the activities to be assisted, including whether the grant funds will support an existing child care program or a new child care program;

(5) Identifies the resources, including technical expertise and financial support, the institution will draw upon to support the child care program and the participation of low-income students in the program, such as accessing social services funding, using student activity fees to help pay the costs of child care, using resources obtained by meeting the needs of parents who are not low-income students, and accessing foundation, corporate, or other institutional support, and demonstrate that the use of the

[2] Stewart, P. ''Campus Child Care Critical in Raising Single Mothers' Graduation Rates.'' Diverse Issues in Higher Education (June 6, 2018). *https://diverseeducation.com/article/117704/.*

[3] National Public Radio. Experiences of U.S. Households with Children During the DELTA Variant Outbreak. (2021). households-children-virus-poll.pdf (*npr.org*).

[4] See *https://childcare.gov/consumer-education/ratios-and-group-sizes.*

[5] PF3.1: ''Public spending on child care and early education.'' OECD Family Database (2020). *https://www.oecd.org/els/soc/PF3_1_Public_spending_on_childcare_and_early_education.pdf#:~:text=On%20a%20per%20child%20basis%2C%20total%20public%20spending,than%20USD%20PPP%202000%20per%20child%20aged%200-5.*

[6] National Public Radio. ''Experiences of U.S. Households with Children During the DELTA Variant Outbreak.'' (Oct. 2021). *https://media.npr.org/assets/img/2021/10/19/households-children-virus-poll.pdf.*

[7] *https://www.naeyc.org/about-us/news/press-releases/survey-childcare-centers-understaffed#:~:text=Among%20the%20survey's%20key%20findings,15%20fewer%20workers%20than%20needed.*

[8] ''Low-income students are dropping out of college this fall in alarming numbers,'' *The Washington Post (Sept. 16, 2020), https://www.washingtonpost.com/business/2020/09/16/college-enrollment-down/.*

[9] *https://www.cnbc.com/2021/04/16/college-enrollment-sank-due-to-the-covid-pandemic.html.*

[10] Manpower Demonstration Research Corporation, ''CUNY ASAP Doubles Graduation Rates in New York and Ohio.'' (Feb. 2021). Retrieved February 23, 2021. *https://www.mdrc.org/publication/cuny-asap-doubles-graduation-rates-new-york-city-and-ohio.*

resources will not result in increases in student tuition;

(6) Contains an assurance that the institution will meet the child care needs of low-income students through the provision of services or through a contract for the provision of services;

(7) Describes the extent to which the child care program will coordinate with the institution's early childhood education curriculum, to the extent the curriculum is available, to meet the needs of the students in the early childhood education program at the institution and the needs of the parents and children participating in the child care program assisted under the applicant's project;

(8) In the case of an institution seeking assistance for a new child care program—

(i) Provides a timeline, covering the period from receipt of the grant through the provision of the child care services, delineating the specific steps the institution will take to achieve the goal of providing low-income students with child care services;

(ii) Specifies any measures the institution will take to assist low-income students with child care during the period before the institution provides child care services; and

(iii) Includes a plan for identifying resources needed for the child care services, including space in which to provide child care services, and technical assistance, if necessary;

(9) Contains an assurance that any child care facility assisted under this section will meet the applicable State or local government licensing, certification, approval, or registration requirements; and

(10) Contains a plan for any child care facility assisted under this program to become accredited within 3 years of the date the institution first receives assistance under this program.

Definitions: The definition of ''early childhood education program'' and ''low-income student'' are from sections 103 (20 U.S.C. 1003) and 419N of the HEA, respectively.

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated child care program; or

(3) A program that—

(i) Serves children from birth through age 6 that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(ii) Is—

(I) A State prekindergarten program;

(II) A program authorized under section 619 (20 U.S.C. 1419) or part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*); or

(III) A program operated by a local educational agency.

Low-income student means a student—

(1) Who is eligible to receive a Federal Pell Grant for the award year for which the determination is made; or

(2) Who would otherwise be eligible to receive a Federal Pell Grant for the award year for which the determination is made, except that the student fails to meet the requirements of—

(i) 20 U.S.C. 1070a(c)(1) because the student is enrolled in a graduate or first professional course of study; or

(ii) 20 U.S.C. 1091(a)(5) because the student is in the United States for a temporary purpose.

Program Authority: 20 U.S.C. 1070e and Consolidated Appropriations Act, 2022 (Pub. L. 117–103).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: Because there are no program-specific regulations for the CCAMPIS Program, applicants are encouraged to carefully read the authorizing statute: Title IV, part A, subpart 7, section 419N of the HEA (20 U.S.C. 1070e).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $38,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $90,000 to $1,000,000.

Estimated Average Size of Awards: $465,000.

Minimum Award: The minimum annual amount an applicant may receive under this program is $90,000.

Maximum Award: The maximum annual amount an applicant may receive under this program is 3 percent of the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution for FY 2021. In the event an applicant's maximum award amount is lower than the minimum award of $90,000, the grant will be awarded $90,000 for a single budget period of 12 months. The Department encourages all applicants to consult the Department of HHS' Provider Cost of Quality Calculator while developing award requests. This tool can be found at *https://childcareta.acf.hhs.gov/pcqc.*

Estimated Number of Awards: 83.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education that awarded a total of $250,000 or more in Federal Pell Grant funds during FY 2021 to students enrolled at the institution.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grants Programs, published in the **Federal Register** on

December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021–27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* Funding restrictions are outlined in section 419N(b)(2)(B) of the HEA and the Consolidated Appropriations Act, 2022 (Pub. L. 117–103). We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative, which includes the budget narrative, to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins.
- Double space all text in the application narrative, and single-space titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a 12-point font.
- Use an easily readable font such as Times New Roman, Courier, Courier New, or Arial.

The recommended 50-page limit does not apply to the Application for Federal Assistance cover sheet (SF 424); the Budget Information Summary form (ED Form 524); the CCAMPIS Program Profile form and the one-page Project Abstract form; or the assurances and certifications. The recommended page limit also does not apply to a table of contents, which you should include in the application narrative. You must include your complete response to the selection criteria in the application narrative.

We recommend that any application addressing the competitive preference and invitational priorities include no more than three additional pages for each priority.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from section 419N of the HEA and 34 CFR 75.210 and are listed below.

We will award up to 100 points to an application under the selection criteria. The maximum number of points available for each criterion is indicated in parentheses.

(a) *Need for the project.* (up to 24 points)

The Secretary determines the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which the applicant demonstrates in its application the need for campus-based child care services for low-income students by including the following (see section 419N(c)(3) of the HEA):

(i) Information regarding student demographics.

(ii) An assessment of child care capacity on or near campus, including information regarding the existence of waiting lists for existing child care.

(iii) Information regarding additional needs created by concentrations of poverty or by geographic isolation.

(iv) Other relevant data.

(b) *Quality of project design and project services.* (up to 36 points)

The Secretary considers the quality of the design of the proposed project and the quality of services to be provided. In determining the quality of the design and the quality of services to be provided by the proposed project, the Secretary considers the following:

(i) The extent to which the applicant describes in its application the activities to be assisted, including whether the grant funds will support an existing child care program or a new child care program (see section 419N(c)(4) of the HEA).

(ii) The extent to which the services to be provided by the proposed project are focused on those with greatest needs (see 34 CFR 75.210(d)(3)(xi)).

Note: When describing how the project is focused on those with greatest needs, applicants are encouraged to include in their assessment the extent to which services are available during all hours that classes are in session, including evenings and weekends, to part-time students, and to students who need only emergency drop-in child care in the event that regularly scheduled child care is unexpectedly unavailable.

(iii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services (see 34 CFR 75.210(d)(3)(iv)).

(iv) The extent to which the application includes an assurance that the institution will meet the child care needs of low-income students through the provision of services, or through a contract for the provision of services (see section 419N(c)(6) of the HEA).

(v) The extent to which the child care program will coordinate with the institution's early childhood education curriculum, to the extent the curriculum is available, to meet the needs of the students in the early childhood education program at the institution, and the needs of the parents and children participating in the child care program assisted under this section (see section 419N(c)(7) of the HEA).

(vi) The extent to which the proposed project encourages parental involvement (see 34 CFR 75.210(c)(2)(xix)).

(vii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition (see 34 CFR 75.210(c)(2)(xv)).

(viii) If the applicant is seeking assistance for a new child care program (see section 419N(c)(8) of the HEA)—

(1) The extent to which the applicant's timeline, covering the period from receipt of the grant through the provision of the child care services, delineates the specific steps the institution will take to achieve the goal of providing low-income students with child care services;

(2) The extent to which the applicant specifies any measures the institution will take to assist low-income students with child care during the period before the institution provides child care services; and

(3) The extent to which the application includes a plan for identifying resources needed for the child care services, including space in which to provide child care services and technical assistance if necessary.

Note: For applications that seek assistance to support existing programs, the maximum available points for this selection criterion will be divided equally among factors (i)–(vi), and, for applications that seek assistance to support new programs, among factors (i)–(vii).

(c) *Quality of management plan and project personnel.* (up to 21 points)

The Secretary considers the quality of the management plan and project personnel for the proposed project. In determining the quality of the management plan and project personnel for the proposed project, the Secretary considers the following:

(i) The extent to which the application identifies the resources, including technical expertise and financial support, the institution will draw upon to support the child care program and the participation of low-income students in the program, such as accessing social services funding, using student activity fees to help pay the costs of child care, using resources obtained by meeting the needs of parents who are not low-income students, and accessing foundation, corporate or other institutional support, and demonstrates that the use of the resources will not result in increases in student tuition (see section 419N(c)(5) of the HEA).

(ii) The qualifications, including relevant training and experience, of key project personnel (see 34 CFR 75.210(e)(3)(ii)).

(iii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (see 34 CFR 75.210(g)(2)(i)).

(d) *Quality of project evaluation.* (up to 12 points)

The Secretary considers the quality of the evaluation to be conducted of the project. In determining the quality of the project evaluation, the Secretary considers the following:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (see 34 CFR 75.210(h)(2)(i)).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (see 34 CFR 75.210(h)(2)(iv)).

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes (see 34 CFR 75.210(h)(2)(vi)).

(e) *Adequacy of resources.* (up to 7 points)

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following:

(i) The extent to which the budget is adequate to support the proposed project (see 34 CFR 75.210(f)(2)(iii)).

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (see 34 CFR 75.210(f)(2)(v)).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process.

If there are insufficient funds for all applications with the same total scores, the Secretary will choose from among the tied applications the institution with the highest percentage of students reported as Pell Grant recipients, in accordance with the following procedure. The Secretary will identify and recommend an award for the applicant that has the highest ratio of Pell Grant recipients to total undergraduate enrollment according to the most recent collection from the Integrated Postsecondary Education Data System (IPEDS). In applying the tiebreaker criteria, the Department will refer to fields within IPEDS that address all undergraduate enrollment (for both the numerator and the denominator of this rate).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures for the CCAMPIS Program. The success of the CCAMPIS Program will be measured by the postsecondary persistence and degree completion rates of the CCAMPIS Program participants. All CCAMPIS Program grantees will be required to submit an annual performance report documenting the persistence and degree attainment of their participants. Although students may choose to use child care services at different points in their college enrollment, the goal is to measure the outcomes of student-parents based on their completion of their program within 150 percent or 200 percent of the published program length. The cohort model of evaluation will track a student-parent's child care utilization throughout enrollment at the institution and will provide results based on the long-term academic success of the student-parent. The Department will aggregate the data provided in the annual grantee performance reports to determine the accomplishment level. This will not increase grantee reporting burden as CCAMPIS grantees already are gathering and maintaining the necessary data.

6. *Continuation Awards:* In making a continuation grant under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2022–10847 Filed 5–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Peer Review Opportunities With the U.S. Department of Education's Office of Elementary and Secondary Education (OESE), Office of Postsecondary Education (OPE), and Office of Special Education and Rehabilitative Services (OSERS)

AGENCY: Office of Elementary and Secondary Education, Office of Postsecondary Education, and Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The U.S. Department of Education (Department) announces opportunities for individuals to participate in its peer review process for competitive grant funding under the programs administered by OESE, OPE, and OSERS.

DATES: Requests to serve as a peer reviewer for fiscal year 2022 will be

accepted on an ongoing basis, aligned with this year's grant competition schedule. Requests to serve as a peer reviewer should be submitted at least four weeks prior to the program's application deadline noted on the Department's website under ''Forecast of Funding Opportunities'' at *www2.ed.gov/fund/grant/find/edlite-forecast.html.* This notice highlights the specific needs of OESE, OPE, and OSERS.

ADDRESSES: An individual interested in serving as a peer reviewer must register and upload his or her resume in the Department's grants management system known as ''G5'' at *www.g5.gov.*

FOR FURTHER INFORMATION CONTACT:

OESE: Richard Wilson, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W101, Washington, DC 20202. *Telephone:* (202) 453–6709. *Email: richard.wilson@ed.gov.*

OPE: Tonya Hardin, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C205, Washington, DC 20202. *Telephone:* (202) 453–7694. *Email: tonya.hardin@ed.gov.*

OSERS: Kate Friday, U.S. Department of Education, 400 Maryland Avenue SW, Room 5081B, Potomac Center Plaza, Washington, DC 20202–5076. *Telephone:* (202) 245–7605. *Email: kate.friday@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: The mission of the Department is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. The Department pursues its mission by funding programs that will improve access to high-quality educational opportunities and programs that pursue innovations in teaching and learning with a focus on underserved students. The Department also funds programs in other areas as authorized by statute. Grant funds are awarded to State educational agencies; local educational agencies (*i.e.,* school districts); State, local, or Tribal governments; nonprofit organizations; institutions of higher education (IHEs), including IHEs that have experience in the operation of American Indian Vocational Rehabilitation Service programs; and other entities through a competitive process referred to as a grant competition.

Each year the Department convenes panels of external education professionals and practitioners to serve as peer reviewers.[1] Peer reviewers evaluate and score submitted applications against competition-specific criteria and announced priorities. Application scores are then used to inform the Secretary's funding decisions.

Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, directs Federal agencies to ''assess whether underserved communities and their members face systemic barriers in accessing benefits and opportunities available pursuant to those policies and programs.'' The Department is committed to increasing the racial and ethnic diversity of peer reviewers—an important element of the Department's efforts to implement this Executive order. Moreover, the Department is particularly interested in peer reviewers who represent diverse experiences and perspectives, including experiences working with diverse and underserved communities, and whose expertise pertains to OESE, OPE, and OSERS grant competitions.

This year, OESE is managing more than 20 grant competitions to fund a range of projects that support, among others, education innovation and research; educator growth and diversity; magnet schools; charter schools; gifted and talented programs; arts education; family engagement; equity technical assistance centers; Indian education; and assessments.

Similarly, OPE is conducting nearly 30 grant competitions to fund a wide range of projects, including projects to support improvements in educational quality, management, and financial stability at colleges and universities that enroll high numbers of underserved students; projects to provide high-quality support services to improve retention and completion rates of students who are low income or first-generation college students or individuals with disabilities; projects designed to strengthen foreign language instruction, area and international studies, teaching and research, professional preparation and development for educators, and curriculum development at the K–12, graduate, and postsecondary levels; and other innovative projects designed to improve postsecondary education.

OSERS is managing nearly 20 grant competitions. The competitions in OSERS' Office of Special Education Programs (OSEP) include those under the following programs: State Personnel Development Grants; Personnel Development; Technical Assistance and Dissemination; Educational Technology, Media, and Materials; and Parent Training and Information. The remaining competition in OSERS' Rehabilitation Services Administration (RSA) is the Disability Innovation Fund.

The Department seeks to expand its pool of peer reviewers to ensure that applications are evaluated by individuals with up-to-date and relevant knowledge of educational interventions and practices across the learning continuum, from early education to college and career, in a variety of learning settings. Department peer reviewers are education professionals and practitioners who have gained subject matter expertise through their education and work as teachers, professors, principals, administrators, school counselors, researchers, evaluators, content developers, or vocational rehabilitation professionals or interpreters. Peer reviewers can be active education professionals in any educational level or sector, or those who are retired but stay informed of current educational content and issues. No prior experience as a peer reviewer is required.

Peer reviewers for each competition will be selected based on several factors, including each reviewer's program-specific expertise, the number of applications to be reviewed, and the diversity and availability of prospective reviewers. Individuals selected to serve as peer reviewers are expected to participate in training; independently read, score, and provide written evaluative comments on assigned applications; and participate in facilitated panel discussions with other peer reviewers. Panel discussions are held via conference calls or in-person, as identified for the specific competition. The time commitment for peer reviewers is usually several hours a day over a period of two to four weeks. Peer reviewers receive an honorarium payment as monetary compensation for successfully reviewing applications.

If you are interested in serving as a peer reviewer for the Department, you should first review the program web pages of the grant programs that match your area of expertise. You can access information on each grant program from the link provided on the Department's grants forecast page at *www2.ed.gov/fund/grant/find/edlite-forecast.html.* If you have documented experience that

[1] Please note that the Institute of Education Sciences (IES) uses different peer review processes and procedures than those described in this notice. More information on the IES peer review process can be found at: *https://ies.ed.gov/director/sro/application_review.asp.* IES also administers its research grant competitions on a different timeline from other offices in the Department.

you believe qualifies you to serve as a peer reviewer for one or more specific grant programs, please register in G5, at *www.g5.gov,* which allows the Department to manage and assign potential peer reviewers to competitions that may draw upon their professional backgrounds and expertise. A toolkit that includes helpful information on how to be considered as a peer reviewer for programs administered by the Department can be found at *www2.ed.gov/documents/peer-review/peer-reviewer-toolkit.pptx.* Neither the submission of a resume nor registration in G5 guarantees you will be selected to be a peer reviewer.

In addition to registering in G5, some OPE and OSERS/RSA peer reviews may require being registered in the System for Award Management (SAM). Since registration for this process can take longer than a week, interested individuals are encouraged to register in advance of being contacted by the Department. In addition to registering in G5, some OSERS/OSEP peer reviews require being approved to serve on the Office of Special Education's Standing Panel. Individuals should express their interest to serve as a peer reviewer for OSEP competitions directly to the competition manager listed in the Notice Inviting Applications at least four weeks prior to the application closing date.

If you have interest in serving as a reviewer specifically for OESE competitions (Chart 2 of the Forecast of Funding Opportunities), you must also send your resume to *OESEPeerReviewRecruitment@ed.gov.*

If you have interest in serving as a reviewer specifically for RSA competitions (Chart 4B) also send your resume to *RSAPeerReview@ed.gov* and *osersprs@ed.gov.* The subject line of the email should read ''Prospective 2022 Peer Reviewer.'' In the body of the email, list all programs for which you would like to be considered to serve as a peer reviewer.

Requests to serve as a peer reviewer should be submitted at least four weeks prior to the program's application deadline, noted on the forecast page, to provide program offices with sufficient time to review resumes and determine an individual's suitability to serve as a peer reviewer for a specific competition. If you are selected to serve as a peer reviewer, the program office will contact you.

Accessible Format: On request to the person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 *et seq.*), Higher Education Act of 1965, as amended (20 U.S.C. 1001 *et seq.*), Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (29 U.S.C. 701 *et seq.*).

Roberto J. Rodriguez,

Assistant Secretary for Planning, Evaluation and Policy Development.

[FR Doc. 2022–10834 Filed 5–19–22; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Voting System Manufacturer Registration, Application for Testing, Anomaly Reporting and Root Cause Analysis; Survey and Submission to OMB of Proposed Collection of Information

AGENCY: Election Assistance Commission.

ACTION: Notice; request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the EAC announces an information collection and seeks public comment on the provisions thereof. The EAC intends to submit this proposed information collection to the Director of the Office of Management and Budget for approval. The U.S. Election Assistance Commission (EAC) is publishing four information collecting forms for its Voting System Testing and Certification Program. The information collected is to be used to improve the quality of voting systems used in federal elections, and to collect necessary key information on voting system manufacturers and their systems. Participation in this program is voluntary. The program is mandated by the Help America Vote Act (HAVA).

DATES: Comments must be received by 5 p.m. on Friday, July 19, 2022.

ADDRESSES: Submission of Comments: Comments on the proposed Testing and Certification forms should be submitted electronically via *https://www.regulations.gov* (docket IDs: EAC–2022–0001, EAC–2022–0002, EAC–2022–0003, EAC–2022–0004). Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: Testing & Certification.

FOR FURTHER INFORMATION CONTACT: Paul Aumayr, Senior Election Technology Specialist, Testing and Certification Program, Washington DC (301)–563–3919. All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Manufacturer Registration, Application for Testing, Voting System Anomaly Reporting and Root Cause Analysis; OMB Numbers Pending.

Purpose

Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the EAC is publishing notice of the proposed collection of information set forth in this document.

HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA (52 U.S.C. 20971) specifically requires the EAC to ''provide for the testing, certification, decertification and recertification of

voting system hardware and software by accredited laboratories.'' To meet this obligation, the EAC has created a voluntary testing and certification program to test voting systems to federal voting system standards.

The program is to publish four forms. These are to be used to collect key information concerning voting system manufacturers and their systems, as well as information regarding anomalies in voting systems used in federal elections. These forms will collect:

- The voting system manufacturer registration form collects information on the ownership, contact details for certain directors and senior staff, and the quality processes for manufacturers who wish to participate in the EAC's Testing and Certification program.
- The voting system application collects administrative information on new or modified voting systems that are being submitted for testing by a registered voting system manufacturer.
- The voting system anomaly report will collect initial anomaly information as reported by voting system manufacturers and election officials.
- The root cause analysis form collects information on voting system anomalies, test results, and findings.

This information is collected to improve the quality of voting systems used in federal elections.

Public Comments

We are soliciting public comments to permit the EAC to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the EAC's Testing and Certification Division.
- Evaluate the accuracy of our estimate of burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Respondents: State and Local Election Officials and Voting System Manufacturers.

Annual Reporting Burden

OMB approval is requested for 3 years.

Annual Burden Estimates

Estimated Burden in hours—177 hours.

Estimated Burden cost—$14,871.

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2022–10900 Filed 5–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Notice of Availability of Final Versatile Test Reactor Environmental Impact Statement

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE or the Department) announces the availability of the *Final Versatile Test Reactor Environmental Impact Statement* (VTR EIS) (DOE/EIS–0542). DOE prepared the VTR EIS in accordance with the National Environmental Policy Act (NEPA) to evaluate the potential environmental impacts of alternatives for constructing and operating VTR and associated facilities for post-irradiation examination of irradiated test specimens and the management of VTR spent nuclear fuel. The Final VTR EIS also evaluates the potential environmental impacts of options for production of VTR driver fuel (the fuel that powers the reactor).

DATES: DOE will issue a Record of Decision based on the VTR EIS no sooner than 30 days after the May 20, 2022, publication of the U.S. Environmental Protection Agency notice of availability of the Final VTR EIS in the **Federal Register**. For alternatives (or options) for which DOE did not identify a preferred alternative (or option) in the Final VTR EIS, DOE will not issue a Record of Decision until 30 days after it announces its preferred alternative (or option) in the **Federal Register**.

ADDRESSES: Communications regarding the Final VTR EIS should be sent to Mr. James Lovejoy, Document Manager, by mail to: U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS 1235, Idaho Falls, Idaho 83415; or by email to *VTR.EIS@nuclear.energy.gov.* The Final VTR EIS is available for viewing or download at *https://www.energy.gov/nepa* or *https://www.energy.gov/ne/versatile-test-reactor.*

FOR FURTHER INFORMATION CONTACT: For information regarding the VTR Project or the Final VTR EIS, *visit https://www.energy.gov/ne/versatile-test-reactor.* For questions about the Final VTR EIS or the analyses therein, contact Mr. James Lovejoy at the mailing address listed in **ADDRESSES**; via email at *VTR.EIS@nuclear.energy.gov;* or call (208) 526–6805. For general information on DOE's NEPA process, contact Mr. Jason Anderson at the mailing address listed in **ADDRESSES**; via email at *VTR.EIS@nuclear.energy.gov;* or call (208) 526–6805.

SUPPLEMENTARY INFORMATION:

Background

Part of the DOE mission is to ensure America's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science and technology solutions. Many commercial organizations and universities are pursuing advanced nuclear energy fuels, materials, and reactor designs that complement the efforts of DOE and its laboratories in advancing nuclear energy. These designs include thermal and fast-spectrum [1] reactors targeting improved fuel resource utilization and waste management and utilizing materials other than water for cooling. Development of these designs requires adequate infrastructure for experimentation, testing, design evolution, and component qualification. Existing irradiation test capabilities are aging and some are over 50 years old. The existing capabilities are focused on testing of materials, fuels, and components in the thermal neutron spectrum and do not have the ability to support the needs of fast reactor researchers. Only limited fast-neutron-spectrum-testing capabilities, with restricted availability, exist outside the United States. To meet its obligation to support advanced reactor technology development, DOE needs to develop the capability for large-scale testing, accelerated testing, and qualification of advanced nuclear fuels, materials, instrumentation, and sensors. This testing capability is essential for the United States to modernize its nuclear

[1] Fast neutrons are highly energetic neutrons (ranging from 0.1 to 10 million electron volts [MeV] and travelling at speeds of thousands to tens of thousands kilometers per second) emitted during fission. The fast-neutron spectrum refers to the range of energies associated with fast neutrons. By contrast, thermal neutrons, such as those typically associated in a commercial light-water reactor, are neutrons that are less energetic than fast neutrons (more than a million times less energetic [about 0.25eV] and travelling at speeds of less than 5 kilometers per second), having been slowed by collisions with other materials such as water. The thermal neutron spectrum refers to the range of energies associated with thermal neutrons.

energy infrastructure and for developing transformational nuclear energy technologies that will play a crucial role in helping the United States reach net-zero emissions by 2050 while re-establishing the United States as a world leader in nuclear technology commercialization.

Recognizing that the United States does not have a dedicated fast-neutron-spectrum testing capability, DOE performed a mission needs assessment to evaluate current testing capabilities (domestic and foreign) against the required testing capabilities to support the development of advanced nuclear technologies. This needs assessment was consistent with the Nuclear Energy Innovation Capabilities Act (NEICA) (Pub. L. 115–248) passed in 2018, which directed DOE to assess the mission need for, and cost of, a versatile reactor-based fast- neutron source with a high neutron flux, irradiation flexibility, multiple experimental environment (*e.g.,* coolant) capabilities, and volume for many concurrent users. The needs assessment identified a gap between required testing needs and existing capabilities. That is, there currently is an inability to effectively test advanced nuclear fuels and materials in a fast-neutron spectrum irradiation environment at high neutron fluxes. Specifically, the DOE Office of Nuclear Energy (NE), Nuclear Energy Advisory Committee (NEAC) report, *Assessment of Missions and Requirements for a New U.S. Test Reactor,* confirmed that there was a need in the United States for fast-neutron testing capabilities, but that there is no facility that is readily available domestically or internationally. The NEAC study confirmed the conclusions of an earlier study, the *Advanced Demonstration and Test Reactor Options Study.* That study established the strategic objective that DOE ''provide an irradiation test reactor to support development and qualification of fuels, materials, and other important components/items (*e.g.,* control rods, instrumentation) of both thermal and fast neutron-based advanced reactor systems.''

Following establishment of the mission need described previously, the VTR Project was formally launched in February 2019 as a part of the effort to modernize the nuclear research and development user facility infrastructure in the United States. In later 2020, Congress enacted the Energy Act of 2020. This legislation, contained within the Consolidated Appropriations Act, directs the Secretary to provide a fast-neutron testing capability and revised the completion date from 2025 to 2026.

The Department is committed to reviving and expanding the nuclear energy infrastructure in the United States. An important step to achieving this goal is building the VTR in a manner that is protective of the public and the environment. DOE is announcing the Final VTR EIS to meet the intent of NEICA and to comply with the Council on Environmental Quality's *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,* which require agencies to ''integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts'' (40 CFR 1501.2).

Alternatives

In addition to a No Action Alternative, the Final VTR EIS evaluates potential environmental impacts of alternatives for constructing and operating a VTR. Under the action alternatives, the VTR would be a small (approximately 300 megawatt thermal) sodium-cooled, pool-type, metal-fueled reactor. DOE has completed a conceptual design of a fast-neutron-spectrum reactor based on the Power Reactor Innovative Small Module (PRISM) design from GE-Hitachi. In addition to constructing and operating the VTR, the action alternatives include the activities necessary to perform post-irradiation examination of test specimens and for the management of spent nuclear fuel from the VTR. After irradiation in the VTR, test specimens/experimental cartridges would be transferred to post-irradiation examination facilities where they would be disassembled so that the specimens can undergo detailed evaluation. To the extent practical, DOE would make use of existing facilities to perform post-irradiation examination. Spent driver fuel would be removed from the VTR each year over its 60-year operating life. The fuel would be treated (to remove sodium that is used as a bonding material in fabrication of the fuel) and packaged in containers that are ready for transport to an offsite storage facility or repository; no fissile material would be recovered during this treatment process. Pending shipment offsite, the packaged spent nuclear fuel would be stored at a facility provided by the VTR project. These activities would be part of each action alternative. The alternatives evaluated include establishing the VTR and support activities at the Idaho National Laboratory (INL) or the Oak Ridge National Laboratory (ORNL).

Idaho National Laboratory Versatile Test Reactor Alternative

Under the INL VTR Alternative, DOE would site the VTR adjacent to the Materials and Fuels Complex (MFC) at INL and use existing hot cell and other facilities at the MFC for post-irradiation examination. The MFC is the location of the Hot Fuel Examination Facility (HFEF), the Irradiated Materials Characterization Laboratory (IMCL), the Experimental Fuels Facility (EFF), and other laboratory facilities. Spent driver fuel would be treated at the Fuel Conditioning Facility (FCF) and stored at a facility constructed as part of the VTR project. The INL VTR Alternative is DOE's preferred alternative.

Oak Ridge National Laboratory Versatile Test Reactor Alternative

Under the ORNL VTR Alternative, the VTR would be sited at ORNL at a location about three quarters of a mile northeast of the High Flux Isotope Reactor. In addition to constructing the VTR and a facility to store spent driver fuel, DOE would also construct a new hot cell facility at this location. The hot cell facility would include capability and capacity for the initial post-irradiation disassembly and examination of test specimens and for the treatment of spent VTR driver fuel. Several existing facilities at ORNL would be used to provide additional post-irradiation examination capabilities. Hot cells in the Irradiated Fuels Examination Laboratory and the Irradiated Materials Examination and Testing Facility would augment the capabilities in the new hot cell facility. In addition, the Low Activation Materials Design and Analysis Laboratory would be used for testing low-dose samples that do not require the use of hot cells.

Reactor Fuel Production

The driver fuel for the VTR would be a metal alloy composed of uranium, plutonium, and zirconium. Activities to produce reactor fuel may include feedstock preparation, as well as fuel fabrication. The Final VTR EIS evaluates the potential environmental impacts of a number of feedstock preparation activities that would be used to remove contaminants from the plutonium (called polishing) and to convert plutonium oxides to metal that can be used in fuel fabrication. The fabrication steps include creating the alloy; casting the alloy to create fuel slugs; fabricating fuel pins, including establishing a sodium bond between the fuel slugs and the encasing tube; and assembling the tube bundles that would be placed in

the reactor. DOE evaluates two options for each phase of reactor fuel production. The feedstock preparation could be performed at either INL or the Savanah River Site (SRS). Similarly, fuel fabrication activities could be performed at INL or SRS.

Under the options to perform feedstock preparation and fuel fabrication at INL, new and existing gloveboxes and equipment would be used in the Fuel Manufacturing Facility and the building that previously housed the Zero Power Physics Reactor. Under the options to perform feedstock preparation and fuel fabrication at SRS, new gloveboxes and equipment would be installed in a building that previously housed one of the SRS production reactors. DOE has not identified a preferred option for reactor fuel production.

Public Involvement

The Final VTR EIS follows the December 2020 release of the Draft VTR EIS (85 FR 83068). The U.S. Environmental Protection Agency published its notice of availability on December 31, 2020 (83 FR 86919). DOE accepted comments through March 2, 2021. During the review and comment period, DOE held two web-based public hearings. DOE received comments from Federal and state agencies, American Indian tribes, and the public. In preparing the Final EIS, DOE considered and responded to the comments received on the Draft EIS. Responses to all comments are included in Volume 3 of the Final VTR EIS.

Signing Authority

This document of the Department of Energy was signed on May 12, 2022, by Robert Boston, DOE Idaho Operations Office Manager, 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 May 13, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–10692 Filed 5–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1201–001.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Tariff Amendment: Niagara Mohawk Power Corporation submits tariff filing per 35.17(b): NMPC Deficiency Response: Smart Path Cost Recovery and Incentive Rate filing to be effective 5/4/2022.
Filed Date: 5/16/22.
Accession Number: 20220516–5073.
Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: ER22–1420–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amend Hybrid Resources Revisions in ER22–1420, Request 5-Day Comment Period to be effective 7/13/2022.
Filed Date: 5/13/22.
Accession Number: 20220513–5147.
Comment Date: 5 p.m. ET 5/23/22.

Docket Numbers: ER22–1874–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC–NTE Carolinas II, LLC—SA No. 491 to be effective 5/14/2022.
Filed Date: 5/13/22.
Accession Number: 20220513–5161.
Comment Date: 5 p.m. ET 6/3/22.

Docket Numbers: ER22–1875–000.
Applicants: RE Gaskell West 2 LLC.
Description: Compliance filing: Gaskell West 2 Revised MBR Filing to be effective 5/14/2022.
Filed Date: 5/13/22.
Accession Number: 20220513–5167.
Comment Date: 5 p.m. ET 6/3/22.

Docket Numbers: ER22–1876–000.
Applicants: RE Gaskell West 3 LLC.
Description: Compliance filing: Gaskell West 3 Revised MBR Filing to be effective 5/14/2022.
Filed Date: 5/13/22.
Accession Number: 20220513–5169.
Comment Date: 5 p.m. ET 6/3/22.

Docket Numbers: ER22–1877–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–05–16_SA 3829 OTP-Crowned Ridge Wind FSA (J722) to be effective 7/16/2022.
Filed Date: 5/16/22.
Accession Number: 20220516–5070.
Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: ER22–1878–000.
Applicants: Sanford ESS, LLC.
Description: Baseline eTariff Filing: Sanford ESS MBR Application to be effective 6/1/2022.
Filed Date: 5/16/22.
Accession Number: 20220516–5106.
Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: ER22–1879–000.
Applicants: South Portland ESS, LLC.
Description: Baseline eTariff Filing: South Portland ESS MBR Application to be effective 6/1/2022.
Filed Date: 5/16/22.
Accession Number: 20220516–5108.
Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: ER22–1880–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Capital Budget Quarterly Filing for First Quarter of 2022.
Filed Date: 5/12/22.
Accession Number: 20220512–5172.
Comment Date: 5 p.m. ET 6/2/22.

Docket Numbers: ER22–1881–000.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Amendment: Termination of Oakland Energy Storage 1, LLC E&P Agreement (SA 2100 EP–27) to be effective 7/16/2022.
Filed Date: 5/16/22.
Accession Number: 20220516–5151.
Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: ER22–1882–000.
Applicants: VESI 10 LLC.
Description: Baseline eTariff Filing: Petition for Approval of Initial Market-Based Rate Tariff to be effective 5/17/2022.
Filed Date: 5/16/22.
Accession Number: 20220516–5187.
Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: ER22–1883–000.
Applicants: Ledyard Windpower, LLC.
Description: Baseline eTariff Filing: Ledyard Windpower, LLC—Market-Based Rates Authorization Request to be effective 7/16/2022.
Filed Date: 5/16/22.
Accession Number: 20220516–5195.
Comment Date: 5 p.m. ET 6/6/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10919 Filed 5–19–22; 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: RP22–925–000.
Applicants: Washington 10 Storage Corporation.
Description: Compliance filing: FERC Form No. 2–A Page 520 Compliance Filing.
Filed Date: 5/13/22.
Accession Number: 20220513–5111.
Comment Date: 5 p.m. ET 5/25/22.

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: RP21–543–000.
Applicants: Northwest Pipeline LLC.
Description: Report Filing: TPAL Activity Report to be effective N/A.
Filed Date: 5/13/22.
Accession Number: 20220513–5081.
Comment Date: 5 p.m. ET 5/25/22.

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: May 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10920 Filed 5–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1333–066]

Pacific Gas and Electric Company, Tule Hydro LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On February 1, 2022, Pacific Gas and Electric Company (transferor) and Tule Hydro LLC (transferee) filed jointly an application for the transfer of license of the Tule River Hydroelectric Project No. 1333. The project is located on Tule River, Springville City, in Tulare County, California.

The applicants seek Commission approval to transfer the license for the Tule River Hydroelectric Project from the transferor to the transferee. The transferee will be required by the Commission to comply with all the requirements of the license as though it were the original licensee.

Applicants Contact: For transferor (Pacific Gas and Electric Company): Ms. Kimberly Ognisty, Senior Counsel, Law, 77 Beale Street, B30A–3005, San Francisco, CA 94105, Phone: (510) 227–7060, Email: *kimberly.ognisty@pge.com* and Ms. Jan Nimick, VP-Power Generation, 245 Market Street, Room 1163, San Francisco, CA 94105, Phone: (415) 973–0629, Email: *jan.nimick@pge.com*

For transferee (Tule Hydro LLC): Ms. Miriah Elliott, Director of Operations, 711 E Turtle Point Drive, Ivins, UT 84738, Phone: (801) 891–4147, Email: *miriah@tsorenson.net* and Mr. Ted Sorenson, PE, Manager, 711 E Turtle Point Drive, Ivins, UT 84738, Phone: (208) 589–6908, Email: *ted@tsorenson.net*

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. 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 U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1333–066. Comments emailed to Commission staff are not considered part of the Commission record.

Dated: May 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10871 Filed 5–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–141–000]

Great Basin Gas Transmission Company; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed 2023 Mainline Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the 2023 Mainline Replacement Project (Project) involving construction and operation of facilities by Great Basin Gas

Transmission Company (Great Basin) in Humboldt County, Nevada. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on June 15, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on March 30, 2022, you will need to file those comments in Docket No. CP22–141–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Great Basin provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–141–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Summary of the Proposed Project

Great Basin proposes to abandon in-place approximately 20.4 miles of its existing 16-inch-diameter steel pipeline and construct, as replacement, approximately 20.4 miles of new 16-inch-diameter steel pipeline. Although Great Basin proposes to abandon the pipeline in-place, it would provide landowners with the option to have the pipeline removed on their property. The replacement pipeline would be constructed approximately 20 feet from the existing pipeline to be abandoned beginning just south of US–95, north of Winnemucca, Nevada, and ending south of State Highway 49/Jungo Road near Great Basin's existing Elko Lateral Tap. According to Great Basin, the replacement is needed to address indications that the subject segment is approaching the end of its useful life, as demonstrated by preventative integrity assessments, including inline inspections and direct assessments. The Project would provide no new transportation capacity. Great Basin would provide landowners with the option to have the pipeline removed on their property rather than abandoned in place.

The Project would consist of the following:

- Abandonment in-place or by removal of 20.4 miles of existing 16-inch-diameter steel pipeline;
- construction of 20.4 miles of new 16-inch-diameter steel pipeline to replace the abandoned pipeline; and
- removal of existing valves and replacement with new valves and associated appurtenances within Great Basin's existing Elko Lateral Tap.

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this

Continued

Land Requirements for Construction

Construction of the Project would impact about 227.7 acres of land, of which 123.4 acres would be permanently used for operation. The remaining acreage would be restored and allowed to revert to former uses. Approximately 78.3 acres (34 percent) of the temporary construction footprint is located inside Great Basin's existing pipeline easement. The proposed pipeline would cross approximately 13.1 miles of public land owned by the Bureau of Land Management.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the abandonment, construction, and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- environmental justice;
- land use;
- air quality and noise;
- cumulative impacts; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/ natural-gas/environment/ environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–141–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

Or

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar

notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: May 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10872 Filed 5–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2307–083]

Alaska Electric Light & Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) part 380, Commission staff reviewed Alaska Electric Light and Power Company's application for an amendment to the license of the Annex Creek and Salmon Creek Hydroelectric Project No. 2307 and have prepared an Environmental Assessment (EA). The licensee proposes to replace the aging Annex Creek penstock. The valvehouse would also be expanded to include an automated valve and controls located immediately downstream of the originally manually operated gate valve. The project is located on Annex and Salmon Creeks in the City and Borough of Juneau, Alaska. The project occupies federal lands within the Tongass National Forest administered by the U.S. Forest Service.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment to the license, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2307) in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

For further information, contact Marybeth Gay at 202–502–6125 or *Marybeth.Gay@ferc.gov.*

Dated: May 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–10873 Filed 5–19–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9872–01–R6]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for ExxonMobil Fuels & Lubricant Company, Baton Rouge Refinery, Reforming Complex and Utilities Units, East Baton Rouge Parish, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on Petition for objection to Clean Air Act title V operating permits.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated March 18, 2022, granting two title V permit Petitions and resolving two related petitions filed by the Louisiana Bucket Brigade, Earthjustice, Environmental Integrity Project, and Sierra Club (the Petitioners). The Administrator granted the petition filed on January 29, 2021 by Petitioners on title V permit 2261–V8 issued for the Reformer Unit. This action also effectively resolves the Petitioner's petition filed on May 11, 2020 for the same permit. In the same action, the Administrator granted the petition filed on February 12, 2021 by Petitioners on title V permit 2363–V8 issued for the Utilities Unit. This action also effectively resolves the Petitioner's petition filed on March 27, 2020 filed on the same permit. The Petitions requested that the EPA object to the Clean Air Act (CAA) title V operating permits issued by the Louisiana Department of Environmental Quality to ExxonMobil Fuels & Lubricant Company for its Baton Rouge Refinery located in East Baton Rouge Parish, Louisiana.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed below if you need alternative access to the final Order and Petition, which are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Brad Toups, EPA Region 6 Office, Air Permits Section, (214) 665–7258, *toups.brad@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issue arose after this period.

The EPA received a total of four Petitions filed by the Louisiana Bucket Brigade, Earthjustice, Environmental Integrity Project, and Sierra Club. Petitioners filed a Petition on May 11, 2020 which was superseded by the filing of a second petition on January 29, 2021 on title V permit 2261–V8 issued for the Reformer Unit. The Administrator's action granted the Petitioner's Reformer Unit petition filed January 29, 2021 and effectively resolves the superseded petition filed on May 11, 2020 for the same permit. Similarly, Petitioners filed a petition on March 27, 2020 which was superseded by the filing of a second petition on February 12, 2021 on title V permit 2363–V8 issued for the Utilities Unit. The same Administrator's action granted the Petitioner's Utility Unit petition filed February 12, 2021 and effectively resolves the superseded petition filed on March 27, 2020 for the same permit.

The Petitioners made five claims in their Petition on the Reformer Permit. The claims were related to volatile organic compound (VOC) emissions monitoring, justification for such monitoring, changing of VOC emissions factors without adequate permit modification, and that the permit failed to ensure compliance with 40 CFR part

68, Chemical Accident Prevention Provision requirements. The Petitioners also made three claims in the Petition on the Utilities Permit consisting of inadequate monitoring and estimation of VOC emissions from the wastewater system, inadequate monitoring and emissions calculations of particulate matter (PM) emissions from the cooling towers, and an inadequate reasoned explanation for why the proposed permit ensures compliance with the VOC and PM limits at issue.

On March 18, 2022, the EPA Administrator issued an Order granting all claims to both permits in the respective Petitions. The Order explains the basis for EPA's decision.

Dated: May 16, 2022.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2022–10793 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–017]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 9, 2022 10 a.m. EST Through May 16, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220069, Draft, FERC, LA, Driftwood Line 200 and Line 300, Comment Period Ends: 07/05/2022, Contact: Office of External Affairs 866–208–3372.

EIS No. 20220070, Final, DOE, ID, Versatile Test Reactor Environmental Impact Statement, Review Period Ends: 06/21/2022, Contact: James Lovejoy 208–526–6805.

EIS No. 20220071, Draft Supplement, USFS, MT, Telegraph Vegetation Project Supplemental Environmental Impact Statement, Comment Period Ends: 07/05/2022, Contact: Katherine Bushnell 406–495–3747.

EIS No. 20220072, Final, Caltrans, CA, El Camino Real Roadway Renewal Project, Contact: Yolanda Rivas 510–506–1461. Pursuant to 23 U.S.C. 139(n)(2), Caltrans has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

Amended Notice

EIS No. 20220052, Draft, FHWA, IN, Mid-States Corridor Tier 1, Comment Period Ends: 06/14/2022, Contact: Michelle Allen 317–226–7344. Revision to FR Notice Published 04/15/2022; Extending the Comment Period from 05/31/2022 to 06/14/2022.

Dated: May 17, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–10870 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0163; FRL–9408–04–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses—April 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before June 21, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the *EPA File Symbol* or the *EPA Registration Number* of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

The latest information on EPA/DC docket access, services and submitting comments is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov*; or Marietta Echeverria, Registration Division (RD) (7505T), main telephone number: (202) 566–1030, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Include the contact person's name, division, and mail code as part of the mailing address. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *EPA Registration Numbers:* 100–727 and 100–1677. *Docket ID number:* EPA–HQ–OPP–2022–0069. *Applicant:* Interregional Research Project Number 4 (IR–4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. *Active ingredient:* Trinexapac-ethyl. *Product type:* Herbicide. *Proposed use:* Clover grown for seed. *Contact:* RD.

2. *EPA Registration Number:* 100–993; 100–1017; 100–1103. *Docket ID number:* EPA–HQ–OPP–2022–0005. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-N-(methylsulfonyl)-2-nitrobenzamide. *Product type:* Herbicide MUP; herbicide end use product. *Proposed use:* Vegetable, bulb, group 3–07; vegetable, cucurbit, group 9; vegetable, foliage of legume, except soybean, subgroup 7A; and vegetable, fruiting, group 8–10. *Contact:* RD.

3. *EPA Registration Number:* 279–9580; 279–9594. *Docket ID number:* EPA–HQ–OPP–2021–0388. *Applicant:* FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104. *Active ingredient:* Tribenuron-methyl, methyl-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl] amino] sulfonyl] benzoate. *Product type:* Herbicide MUP; herbicide end use product. *Proposed use:* Cottonseed subgroup 20C; rapeseed subgroup 20A; proposed crop subgroup 6–18E: Dried shelled bean, except soybean, subgroup including Adzuki bean, dry seed; African yam-bean, dry seed; American potato bean, dry seed; Andean lupin bean, dry seed; asparagus bean, dry seed; black bean, dry seed; black-eyed pea, dry seed; blue lupin bean, dry seed; broad bean, dry seed; catjang bean, dry seed; Chinese longbean, dry seed; cowpea, dry seed; cranberry bean, dry seed; crowder pea, dry seed; dry bean, dry seed; field bean, dry seed; French bean, dry seed; garden bean, dry seed; goa bean, dry seed; grain lupin bean, dry seed; great northern bean, dry seed; green bean, dry seed; guar bean, dry seed; horse gram, dry seed; jack bean, dry seed; kidney bean, dry seed; lablab bean, dry seed; lima bean, dry seed; morama bean, dry seed; moth bean, dry seed; mung bean, dry seed; navy bean, dry seed; pink bean, dry seed; pinto bean, dry seed; red bean, dry seed; rice bean, dry seed; scarlet runner bean, dry seed; southern pea, dry seed; sweet lupin bean, dry seed; sword bean, dry seed; tepary bean, dry seed; urd bean, dry seed; vegetable soybean, dry seed; velvet bean, seed, dry seed; white lupin bean, dry seed; white sweet lupin bean, dry seed; winged pea, dry seed; yard long bean, dry seed; yellow bean, dry seed; yellow lupin bean, dry seed; individual commodities of proposed crop subgroup 6–18F: Dried shelled pea subgroup including chickpea, dry seed; dry pea, dry seed; field pea, dry seed; garden pea, dry seed; grass-pea, dry seed; green pea, dry seed; lentil, dry seed; pea, field, hay; pea, field, vines; pigeon pea, dry seed; individual commodities of proposed crop subgroup 15–20A: Wheat subgroup including amaranth, grain, forage; amaranth, grain, grain; amaranth, grain, hay; amaranth, grain, straw; amaranth, purple, forage; amaranth, purple, grain; amaranth, purple, hay; amaranth, purple, straw; cañihua, forage; cañihua, grain; cañihua, hay; cañihua, straw; chia, forage; chia, grain; chia, hay; chia, straw; cram cram, forage; cram cram, grain; cram cram, hay; cram cram, straw; huauzontle, grain, forage; huauzontle, grain, grain; huauzontle, grain, hay; huauzontle, grain, straw; Inca wheat, forage; Inca wheat, grain; Inca wheat, hay; Inca wheat, straw; princess feather, forage; princess feather, grain; princess feather, hay; princess feather, straw; psyllium, forage; psyllium, grain; psyllium, hay; psyllium, straw; psyllium, blond, forage; psyllium, blond, grain; psyllium, blond, hay; psyllium, blond, straw; quinoa, forage; quinoa, grain; quinoa, hay; quinoa, straw; rye, forage; rye, grain; rye, hay; rye, straw; triticale, forage; triticale, grain; triticale, hay; triticale, straw; wheat, club, forage; wheat, club, grain; wheat, club, hay; wheat, club, straw; wheat, common, forage; wheat, common, grain; wheat, common, hay; wheat, common, straw; wheat, durum, forage; wheat, durum, grain; wheat, durum, hay; wheat, durum, straw; wheat, einkorn, forage; wheat, einkorn, grain; wheat, einkorn, hay; wheat, einkorn, straw; wheat, emmer, forage; wheat, emmer, grain; wheat, emmer, hay; wheat, emmer, straw; wheat, macha, forage; wheat, macha, grain; wheat, macha, hay; wheat, macha, straw; wheat, oriental, forage; wheat, oriental, grain; wheat, oriental, hay; wheat, oriental, straw; wheat, Persian, forage; wheat, Persian, grain; wheat, Persian, hay; wheat, Persian, straw; wheat, Polish, forage; wheat, Polish, grain; wheat, Polish, hay; wheat, Polish, straw; wheat, poulard, forage; wheat, poulard, grain; wheat, poulard, hay; wheat, poulard, straw; wheat, shot, forage; wheat, shot, grain; wheat, shot, hay; wheat, shot, straw; wheat, spelt, forage; wheat, spelt, grain; wheat, spelt, hay; wheat, spelt, straw; wheat, timopheevi, forage; wheat, timopheevi, grain; wheat, timopheevi, hay; wheat, timopheevi, straw; wheat, vavilovi, forage; wheat, vavilovi, grain; wheat, vavilovi, hay; wheat, vavilovi, straw; wheat, wild einkorn, forage; wheat, wild einkorn, grain; wheat, wild einkorn, hay; wheat, wild einkorn, straw; wheat, wild emmer, forage; wheat, wild emmer, grain; wheat, wild emmer, hay; wheat, wild emmer, straw; wheatgrass, intermediate, forage; wheatgrass, intermediate, grain; wheatgrass, intermediate, hay; wheatgrass, intermediate, straw; individual commodities of proposed crop subgroup 15–20B: Barley subgroup including buckwheat, grain; buckwheat, hay; buckwheat, straw; buckwheat, tartary, grain; buckwheat, tartary, hay; buckwheat, tartary, straw; canary grass, annual, grain; canary grass, annual, hay; canary grass, annual, straw; oat, hay; oat, Abyssinian, grain; oat, Abyssinian, hay; oat, Abyssinian, straw; oat, common, grain; oat, common, hay; oat, common, straw; oat, naked, grain; oat, naked, hay; oat, naked, straw; oat, sand, grain; oat, sand, hay; oat, sand, straw; individual commodities of proposed crop subgroup 15–20C field corn subgroup including popcorn, forage; popcorn, grain; popcorn, stover; teosinte, forage; teosinte, grain; teosinte, stover; individual commodities of proposed crop subgroup 15–20E grain sorghum and millet subgroup including fonio, black, forage; fonio, black, grain; fonio, black, stover; fonio, white, forage; fonio, white, grain; fonio, white, stover; job's tears, forage; job's tears, grain; job's tears, stover; millet, barnyard, forage; millet, barnyard, grain; millet, barnyard, stover; millet, finger, forage; millet, finger, grain; millet, finger, stover; millet, foxtail, forage; millet, foxtail, grain; millet, foxtail, stover; millet, little, forage; millet, little, grain; millet, little, stover; millet, pearl, forage; millet,

pearl, grain; millet, pearl, stover; millet, proso, forage; millet, proso, grain; millet, proso, stover; teff, forage; teff, grain; teff, stover; individual commodities of proposed crop subgroup 15–20F rice subgroup including rice, African, grain; wild rice, grain; wild rice, eastern, grain. *Contact:* RD.

4. *EPA Registration Numbers:* 42750–UNE and 42750–UNG. *Docket ID number:* EPA–HQ–OPP–2021–0634. *Applicant:* Albaugh, LLC, 1535 36th St. NE, Ankeny, IA 50021. *Active ingredient:* Oxyfluorfen. *Product type:* Herbicide. *Proposed uses:* Rice. *Contact:* RD.

5. *EPA Registration Numbers:* 70506–60 and 91813–18. *Docket ID number:* EPA–HQ–OPP–2022–0361. *Applicant:* Interregional Research Project Number 4 (IR–4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. *Active ingredient:* Acifluorfen. *Product type:* Herbicide. *Proposed use:* Edamame and a crop group expansion to low-growing berry subgroup 13–07. *Contact:* RD.

6. *EPA Registration Numbers:* 71512–28, 71512–29. *Docket ID number:* EPA–HQ–OPP–2022–0198. *Applicant:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio, 44077. *Active ingredient:* Tolpyralate. *Product type:* Herbicide. *Proposed uses:* Wheat and Barley. *Contact:* RD.

7. *EPA Registration Numbers:* 91813–76, 70506–536, and 70506–539. *Docket ID number:* EPA–HQ–OPP–2022–0300. *Applicant:* Interregional Research Project Number 4 (IR–4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. *Active ingredient:* Bifenazate. *Product type:* Insecticide. *Proposed Uses:* Banana and bushberry subgroup 13–07B; cherry subgroup 12–12A; cottonseed subgroup 20C; nut, tree, group 14–12; peach subgroup 12–12B; plantain; plum subgroup 12–12C; tropical and subtropical, small fruit, inedible peel, subgroup 24A; individual crops of edible podded bean legume vegetable subgroup 6–18A; individual crops of edible podded pea legume vegetable subgroup 6–18B; individual crops of succulent shelled bean subgroup 6–18C; individual crops of succulent shelled pea subgroup 6–18D; and individual crops of dried shelled bean, except soybean subgroup 6–18E. *Contact:* RD.

8. *EPA Registration Numbers:* 59639–185 and 59639–186. *Docket ID number:* EPA–HQ–OPP–2022–0385. *Applicant:* Valent U.S.A. LLC,4600 Norris Canyon Road San Ramon, CA 94583. *Active ingredient:* Ethaboxam. *Product type:* Fungicide. *Proposed Use:* Seed treatment on alfalfa. *Contact:* RD.

9. *EPA Registration Number:* 94339–1. *Docket ID number:* EPA–HQ–OPP–2022–0393. *Applicant:* Better Air International Limited, Unit 705, China Insurance Group Building, 141 Des Voeux Road Central, Hong Kong (c/o toXcel LLC, 7140 Heritage Village Plaza, Gainesville, VA 20155–3061). *Active ingredients: Bacillus subtilis* strain 3, *bacillus subtilis* strain 281, and *bacillus amyloliquefaciens* strain 298. *Product type:* Bactericide and fungicide. *Proposed use:* Indoor automatic dispenser for the control or suppression of odor-causing and discoloration-causing bacterial and fungal growth in commercial and residential areas. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 12, 2022.

Brian Bordelon,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–10849 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0160; FRL–9409–13–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients—April 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before June 21, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the *EPA File Symbol* of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

The latest information on EPA/DC docket access, services and submitting comments is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov.* The mailing address: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Include the contact person's name, division, and mail code in the mailing address.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

Notice of Receipt—New Active Ingredients

1. *EPA File Symbols:* 10163–GIU and 10163–GIL. *Docket ID number:* EPA–HQ–OPP–2022–0302. *Applicant:* Gowan Company in cooperation with SDS Biotech K.K., c/o Landis International, Inc., P.O. Box 5126, 3185 Madison Highway, Valdosta, GA 31603. *Product names:* SB–950 Technical and SB–9503. *Active ingredient:* Fungicide—Bacillus amyloliquefaciens strain AT–332 at 82.5% and 30.0%. *Proposed use:* For aerial and ground applications. *Contact:* BPPD.

2. *EPA File Symbols:* 95374–R and 95374–E. *Docket ID number:* EPA–HQ–OPP–2022–0278. *Applicant:* Trafalgar Land Company, LLC, P.O. Box 38, Orosi, CA 93647. *Product names:* CPCC TGAI and CPCC 40.5. *Active ingredient:* Rodenticide—Cellulose from powdered corn cobs at 45.1% and 40.5%. *Proposed use:* For use indoors to control mice. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 12, 2022.

Brian Bordelon,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–10850 Filed 5–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 87793]

Open Commission Meeting Thursday, May 19, 2022

May 12, 2022.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 19, 2022, which is scheduled to commence at 10:30 a.m.

Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in an electronic format and will be open to the public only on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Consumer & Governmental Affairs and Wireline Competition.	*Title:* Combatting Illegal Robocalls (CG Docket No. 17–59); Call Authentication Trust Anchor (WC Docket No. 17–97). *Summary:* The Commission will consider a Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking addressing foreign-originated and other illegal robocalls from multiple angles.
2	Wireline Competition	*Title:* Expanding Broadband Service Through the A–CAM Program (WC Docket No. 10–90); ETC Annual Reports and Certifications (WC Docket No. 14–58); Telecommunications Carriers Eligible to Receive Universal Service Support (WC Docket No. 09–197); Connect America Fund—Alaska Plan (WC Docket No. 16–271). *Summary:* The Commission will consider a Notice of Proposed Rulemaking seeking comment on a proposal by the ACAM Broadband Coalition to achieve widespread deployment of 100/20 Mbps broadband service throughout the rural areas served by carriers currently receiving Alternative Connect America Model support, and proposing targeted modifications to the Commission's rules to improve the efficiency and efficacy of the high-cost program.
3	Public Safety & Homeland Security	*Title:* Modernizing Priority Services for National Security and Emergency Response (PS Docket No. 20–187). *Summary:* The Commission will consider a Report and Order that would update and streamline its rules providing priority provision and restoration of service for national security and emergency response users.
4	Media	*Title:* Updating FM Radio Directional Antenna Verification (MB Docket No. 21–422). *Summary:* The Commission will consider a Report and Order to allow applicants proposing directional FM antennas the option of verifying the directional antenna pattern through computer modeling.
5	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with

open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–10915 Filed 5–19–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA20

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: On May 17, 2022, the Federal Deposit Insurance Corporation (FDIC) adopted revised Guidelines for Appeals of Material Supervisory Determinations. The revisions generally restore the Supervision Appeals Review Committee as the final level of review in the supervisory appeals process, consistent with the agency's longstanding practice of providing Board-level review of material supervisory determinations.

DATES: The revised Guidelines for Appeals of Material Supervisory Determinations took effect on May 17, 2022. Written comments must be received by the FDIC on or before June 21, 2022 for consideration.

ADDRESSES: Interested parties are invited to submit written comments, identified by RIN 3064–ZA20, by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''Guidelines for Appeals of Material Supervisory Determinations—RIN 3064–ZA20'' in the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–ZA20, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7:00 a.m. and 5:00 p.m. (EST).
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Patricia Colohan, Associate Director, Division of Risk Management Supervision, *pcolohan@fdic.gov,* 202–898–7283; Tara Oxley, Associate Director, Division of Depositor and Consumer Protection, *toxley@fdic.gov,* 202–898–6722; James Watts, Counsel, Legal Division, *jwatts@fdic.gov,* 202–898–6678.

SUPPLEMENTARY INFORMATION:

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration) to establish an ''independent intra-agency appellate process'' to review material supervisory determinations.[1] The statute defines the term ''independent appellate process'' to mean ''a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.''[2] In the appeals process, the FDIC is required to ensure that: (1) An IDI's appeal of a material supervisory determination is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.[3]

In 1995, the FDIC adopted Guidelines for Appeals of Material Supervisory Determinations to implement section 309(a). At that time, the FDIC's Board of Directors established the Supervision Appeals Review Committee (SARC) to consider and decide appeals of material supervisory determinations.[4] The Board has modified the composition of the SARC over the years, but as of 2021, the SARC included: One inside member of the FDIC's Board of Directors (serving as Chairperson); one deputy or special assistant to each of the other inside Board members; and the General Counsel as a non-voting member.

In January 2021, the FDIC adopted Guidelines that generally replaced the SARC as the final level of review in appellate process with a standalone office within the FDIC, designated the Office of Supervisory Appeals (Office).[5] This Office was granted delegated authority to consider and resolve appeals of material supervisory determinations, and would be staffed by reviewing officials with bank supervisory or examination experience. After appealing a material supervisory determination to the relevant Division Director, an institution would have the option to appeal to the Office. If a material supervisory determination was appealed to the Office, a three- or five-member panel of reviewing officials would consider the appeal and issue a written decision to the institution. The Guidelines did not provide for additional review beyond the Office.

Restoring Committee Structure

Prior to the establishment of the Office, the FDIC's supervisory appeals process had always provided for Board-level review by including a Board member on the SARC. The FDIC's experience suggests that its longstanding practice of providing Board-level review of material supervisory determinations would better promote independence and accountability in the appellate process. Allowing material supervisory determinations to be appealed to a Board-level committee underscores the significance of an independent review and lends credibility to the process. Furthermore, Board-level review has historically ensured that accountability for the FDIC's supervisory determinations ultimately remains with the agency's Board of Directors, consistent with sound corporate governance principles.

The FDIC also believes that restoring the SARC as the final level of review for supervisory appeals will address staffing concerns that were inherent in the Office structure and may potentially threaten to hinder the effectiveness of the process going forward. The Guidelines provided that the Office

[1] 12 U.S.C. 4806(a).

[2] 12 U.S.C. 4806(f)(2).

[3] 12 U.S.C. 4806(b).

[4] 60 FR 15923 (Mar. 28, 1995).

[5] 86 FR 6880 (Jan. 25, 2021).

would be staffed with reviewing officials hired for terms, and current government officials were ineligible to serve as reviewing officials. The FDIC also noted that it expected to employ reviewing officials on a part-time, intermittent basis.[6] Given these constraints, experience suggests that it may be challenging to recruit and retain individuals with sufficient expertise and judgment to make final supervisory decisions on behalf of the agency. Inability to adequately staff the Office on an ongoing basis would prevent the agency from satisfying its statutory mandate to expeditiously hear and decide appeals of material supervisory determinations. By contrast, vacancies on the SARC can be filled more promptly through existing routine internal processes, minimizing potential impact on the administration of appeals. Reliance on existing staff rather than employees dedicated solely to the appeals function (even on a part-time basis) is also a more cost-effective use of the Deposit Insurance Fund, given the historically infrequent nature of supervisory appeals.[7]

For these reasons, the FDIC has reconstituted the SARC and adopted revised Guidelines that restore the SARC as the final level of review of material supervisory determinations made by the FDIC.[8] Consistent with the composition of the SARC as it stood in 2021, the SARC will include: One inside member of the FDIC's Board of Directors (serving as Chairperson); a deputy or special assistant to each of the other inside Board members; and the General Counsel as a non-voting member. Also consistent with the prior structure of the SARC, the Chairperson of the FDIC's Board of Directors will have the authority to designate alternate members in the event of vacancies.

The revised Guidelines also include changes to certain procedural provisions that are intended to reflect the restoration of the SARC structure in the appeals process. For example, the SARC Chairperson will have the authority to extend the timeframes where supervisory appeal rights are suspended while a formal enforcement action is being pursued, and to approve an institution's submission of evidence that was not previously submitted to the Division Director for review. The SARC Chairperson also may provide guidance to Division Directors in response to procedural questions relating to appeals. These authorities are consistent with the SARC Chairperson's authorities under the Guidelines that were in effect until December 2021.

Communications With Supervisory Staff

The revised Guidelines also eliminate a provision that was added in 2021 specifically to accommodate an independent Office of Supervisory Appeals. This provision required that any communications between the Office and supervisory staff be in writing and shared with an appealing bank. As a conforming change, and given the broad responsibilities that SARC members have in their normal duties, the FDIC believes that a provision limiting communications with supervisory staff is no longer appropriate.

Formal Enforcement-Related Decisions

In the revised Guidelines, the FDIC is retaining the provisions for considering formal enforcement-related decisions (and their underlying facts and circumstances) that were adopted in 2021 to clarify the intersection of the supervisory appeals process and the administrative enforcement process. The revised Guidelines include one enhancement to these provisions. Specifically, the Guidelines previously stated that if the FDIC provided written notice to an institution that it is determining whether a formal enforcement action is merited, the FDIC would have 120 days from the date of the notice to issue an Order of Investigation, a Notice of Charges, or to provide the institution with a draft consent order; if the FDIC failed to do so, supervisory appeal rights would be made available under the Guidelines. In some instances, however, when the FDIC provides notice that it is determining whether a formal enforcement action is merited, it invites the institution to provide additional information. This can serve as an important channel of communication between institutions and supervisory staff, but the timeframes contained in the Guidelines did not account for the possibility of an institution providing information in response to the FDIC's notice. The FDIC believes that the process should provide ample opportunity to review information provided by the institution before taking enforcement action. Accordingly, the revised Guidelines provide that the FDIC has 120 days to take action from the date of its notice to the institution or the date of the most recent submission of information from the institution, whichever is later.

Other Aspects of the Appeals Process

Aside from the substitution of the SARC for the Office as the final level of review, most aspects of the supervisory appeals process remain unchanged. The revised Guidelines continue to encourage institutions to make good-faith efforts to resolve disputes with the on-site examiner and/or the appropriate Regional Office. While such efforts are not required under the process, the FDIC's experience suggests that they may narrow the matters in dispute or eliminate the need for an appeal in some instances.

The revised Guidelines also continue to provide for review by the appropriate Division Director before an appeal to the SARC may be submitted. The Division Director will have 45 days to consider the appeal and issue a written decision on the supervisory matters at issue.

In addition, the revised Guidelines continue to include provisions for considering formal enforcement-related decisions (and their underlying facts and circumstances) that were adopted in 2021 to clarify the intersection of the supervisory appeals process and the administrative enforcement process. These provisions were intended to allow sufficient time to review the facts and circumstances that lead to formal enforcement actions and ensure that such actions were not brought prematurely, and to allow sufficient time for institutions to consider and execute consent orders.[9] The FDIC believes these clarifying provisions have been beneficial and should be retained.

Effective Date

These revised Guidelines took effect on May 17, 2022. The FDIC believes that taking action quickly in this instance minimizes the potential for confusion among insured depository institutions with respect to the process they must follow in the event they wish to appeal a material supervisory determination.

Request for Comment

The FDIC invites comment on all aspects of the revised Guidelines. In particular, the FDIC is considering how it may further enhance the supervisory appeals process to include the Ombudsman's perspective. When the FDIC amended the Guidelines in 2021, it formalized its process for including the Ombudsman's views in the consideration of appeals. Specifically, copies of appeals to the Office were also

[6] 85 FR 54377, 54378 (Sep. 1, 2020).

[7] In the fifteen years prior to the establishment of the Office, 51 appeals were submitted to the SARC out of 113,448 examinations. Some of these appeals were withdrawn prior to a decision, raised issues that were not reviewable under the Guidelines, or became moot because the institution had failed.

[8] While the FDIC has periodically amended the Guidelines through the notice and comment process that generally applies to rulemakings, soliciting comment is not required.

[9] *See* 85 FR 54377, 54380 (Sep. 1, 2020).

provided to the Ombudsman, and the Ombudsman could submit views to the panel for consideration. The revised Guidelines retain this process, allowing the Ombudsman to submit views regarding an appeal to the SARC. Are there other enhancements to the process the FDIC should consider to include the Ombudsman's perspective, while remaining consistent with the Ombudsman's role as a neutral liaison between supervised institutions and the FDIC?

For the reasons set out in the preamble, the Federal Deposit Insurance Corporation adopts the Guidelines for Appeals of Material Supervisory Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Riegle Act) required the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (Guidelines) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (SARC).

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible To Appeal

The Guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.,* insured State nonmember banks, insured branches of foreign banks, and state savings associations), and to other insured depository institutions for which the FDIC makes material supervisory determinations.

D. Determinations Subject To Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines.

(1) Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Rating System for Information Technology;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the appropriateness of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending Act (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829 (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (DCP) or the Division of Risk Management Supervision (RMS);

(n) Decisions to initiate informal enforcement actions (such as memoranda of understanding);

(o) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires an additional formal enforcement action, the proposed new enforcement action is not appealable;

(p) Matters requiring board attention; and

(q) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or that otherwise affects the nature and level of supervisory oversight accorded an institution.

(2) Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution, and other decisions made in furtherance of the resolution or receivership process, including but not limited to determinations pursuant to parts 370, 371, and 381, and section 360.10 of the FDIC's rules and regulations;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831*o;*

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

(3) A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) (Order of Investigation), issues a notice of charges or a notice of assessment under 12 U.S.C. 1818 or other applicable laws (Notice of Charges), provides the institution with a draft consent order, or otherwise provides written notice to the institution that the FDIC is reviewing the facts and circumstances presented to determine if a formal enforcement action is merited under applicable

statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (ECOA) or a notice to the Secretary of Housing and Urban Development (HUD) for violations of ECOA or the Fair Housing Act (FHA). Such notice may be provided in the transmittal letter accompanying a Report of Examination. For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice that the FDIC is reviewing the facts and circumstances presented to determine if a proposed enforcement action is merited. Commencement of a formal enforcement-related action or decision will not suspend or otherwise affect a pending request for review or appeal that was submitted before the commencement of the formal enforcement-related action or decision.

(4) Additional Appeal Rights:

(a) In the case of any written notice from the FDIC to the institution that the FDIC is determining whether a formal enforcement action is merited, the FDIC must issue an Order of Investigation, issue a Notice of Charges, or provide the institution with a draft consent order within 120 days of such a notice, or the most recent submission of information from the institution, whichever is later, or appeal rights will be made available pursuant to these Guidelines. If the FDIC timely provides the institution with a draft consent order and the institution rejects the draft consent order in writing, the FDIC must issue an Order of Investigation or a Notice of Charges within 90 days from the date on which the institution rejects the draft consent order in writing or appeal rights will be made available pursuant to these Guidelines. The FDIC may extend these periods, with the approval of the SARC Chairperson, after the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) In the case of a referral to the Attorney General for violations of the ECOA, beginning on the date the referral is returned to the FDIC, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(c) In the case of providing notice to HUD for violations of the ECOA or the FHA, beginning on the date the notice is provided, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(d) Written notification will be provided to the institution within 10 days of a determination that appeal rights have been made available under this section.

(e) The relevant FDIC Division and the institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP, RMS, or the Division of Complex Institution Supervision and Resolution (CISR), or to filing a subsequent appeal with the SARC under these Guidelines.

F. Filing a Request for Review With the Appropriate Division

(1) An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, the Director, RMS, or the Director, CISR (Director or Division Director), 550 17th Street NW, Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. Requests for review also may be submitted electronically. To ensure confidentiality, requests should be submitted through *securemail.fdic.gov,* directing the message to *DirectorReviewRequest@fdic.gov.* A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors or senior management has considered the merits of the request and has authorized that it be filed. Senior management is defined as the core group of individuals directly accountable to the board of directors for the sound and prudent day-to-day management of the institution. If an institution's senior management files an appeal, it must inform the board of directors of the substance of the appeal before filing and keep the board of directors informed of the appeal's status.

(2) Within 45 calendar days after receiving a request for review described in paragraph (1), the Division Director will:

(a) Review the appeal, considering whether the material supervisory determination is consistent with applicable laws, regulations, and policy, make his or her own supervisory determination without deferring to the judgments of either party, and issue a written determination on the request for review, setting forth the grounds for that determination; or

(b) refer the request for review to the SARC for consideration as an appeal under Section G and provide written notice to the institution that the request for review has been referred to the SARC.

(3) No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

(4) In any decision issued pursuant to paragraph (2)(a) of this section, the Director will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file.

(5) The Division Director may request guidance from the SARC Chairperson or the Legal Division as to procedural or other questions relating to any request for review.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director may appeal that determination to the SARC within 30 calendar days after the date of receipt of that determination. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC.

1. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar

days after the date of receipt of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. The appeal should be sent to the address indicated on the Division Director's determination being appealed, or sent via email to *ESS_Appeals@fdic.gov.* An acknowledgment of the appeal will be provided to the institution, and copies of the institution's appeal will be provided to the Office of the Ombudsman and the appropriate Division Director.

2. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. If expedited review is requested, the appeal should state the reason for the request. Only matters submitted to the appropriate Division Director in a request for review may be appealed to the SARC. Evidence not presented for review to the Division Director is generally not permitted; such evidence may be submitted to the SARC only if approved by the SARC Chairperson and with a reasonable time for the Division Director to review and respond. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

3. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

4. Submissions From the Ombudsman and the Division Director

The Ombudsman and the Division Director each may submit views regarding the appeal to the SARC within 30 calendar days of the date on which the appeal is received by the SARC.

5. Oral Presentation

The SARC will, if a request is made by the institution or by FDIC staff, allow an oral presentation. The SARC may hear oral presentations in person, telephonically, electronically, or through other means agreed upon by the parties. If an oral presentation is held, the institution and FDIC staff will be allowed to present their positions on the issues raised in the appeal and to respond to any questions from the SARC.

6. Consolidation, Dismissal, and Rejection

Appeals based upon similar facts and circumstances may be consolidated for expediency. An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. The SARC will decline to consider an appeal if the institution's right to appeal is not yet available under Section D(4), above.

7. Scope of Review and Decision

The SARC will be an appellate body and will make independent supervisory determinations. The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC's review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC will not consider any aspect of an appeal that seeks to change or modify existing FDIC rules or policy. The SARC, after consultation with the Legal Division, will refer any appeals that raise policy matters of first impression to the Chairperson's Office for its consideration. The SARC will notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 45 days after the date the SARC meets to consider the appeal, which meeting will be held within 90 days after either the date of the filing of the appeal or the date that the Division Director refers the appeal to the SARC.

H. Publication of Decisions

Decisions of the SARC will be published as soon as practicable, and the published decisions will be redacted to avoid disclosure of the name of the appealing institution and any information exempt from disclosure under the Freedom of Information Act and the FDIC's document disclosure regulations found in 12 CFR part 309. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC. Annual reports on the SARC's decisions and Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

I. Appeal Guidelines Generally

Appeals to the SARC will be governed by these Guidelines. The SARC, with the concurrence of the Legal Division, will retain discretion to waive any provision of the Guidelines for good cause. Supplemental rules governing the SARC's operations may be adopted.

Institutions may request extensions of the time period for submitting appeals under these Guidelines from either the appropriate Division Director or the SARC Chairperson, as appropriate. If a filing under these Guidelines is due on a Saturday, Sunday, or a Federal holiday, the filing may be made on the next business day.

J. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed, or a final SARC decision issued, is not eligible for consideration by the Ombudsman. However, pursuant to Section (G)(4) of these Guidelines, the Ombudsman may submit views to the SARC for its consideration in connection with any pending appeal.

K. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, the Director, RMS, or the Director, CISR, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State regulatory authority will be left to those parties to resolve.

L. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress during the appeal or

affect the FDIC's authority to take any supervisory or enforcement action against that institution.

M. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

N. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 3501 Fairfax Drive Suite E–2022, Arlington, Virginia, 22226, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on May 17, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–10904 Filed 5–19–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–6]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, (Privacy Act), the Federal Housing Finance Agency (FHFA or Agency) gives notice of a new proposed Privacy Act system of records entitled ''Fair Lending Oversight Data System'' (FHFA–27). The new system will be used to store, maintain, and analyze information for fair lending oversight.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records will go into effect without further notice on May 20, 2022, unless otherwise revised pursuant to comments received. New routine uses will go into effect on June 21, 2022. Comments must be received on or before June 21, 2022. FHFA will publish a new notice if the effective date is delayed in order for the Agency to review the comments or if changes are made based on comments received.

ADDRESSES: Submit comments to FHFA, identified by ''2022–N–6,'' using any one of the following methods:

- *Agency Website: https://www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''Comments/No. 2022–N–6'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Clinton Jones, General Counsel, Attention: Comments/No. 2022–N–6, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The package should be delivered to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m., EST.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Clinton Jones, General Counsel, Attention: Comments/No. 2022–N–6, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. *Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: James Wylie, Associate Director, *James.Wylie@fhfa.gov* or (202) 649–3209; Stacy Easter, Privacy Act Officer, *privacy@fhfa.gov* or (202) 649–3803; or Tasha Cooper, Senior Agency Official for Privacy, *privacy@fhfa.gov* or (202) 649–3091 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA seeks public comments on a new system of records and will take all comments into consideration. *See* 5 U.S.C. 552a(e)(4) and (11). In addition to referencing ''Comments/No. 2022–N–6,'' please reference ''FHFA–27, Fair Lending Oversight Data System.''

FHFA will make all comments timely received available for examination by the public through the electronic comment docket for this notice, which is located on the FHFA website at *http://www.fhfa.gov.* All comments received will be posted without change and will include any personal information you provide, such as name, address (mailing and email), telephone numbers, and any other information you provide.

II. Introduction

This notice informs the public of FHFA's proposal to establish and maintain a new system of records. This notice satisfies the Privacy Act's requirement that an agency publish a system of records notice in the **Federal Register** when establishing a new or making a significant change to an agency's system of records. Congress has recognized that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that can be used to exempt records from provisions of the Privacy Act. Congress also mandates that exempting records from provisions of the Privacy Act requires the head of an agency to publish a determination to exempt a record from the Privacy Act in accordance with the Administrative Procedure Act. Records and information in this system of records are not exempt from the requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to section

7 of OMB Circular No. A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,* (81 FR 94424 (Dec. 23, 2016)), prior to publication of this notice, FHFA submitted a report describing the system of records covered by this notice to the OMB, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate.

The proposed new system of records described above is set forth in its entirety below.

SYSTEM NAME AND NUMBER:

Fair Lending Oversight Data System, FHFA–27.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, and any alternate work site used by employees of FHFA, including contractors assisting agency employees.

SYSTEM MANAGER(S):

Office of Fair Lending Oversight, Associate Director, (202) 649–3209, Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, and any alternate work site utilized by employees of FHFA or by individuals assisting such employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C. 4511, 4514, 4517, 4544, 4561, and section 4562 of the Federal Housing Enterprises Financial Safety and Soundness Act (Safety and Soundness Act) as amended by section 1125 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 4544(c)); 42 U.S.C. 3608(d) of the Fair Housing Act; Executive Order No. 12892; FHFA Order Nos. 2021–OR–FHLMC–2 and 2021–OR–FNMA–2; and the Final Redesigned Uniform Residential Loan Application Status Under Regulation B, 12 CFR 1002.5(b) through (d).

PURPOSE(S) OF THE SYSTEM:

The Fair Lending Oversight Data System is a collection of information about borrowers, property, and loan applications. The system is being established by FHFA to store, maintain, and analyze information for fair lending oversight of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). The system will be used to analyze compliance with the Fair Housing Act, the Equal Credit Opportunity Act, and the Safety and Soundness Act.

The system will also be used to share information with federal agencies for fair lending and fair housing research, investigation, supervision, and enforcement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Borrowers of Fannie Mae or Freddie Mac mortgages, applicants for mortgages reported pursuant to the Home Mortgage Disclosure Act, applicants for mortgages that have been reviewed by Fannie Mae and Freddie Mac's automated underwriting system, individuals involved in activities being reviewed for fair lending purposes, appraisers providing appraisals to Fannie Mae or Freddie Mac, and individuals making complaints related to fair lending.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system may include but are not limited to: (1) Borrower and loan characteristics such as credit score, closing costs, interest rates, income, race, ethnicity, age, gender, debt ratio, and loan amount; (2) loan transactions including mortgage loan originator identification numbers, origination lender identifiers, and seller identifiers; (3) loan payment history; (4) property characteristics; (5) appraiser name and license number; (6) multifamily property transactions including information about parties involved in the transaction such as name, property address, and transaction underwriting characteristics; and (7) real-estate owner property information such as appraised values, condition, repair status, and property address.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from the Federal Home Loan Banks, United States Department of Housing and Urban Development, Consumer Financial Protection Bureau, FHFA systems, Fannie Mae, and Freddie Mac.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside of FHFA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, to the extent such disclosures are compatible with the purposes for which the information is collected:

(1) To appropriate agencies, entities, and persons when—(a) FHFA suspects or has confirmed that there has been a breach of the system of records; (b) FHFA has determined that as a result of a suspected or confirmed breach there is a risk of harm to individuals, FHFA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure is made to agencies, entities, and persons as reasonably necessary to assist with FHFA's efforts to (i) respond to a suspected or confirmed breach; or (ii) prevent, minimize, or remedy harm caused by such breach.

(2) To a federal agency or federal entity, when FHFA determines information from the system of records is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or; (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or to national security, resulting from a suspected or confirmed breach.

(3) When there is an indication of a violation or potential violation of law (whether civil, criminal, or regulatory in nature or whether arising by general statute or particular program statute or by regulation, rule, or order issued pursuant thereto), the relevant records in the system of records may be referred, as a routine use, to the appropriate agency (*e.g.,* federal, state, local, tribal, foreign or a financial regulatory organization) charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing a statute, rule, regulation or order issued pursuant thereto.

(4) To any individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil litigation, if FHFA has reason to believe the individual to whom the record is disclosed may have further information about the matters related thereto, and those matters appeared to be relevant and necessary at the time to the subject matter of the inquiry.

(5) To any contractor, agent, or other authorized individual performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FHFA who has a need to access the information in the performance of their official duties or activities.

(6) To members of advisory committees created by FHFA or by Congress to render advice and recommendations to FHFA or to Congress, to be used solely in

connection with their official, designated functions.

(7) To a Congressional office in response to an inquiry from the Congressional office made at the request of and on behalf of the Congressional Offices' constituents included in the system.

(8) To the Office of Management and Budget, Department of Justice (DOJ), Department of Labor, Office of Personnel Management, Equal Employment Opportunity Commission, Office of Special Counsel, Merit Systems Protection Board, or other federal agencies to obtain advice regarding statutory, regulatory, policy, and other requirements related to fair lending oversight.

(9) To appropriate third parties contracted by FHFA to facilitate mediation or other dispute resolution procedures or programs.

(10) To outside counsel contracted by FHFA, DOJ (including United States Attorney Offices), or other federal agencies conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is relevant and necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

a. FHFA;

b. Any employee of FHFA in his/her official capacity;

c. Any employee of FHFA in his/her individual capacity when DOJ or FHFA has agreed to represent the employee; or

d. The United States, or any agency thereof, is a party to the litigation or has an interest in such litigation, and FHFA determines that the records are both relevant and necessary to the litigation.

(11) To the National Archives and Records Administration or other federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(12) To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as relevant and necessary to such audit or oversight functions.

(13) To federal agencies for fair lending and fair housing research, investigation, supervision, and enforcement purposes.

(14) To a regulated entity or party during fair lending supervision or investigation when relevant and necessary to: (a) Verify information; (b) provide information; or (c) respond to information.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic or paper format. Electronic records are stored on FHFA's secured network, FHFA-authorized cloud service providers and FHFA-authorized contractor networks located within the continental United States. Paper records are stored in locked offices, locked file rooms, and locked file cabinets or safes.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, property address, loan identifier or professional licensing identifier.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with FHFA's Comprehensive Record Schedule, Item 2.2 (N1–543–11–1, as approved on 01/11/2013), and reflects Transmittal No. 31 General Records Schedules Authorities, 04/2020.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained in controlled access areas. Electronic records are protected by restricted access procedures, including user identifications and passwords. Only FHFA staff (and FHFA contractors assisting such staff) whose official duties require access can view, administer, and control these records.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' Below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' Below.

NOTIFICATION PROCEDURES:

Individuals seeking notification of any records about themselves contained in this system should address their inquiry to the Privacy Act Officer, via email to *privacy@fhfa.gov* or by mail to the Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219, or in accordance with the procedures set forth in 12 CFR part 1204. *Please note that all mail sent to FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Clinton Jones,

General Counsel, Federal Housing Finance Agency.

[FR Doc. 2022–10798 Filed 5–19–22; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Notice of Stakeholder Surveys for Facilitation and Other Purposes

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 30-Day notice and request for comments.

SUMMARY: FMCS invites the general public and other Federal Agencies to take this opportunity to comment on the surveys and other information FMCS will collect to inform the process and participants for its conflict prevention, management, and resolution services provided to Federal Agencies, particularly public policy mediations and facilitations that include participants external to the federal government.

DATES: Comments must be submitted on or before June 21, 2022.

ADDRESSES: You may submit comments through one of the following methods:

- *Email: register@fmcs.gov.*
- *Mail:* Stakeholder Survey Comments c/o Sarah Cudahy, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, mail is sometimes delayed. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Sarah Cudahy, 202–606–8090, *register@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the proposed questions are available below. Paper copies are available by emailing *register@fmcs.gov.* Please ask for the Stakeholder Survey.

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: Not yet assigned.

Type of Request: New collection; generic clearance.

Affected Entities: Private sector; state, local, and tribal governments; individuals or households; and federal government.

Frequency: These methods of engagement are utilized on an as-needed basis. Each engagement is completed once.

Abstract: Pursuant to the Administrative Dispute Resolution Acts of 1990 and 1996, 5 U.S.C. 561 *et seq.* and 571 *et seq.,* and 29 U.S.C. 173(f), the Federal Mediation and Conciliation Service provides conflict prevention, management, and resolution services, including, but not limited to, public policy facilitation and mediation services, to Federal agencies. As part of these services, sometimes FMCS employees need to survey or ask questions to determine the best process and participants to prevent, manage, or resolve the issue, particularly for public policy mediations, public policy or environmental facilitations, or negotiated rulemaking. To do so, FMCS has created a set of questions to ask various stakeholders about issues, concerns, engagement, and appropriate stakeholders relevant to the issues. The survey format will differ depending on the project but may be conducted in one or more of the following ways, both in-person and virtually: Individual or group interviews, individual or group discussions, or written surveys. The survey requests information such as stakeholder understanding of the particular issue, stakeholder interests in the particular issue, appropriate stakeholders, methods of engagement with the issue, and other similar information that will allow FMCS to best create a successful process. A link to the survey is found here: *https://tags.fmcs.gov/4DAction/FC/DoAsynchTop?Fedreg*UPPJ*919/10300.* To log in, go to: *https://tags.fmcs.gov/,* use username ''Fedreg'' and password ''UPPJ.'' The collection of such information is critical for ensuring the appropriate process, stakeholders, and stakeholder input in the process. No other collections are being conducted that would provide this information to FMCS.

Burden: The current total annual burden estimate is that FMCS will receive information from approximately 15,000 respondents per year. Interviews and discussions would be approximately thirty minutes in duration. Written surveys would take approximately ten minutes to complete. FMCS expects the total burden to not exceed 2,535 hours per year.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. 60-Day Comment Period

This information was previously published in the **Federal Register** on March 16, 2022, allowing for a 60-day public comment period under Document 2022–05543 at 87 FR 14857. FMCS received no comments.

IV. The Official Record

The official records are electronic records.

List of Subjects

Information collection requests.

Dated: May 16, 2022.

Anna Davis,

Acting General Counsel.

[FR Doc. 2022–10815 Filed 5–19–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Notice of Stakeholder Surveys for Facilitation and Other Purposes

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 30-Day notice and request for comments.

SUMMARY: FMCS invites the general public and other Federal Agencies to take this opportunity to comment on the surveys and other information FMCS will collect to inform the process and participants for its conflict prevention, management, and resolution services provided to Federal Agencies, particularly public policy mediations and facilitations that include participants external to the federal government.

DATES: Comments must be submitted on or before June 21, 2022.

ADDRESSES: You may submit comments through one of the following methods:

- *Email: register@fmcs.gov.*
- *Mail:* Stakeholder Survey Comments c/o Sarah Cudahy, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, mail is sometimes delayed. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Sarah Cudahy, 202–606–8090, *register@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the proposed questions are available below. Paper copies are available by emailing *register@fmcs.gov.* Please ask for the Stakeholder Survey.

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: Not yet assigned.

Type of Request: New collection; generic clearance.

Affected Entities: Private sector; state, local, and tribal governments; individuals or households; and federal government.

Frequency: These methods of engagement are utilized on an as-needed basis. Each engagement is completed once.

Abstract: Pursuant to the Administrative Dispute Resolution Acts of 1990 and 1996, 5 U.S.C. 561 *et seq.* and 571 *et seq.,* and 29 U.S.C. 173(f), the Federal Mediation and Conciliation Service provides conflict prevention, management, and resolution services, including, but not limited to, public policy facilitation and mediation services, to Federal agencies. As part of these services, sometimes FMCS employees need to survey or ask questions to determine the best process and participants to prevent, manage, or resolve the issue, particularly for public policy mediations, public policy or environmental facilitations, or negotiated rulemaking. To do so, FMCS has created a set of questions to ask various stakeholders about issues, concerns, engagement, and appropriate stakeholders relevant to the issues. The survey format will differ depending on the project but may be conducted in one or more of the following ways, both in-person and virtually: Individual or group interviews, individual or group discussions, or written surveys. The survey requests information such as stakeholder understanding of the particular issue, stakeholder interests in the particular issue, appropriate stakeholders, methods of engagement with the issue, and other similar information that will allow FMCS to best create a successful process. A link to the survey is found here: *HTTPS://tags.fmcs.gov/4DAction/FC/DoAsynchTop?Fedreg*UPPJ*919/10300.* To log in, go to: *https://tags.fmcs.gov/,* use username ''Fedreg'' and password ''UPPJ.'' The collection of such information is critical for ensuring the appropriate process, stakeholders, and stakeholder input in the process. No other collections are being conducted

that would provide this information to FMCS.

Burden: The current total annual burden estimate is that FMCS will receive information from approximately 15,000 respondents per year. Interviews and discussions would be approximately thirty minutes in duration. Written surveys would take approximately ten minutes to complete. FMCS expects the total burden to not exceed 2,535 hours per year.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. 60-Day Comment Period

This information was previously published in the **Federal Register** on March 16, 2022, allowing for a 60-day public comment period under Document 2022–05543 at 87 FR 14857. FMCS received no comments.

IV. The Official Record

The official records are electronic records.

List of Subjects

Information collection requests.

Dated: May 16, 2022.

Anna Davis,

Acting General Counsel.

[FR Doc. 2022–10823 Filed 5–19–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Federal Mine Safety and Health Review Commission (FMSHRC) is revising the notice of Privacy Act system of records FMSHRC–06.

DATES: This revised system of records is effective upon publication. Comments regarding Routine Uses must be received by FMSHRC on or before June 21, 2022. The Routine Uses are effective at the close of the comment period unless comments necessitate otherwise.

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

- *Email: PrivacyAct@fmshrc.gov.* Include ''PRIVACY ACT SYSTEM OF RECORDS'' in the subject line of the message.
- *Fax:* (202) 434–9916.
- *Mail:* Privacy Act Coordinator, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.
- *Hand Delivery/Courier:* Same as mailing address.

Instructions: All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as ''PRIVACY ACT SYSTEM OF RECORDS.''

FOR FURTHER INFORMATION CONTACT: Leslie C. Bayless, Chief Operating Officer, Office of the Chair, via telephone at (202) 434–9941 or via email at *lbayless@fmshrc.gov*.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as FMSHRC to publish in the **Federal Register** notice of any new or modified system of records. As detailed below, FMSHRC is revising FMSHRC–06, Official Case Files Filed according to and Retrieved by Name of Individually-Named Miner, to update FMSHRC's address and listed contact information, to make changes to the categories of records in the system and the routine uses of records maintained in the system, and to update the policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system. The changes to the categories of records in the system more specifically describe the records in the system, while the changes to the routine uses state with greater specificity the routine uses that apply to the system rather than the system's prior reference to a general statement of routine uses.

The notice for FMSHRC–06, provided below in its entirety, is as follows.

SYSTEM NAME AND NUMBER:

Official Case Files Filed according to and Retrieved by Name of Individually-Named Miner, FMSHRC–06.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Docket Office Supervisory Attorney, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710.

SYSTEM MANAGER(S):

Docket Office Supervisory Attorney, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710, *docket@fmshrc.gov,* (202) 434–9950.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 823, 44 U.S.C. 3101 *et seq.;* 29 CFR part 2700.

PURPOSE(S) OF THE SYSTEM:

FMSHRC provides trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (2018) (Mine Act). Official case files store documents used by FMSHRC in its consideration and review of such cases and provide information regarding such cases.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individually-named miners whose names are used for filing and retrieval purposes of the official case file of cases arising under the Mine Act. Official case files are retrieved by reference to docket number, and in some instances, by case name. In the large majority of cases before FMSHRC, case names are derived from the name of a mine operator or a union. In a small percentage of cases, cases are identified by an individual miner's name, such as when a miner brings a discrimination complaint in an individual capacity under 30 U.S.C. 815(c)(3), or when the Secretary of Labor takes an enforcement action against a miner under 30 U.S.C. 820(c) or 820(g). This system of records covers only those case files filed according to and retrieved by an individually-named miner's name.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include notices, orders and decisions issued by FMSHRC, filings by parties and their representatives, related correspondence, hearing transcripts and exhibits, transcripts of oral argument, other case-related recordings, and FMSHRC documents pertaining to appeal of the case before a U.S. Court of Appeals.

RECORD SOURCE CATEGORIES:

The parties, their representatives, FMSHRC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use, as defined by 5 U.S.C. 552a(a)(7), pursuant to 5 U.S.C. 552a(b)(3) under the circumstances described below:

1. To a party in a case presently or formerly before FMSHRC to which case the record relates, or to the party's representative.

2. Pursuant to 5 U.S.C. 552(a)(2) and 29 CFR 2701.1, 2701.2, and 2702.7(b), to members of the public who visit FMSHRC's website and gain access to information about a case including decisions, orders, notices, and recordings of oral arguments and decisional meetings created in the case and maintained on the website, unless it is determined that release of the information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

3. To an agency, organization, or individual for audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function when necessary to accomplish an agency function related to the system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to FMSHRC officers and employees.

4. To appropriate agencies, entities, and persons when: (a) FMSHRC suspects or has confirmed that there has been a breach of the system of records; (b) FMSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FMSHRC, the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FMSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

5. To another federal agency or federal entity, when FMSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

6. To a Member of Congress or staff on behalf of and at the request of the individual who is the subject of the record.

7. To contractors, experts, consultants, the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for FMSHRC, when necessary to accomplish an agency function related to the system of records.

8. To an appropriate federal, state, tribal, local, or foreign agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties making the disclosure.

9. To the Department of Justice, FMSHRC's outside counsel, other federal agencies engaged in ongoing, pending, or potential litigation when (a) FMSHRC, or (b) any employee of FMSHRC in his or her official capacity, or (c) any employee of FMSHRC in his or her individual capacity where the Department of Justice or FMSHRC has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and FMSHRC determines that the records are both relevant and necessary to the litigation.

10. To the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; to the Government Accountability Office for oversight purposes; to the Department of Justice to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); to NARA's Office of Government Information Services (OGIS) for record inspection purposes and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies; or to the Office of Management and Budget to obtain that office's advice regarding obligations under the Privacy Act.

11. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when FMSHRC determines that the records may be relevant and necessary to the proceeding or in an appropriate proceeding before another administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

12. To a federal, state, tribal, local, or foreign government agency or entity for the purpose of consulting with that agency or entity: (a) To assist in making a determination regarding remedies for an individual in connection with the operations of a FMSHRC program; (b) for the purpose of verifying the identity of an individual seeking remedies in connection with the operations of a FMSHRC program; or (c) for the information submitted by an individual who has requested such remedies on behalf of another individual.

13. To such recipients and under such circumstances and procedures as are mandated by federal statute.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored in FMSHRC's electronic case management system. Some parts of the official file that cannot be reduced into an electronic format are marked as part of the official file and are stored in a physical FMSHRC filing system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By case name or docket number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with the records schedule approved by the National Archives and Records Administration, the cut-off date for files is at the close of the case. Files are maintained until 99 years old or when no longer needed for reference, whichever is earlier, but no earlier than 6 years after cut-off.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are safeguarded through use of access codes and information technology security in compliance with the FedRAMP standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services. Contractors and other recipients providing services to FMSHRC shall be required to maintain equivalent safeguards. Physical records are safeguarded in a secured environment. The building where the records are stored has security cameras and security guard service. The records are kept in locked file rooms in limited access areas. Access to the file rooms is

limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should notify: Privacy Officer, FMSHRC, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710. For an explanation on how such requests should be drafted, refer to FMSHRC's regulations contained in 29 CFR part 2705.

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest their records should notify: Privacy Officer, FMSHRC, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710. For an explanation on the specific procedures for contesting the contents of a record, refer to FMSHRC's regulations contained in 29 CFR part 2705.

NOTIFICATION PROCEDURE:

Individuals who wish to inquire about their records should notify: Privacy Officer, FMSHRC, 1331 Pennsylvania Avenue NW, Suite 520N, Washington, DC 20004–1710. For an explanation on the specific procedures for contesting the contents of a record, refer to FMSHRC's regulations contained in 29 CFR part 2705.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

April 6, 2000, 65 FR 18134.

Dated: May 17, 2022.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2022–10927 Filed 5–19–22; 8:45 am]

BILLING CODE

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 June 6, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Berry Leaf Sewell Revocable Trust, Berry L. Sewell and Adrienne M. Sewell, as co-trustees, all of Clinton, Oklahoma;* to become members of the Sewell Family Control Group, a group acting in concert, to acquire voting shares of Clinton Bancshares, Inc., and thereby indirectly acquire voting shares of First Bank and Trust Company, both of Clinton, Oklahoma.

Additionally, the Frank A. Sewell IV 1998 Irrevocable Trust, First Bank and Trust Company, as trustee; the Frank A. Sewell III 2012 Revocable Trust, Lucie K. Sewell and First Bank and Trust Company, co-trustees; the Lucie K. Sewell 2012 Revocable Trust, Lucie K. Sewell, trustee; and the Lucie K. Sewell 2012 Irrevocable Trust, Berry L. Sewell and First Bank and Trust Company, co-trustees, all of Clinton, Oklahoma; to become members of the Sewell Family Control Group, a group acting in concert, to retain voting shares of Clinton Bancshares, Inc., and thereby indirectly retain voting shares of First Bank and Trust Company.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–10796 Filed 5–19–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 211 0184; Docket No. C–4763]

Medtronic/Intersect ENT; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 21, 2022.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Medtronic/Intersect ENT; Docket No. C–4763'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Charles Dickinson (202–326–2617), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 21, 2022. Write ''Medtronic/Intersect ENT; Docket No. C–4763'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the

agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Medtronic/Intersect ENT; Docket No. C–4763'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before June 21, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Medtronic plc, Medtronic, Inc. (''Medtronic''), and Intersect ENT, Inc. (''Intersect'') (together, ''Respondents''). The Consent Agreement is designed to remedy the anticompetitive effects that otherwise would result from Medtronic's acquisition of Intersect.

Pursuant to an Agreement and Plan of Merger dated as of August 6, 2021, Medtronic proposes to acquire all of the issued and outstanding securities of Intersect for approximately $1.1 billion (the ''Acquisition''). The Commission's Complaint alleges that the Acquisition violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and that the Acquisition agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the U.S. markets for balloon sinus dilation products and ear, nose, and throat (''ENT'') navigation systems.

The proposed Decision and Order (''Order'') contained in the Consent Agreement requires Respondents to divest to Hemostasis, LLC (''Hemostasis'') the assets and business of Intersect's subsidiary Fiagon AG Medical Technologies (''Fiagon''). Respondents must complete the transfer no later than 10 days after Medtronic consummates its acquisition of Intersect. The Commission has issued, and Respondents have agreed to comply with, an Order to Maintain Assets that requires Respondents to operate and maintain the divestiture assets in the normal course of business through the date the approved buyer acquires the divested assets.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and decide whether it should withdraw, modify, or make the proposed Order final.

II. The Relevant Market and Competitive Effects

The Commission's Complaint alleges that the relevant product markets in which to analyze the Acquisition are the research, development, licensing, manufacturing, marketing, distribution, and sale of (a) balloon sinus dilation products and (b) ENT navigation systems. Balloon sinus dilation products are catheter devices used to clear blocked sinuses in patients suffering from chronic rhinosinusitis. ENT navigation systems allow physicians to view and track the location of operating instruments such as balloon sinus dilation products during sinus surgery.

The relevant geographic market in which to analyze the competitive effects of the Acquisition is the United States. Balloon sinus dilation products and ENT navigation systems are medical devices subject to approval by the U.S. Food and Drug Administration before sale in the United States. As such, medical devices not approved for sale in the United States do not provide competitive alternatives for U.S. consumers.

The Acquisition would likely substantially lessen competition in the relevant markets. The U.S. markets for balloon sinus dilation products and ENT navigation systems are both highly concentrated. The Acquisition, if consummated, would reduce the number of independent manufacturers of balloon sinus dilation products from four to three. Fiagon, having just entered the U.S. market in 2021 after securing regulatory approvals for its balloon sinus dilation products, is poised to become an important competitive constraint on the established ENT market leaders, including Medtronic. In ENT navigation systems, Medtronic currently holds a dominant position, and the Acquisition would eliminate a nascent competitive threat in Fiagon.

III. The Proposed Order and the Order To Maintain Assets

The proposed Order and the Order to Maintain Assets would remedy the Acquisition's likely anticompetitive effects by requiring Respondents to

divest the entirety of the Fiagon business and assets to Hemostasis. Hemostasis is an established participant in the ENT medical device segment and has the expertise, sales infrastructure, and resources to restore the competition that otherwise would have been lost pursuant to the Acquisition. The parties must divest all facilities and equipment, intellectual property, business information, and other assets used with and related to the Fiagon business. Hemostasis also intends to retain Fiagon employees. Because Hemostasis will acquire all assets related to the Fiagon business, and the parties are required to obtain all third-party consents before the divestiture transaction is consummated, Hemostasis will be able to begin manufacturing its own supply of ENT navigation systems and balloon sinus dilation products from day one.

The proposed Order contains additional provisions designed to ensure the effectiveness of the relief. For example, the proposed Order requires the Respondents to assist and cooperate in the defense against any intellectual property litigation related to the Fiagon assets. Respondents are required to provide Hemostasis with transition assistance for up to one year following the divestiture of the assets and must cooperate with and assist Hemostasis to evaluate and offer employment to employees involved in the business and assets subject to divestiture. Respondents have also agreed not to enforce any employee noncompete or confidentiality agreements against Hemostasis relating to employees that interview or accept employment with Hemostasis. The proposed Order and the Order to Maintain Assets further require Medtronic to operate and maintain the divestiture assets in the ordinary course of business, including maintaining the economic viability, marketability, and competitiveness of the Fiagon business until the divestiture transaction takes place.

The Commission will appoint Jeryl Hilleman to act as an independent Monitor to oversee the Respondents' compliance with the requirements of the Order, and to keep the Commission informed about the status of the transfer of the Fiagon business to Hemostasis. The proposed Order requires that the divestiture to Hemostasis be completed no later than 10 days after Medtronic consummates the Acquisition.

In addition to requiring the divestiture of the Fiagon assets and business, the proposed Order requires Respondents to obtain prior approval from the Commission before making certain future acquisitions in the relevant markets for a period of ten years from the date the Order is issued. The proposed Order also requires Hemostasis to obtain prior approval from the Commission before transferring any of the divested assets to any buyer for the first three years after Hemostasis acquires the divestiture assets. For the seven years following the initial three-year period, the proposed Order requires Hemostasis to obtain prior approval from the Commission before transferring any of the divested assets to any buyer engaged in the research, development, manufacture, marketing, or sale of any balloon sinus dilation products or ENT navigation systems.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–10935 Filed 5–19–22; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0297; Docket No. 2022–0001; Sequence No. 2]

Submission for OMB Review; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: General Services Administration (GSA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

DATES: Submit comments on or before June 21, 2022.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Camille Tucker, Office of Customer Experience, GSA, at 202–603–2666, or via email at *customer.experience@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study.

Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results. The Digital Government Strategy released by the White House in May, 2012 drives

agencies to have a more customer-centric focus. Because of this, GSA anticipates an increase in requests to use this generic clearance, as the plan states that: A customer-centric principle charges us to do several things: conduct research to understand the customer's business, needs and desires; ''make content more broadly available and accessible and present it through multiple channels in a program-and device-agnostic way; make content more accurate and understandable by maintaining plain language and content freshness standards; and offer easy paths for feedback to ensure we continually improve service delivery.

The customer-centric principle holds true whether our customers are internal (*e.g.,* the civilian and military federal workforce in both classified and unclassified environments) or external (*e.g.,* individual citizens, businesses, research organizations, and state, local, and tribal governments).''

B. Annual Reporting Burden

Respondents: 500,000.
Responses per Respondent: 1.
Total Annual Responses: 500,000.
Hours per Response: 60.446 minutes.
Total Burden Hours: 32,970.72.

C. Public Comments

A 60-day notice published in the **Federal Register** at 87 FR 14532 on March 15, 2022. No comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0297, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, in all correspondence.

Beth Anne Killoran,
Deputy Chief Information Officer.

[FR Doc. 2022–10896 Filed 5–19–22; 8:45 am]
BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; State Access and Visitation Grant Application (OMB #0970–0482)

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The federal Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS) is requesting a 3-year extension of the State Access and Visitation Grant Application (OMB #0970–0482, expiration 5/31/2022. There are changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the ''Grants to States for Access and Visitation'' program (AV grant program). Funding for the program began in fiscal year 1997 with a capped, annual entitlement of $10 million. The statutory goal of the program is to provide funds to states that will enable them to provide services for the purpose of increasing noncustodial parent access to and visitation with their children. State governors decide which state entity will be responsible for implementing the AV grant program in addition to determining who will be served, what services will be provided, and whether the services will be statewide or in local jurisdictions. The statute specifies certain activities which may be funded, including voluntary and mandatory mediation, counseling, education, the development of parenting plans, supervised visitation, and the development of guidelines for visitation and alternative custody arrangements. Even though OCSE manages this program, funding for the AV grant is separate from funding for federal and state administration of the Child Support program.

Section 469B(e)(3) of the Social Security Act (Pub. L. 104–193) requires that each state receiving an AV grant award shall monitor, evaluate, and report on such programs in accordance with regulations. Additionally, the Catalog of Federal Domestic Assistance states that there is an application requirement for Grants to States for Access and Visitation Programs (93.597). The application process assists OCSE in complying with this requirement and emphasizes program efficiency, coordination of services, building support for parenting time services, and ensuring the safety of parents and children.

Specifically, the application requires states to submit a detailed program plan indicating how they anticipate spending their funds within the program statue and regulations. The applications cover 3 fiscal years and any changes made to the plan during the 3-year period will require a notification of change to OCSE.

OCSE will review the applications to ensure that planned services meet the requirements laid out in section 469B(e)(3) of the Social Security Act (Pub. L. 104–193. This review will include monitoring of program compliance and the safe delivery of services. In addition to monitoring, the report will also assist in OCSE's ability to provide technical assistance to states that request assistance.

The State Access and Visitation Grant Application is proposing changes to the application itself, including requirements for states and territories to:

—Address disparities in access;

—ensure the proactive identification of systemic barriers to AV grant services for people of color and other underserved populations;

—describe how grant activities will redress such barriers; and

—describe how outreach and recruitment efforts will promote equity in access for underserved or marginalized populations.

The grant application also expands requirements for partnerships with domestic violence service providers to address the access issues experienced by marginalized victims of domestic violence.

Respondents: Recipients of the State Access and Visitation Grant (54 states and territories).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
State Access and Visitation Grant Application	54	1	10	540	180

Estimated Total Annual Burden Hours: 180.

Authority: Sec. 469B(e)(3), Pub. L. 104–193.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–10832 Filed 5–19–22; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0517]

Medical Devices; 510(k) Sterility Change Master File Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA, Agency, or we) Center for Devices and Radiological Health (CDRH or Center) is announcing its 510(k) Sterility Change Master File Pilot Program (''510(k) Sterility Pilot Program''). The 510(k) Sterility Pilot Program is voluntary and intends to give interested companies that terminally sterilize single-use devices (''sterilization providers'') using certain sterilization methods a pathway to submit a Master File for FDA's review. FDA will accept a Master File into the 510(k) Sterility Pilot Program when it determines, among other things, that there is not a likelihood that switching from a fixed chamber ethylene oxide (EtO) sterilization method to the sterilization method described in the Master File could significantly affect the safety or effectiveness of a 510(k)-cleared device that meets the product definition in the Master File and that satisfies other conditions outlined in this document. If a Master File is accepted into the 510(k) Sterility Pilot Program, manufacturers of 510(k)-cleared devices (''510(k) holders'') may choose to reference the Master File in internal documentation in support of a justification for not submitting a new premarket notification (510(k)) under certain conditions as outlined in this document. This voluntary pilot program seeks to encourage industry to consider new, innovative ways to sterilize devices that reduce the potential impact of EtO on the environment and on public health, while ensuring consistent patient access to safe devices and providing a framework for future regulatory approaches that would help address potential device shortages related to EtO sterilization.

DATES: FDA is seeking participation in the voluntary 510(k) Sterility Pilot Program beginning May 20, 2022. See the ''Participation'' section for selection criteria for sterilization providers to participate in the 510(k) Sterility Pilot Program and the ''Procedures'' section for instructions on how to submit a Master File for consideration for inclusion into the 510(k) Sterility Pilot Program. Up to nine eligible sterilization providers may be selected for participation in the 510(k) Sterility Pilot Program.

FOR FURTHER INFORMATION CONTACT: Clarence W. Murray, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4536, Silver Spring MD 20993, 301–796–0270, *clarence.murray@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EtO sterilization is an important sterilization method that is widely used to keep devices safe. It is estimated that approximately 50 percent of all sterile devices in the United States are sterilized using EtO (Ref. 1). For many devices, sterilization with EtO may be the only method [1] currently evaluated that effectively sterilizes and does not damage the device during the sterilization process. However, there have been concerns about the effects of EtO exposure and environmental emissions.

In 2019, FDA was made aware of closures of device sterilization facilities due to concerns about the level of EtO emissions (Ref. 2). The Agency closely monitored the situation and worked with device manufacturers affected by the closures to minimize impact to patients who needed device access. Future losses of sterilization capacity due to facility closure have the potential to result in shortages of sterile devices if an alternative for sterilization is not readily available for the devices sterilized at a closed facility. FDA continues to work with manufacturers on site changes, engage with manufacturers about potential solutions to shortage concerns, and collaborate with external stakeholders to help reduce barriers to the utilization of innovative device sterilization technologies. FDA has also taken several actions to advance device sterilization, including sponsoring two innovation challenges to identify alternatives to EtO sterilization methods (Ref. 3) and approaches to reduce EtO emissions (Ref. 4); convening the General Hospital and Personal Use Devices Panel on November 6 and 7, 2019 (''November 2019 Panel Meeting''), to discuss the role of EtO sterilization in maintaining public health (84 FR 46546, September 9, 2019; see also Ref. 5); and announcing an Ethylene Oxide Sterilization Master File Pilot Program (''EtO Pilot Program'') for devices subject to Premarket Application (''PMA'') approval (84 FR 65162, November 26, 2019; see also Ref. 1).

For devices subject to 510(k) requirements, before most sterile devices are cleared for marketing, FDA reviews the submitted 510(k) information to determine, among other considerations, if the provided sterility information is adequate (*e.g.,* in accordance with internationally agreed upon voluntary consensus standards that FDA recognizes). In some cases, if a device manufacturer changes the sterilization method or process for sterilizing the device identified in its original 510(k) submission, the manufacturer may need to submit a new 510(k) for FDA review of these changes and clearance prior to marketing (Ref. 6). However, in addition to public

[1] In this notice, ''method'' generally refers to the type of sterilization and ''processes'' generally refers to steps within that method to achieve a sterile device.

health and environmental concerns regarding EtO emissions, FDA recognizes the need to facilitate timely sterilization method changes to keep device supply chain interruptions at a minimum and to facilitate changes to sterilization processes that utilize reduced EtO concentrations or that utilize other sterilization methods. At the November 2019 Panel Meeting, FDA received feedback from Panel members and stakeholders that the Agency could help prevent device shortages and advance device sterilization by facilitating the development and utilization of safe and effective alternative sterilization methods that 510(k) holders may wish to consider for select sterile devices (Ref. 5).[2]

In general, a change from a fixed chamber EtO sterililzation method to a sterilization method characterized as ''Established Category B'' or ''Novel'' by FDA's guidance, *Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile* (Ref. 7), would likely require a new 510(k) because this change could significantly affect the safety or effectiveness of the device (Ref. 6).[3] Under § 807.81(a)(3)) 21 CFR 807.81(a)(3), the submission of a new 510(k) is required prior to a change or modification that could significantly affect the safety or effectiveness of the device, or that is a major change or modification in the intended use of the device. However, FDA also recognizes that for some 510(k)-cleared devices, a change from a fixed chamber EtO sterilization method to an Established Category B or Novel method does not typically significantly affect the safety or effectiveness of the device in certain cases, and therefore may not require submission of a new 510(k) in these cases.

For these reasons, FDA is announcing and soliciting participation in the 510(k) Sterility Pilot Program. Under this pilot program, sterilization providers that sterilize single-use devices using certain sterilization methods characterized as ''Established Category B'' or ''Novel'' may submit a Master File for their sterilization method for FDA review.[4] This review would include consideration of various evaluation and validation methods (described below) that a sterilization provider would ultimately propose to a 510(k) holder interested in implementing a sterilization method other than fixed chamber EtO sterilization. Interested 510(k) holders may use this information in reaching device-specific determinations of whether a change in sterilization method from fixed chamber EtO sterilization to the alternative sterilization method could significantly affect safety or effectiveness of the subject device. For 510(k) holders who are granted a right of reference to an accepted Master File for a particular 510(k)-cleared device under the conditions described below, FDA believes there is a likelihood that switching to the sterilization method described in the Master File could not significantly affect the safety or effectiveness of such device. Accordingly, if a Master File submitted by a 510(k) holder's sterilization provider is accepted by FDA, the 510(k) holder could, under certain conditions and on a voluntary basis, reference the Master File in the 510(k) holder's internal documentation,[5] without submitting a new 510(k) for a sterilization method change from a fixed chamber EtO method to the method described in the Master File. The pilot program is intended to provide expeditious review and feedback to sterilization providers on Master File submissions that may support sterilization changes to 510(k) cleared devices. FDA intends to evaluate pilot participation and the progress of the pilot in 6 months and provide any updates to the pilot in a subsequent notice, if appropriate. At this time, 510(k)s reviewed by the Center for Biologics Evaluation and Research (CBER) and 510(k)s for combination products[6] are outside the scope of this pilot.

For the purposes of this document, the term ''sterilization provider'' is used to refer to a device manufacturer's own in-house sterilization facility or a device manufacturer's contract sterilization provider, and encompasses any subcontractor facilities utilizing the same quality system as the contract sterilization provider, as applicable. This document and the proposed 510(k) Sterility Pilot Program do not otherwise remove or replace applicable statutory or regulatory requirements for EtO-sterilized devices subject to 510(k) submissions.

A. Participation

Up to nine sterilization providers may be eligible to participate in this voluntary 510(k) Sterility Pilot Program. The pilot program is limited to sterilization providers that meet the following selection qualities:

1. Be a sterilization provider of a single-use device that is provided sterile;
2. Be in good compliance standing with the Agency; and
3. Submit a Master File in accordance with the procedures set forth in section I.B for a validated sterilization method that may be considered an ''Established Category B'' or ''Novel'' sterilization method as described in FDA's guidance entitled *Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile* (Ref. 7).

The following are outside the scope of the 510(k) Sterility Pilot Program and are inappropriate for inclusion in this program:

1. Reusable devices, reprocessed single-use devices, or devices that are provided non-sterile.
2. Combination products.
3. Devices regulated by CBER.
4. Changes to device design, specifications, or materials.
5. Sterilization changes for which there is a likelihood that the change could significantly affect device specifications, device performance, material compatibility, or biocompatibility, or otherwise could significantly affect device safety or effectiveness.[7] [8]

[2] Further, FDA more generally seeks to improve and strengthen the device supply chain through other broader initiatives, such as the planned Resilient Supply Chain and Shortages Prevention Program (RSCSPP). *See* FDA's Budget, Medical Device Supply Chain and Shortages Prevention Program, *https://www.fda.gov/news-events/fda-voices/fdas-budget-medical-device-supply-chain-and-shortages-prevention-program.*

[3] FDA also notes that changes that constitute a major change or modificiation in the intended use of a device would require a new 510(k) submission. § 807.81(a)(3)(ii). Such changes fall outside the scope of this pilot program.

[4] FDA is not including ''Established Category A'' methods within the scope of the pilot program at this time. Manufacturers of 510(k) devices seeking to change from a fixed chamber EtO sterilization method to an ''Established Category A'' method should evaluate the change according to FDA's guidance, ''Deciding When to Submit a 510(k) for a Change to an Existing Device'' in determining whether a new 510(k) is required (available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/deciding-when-submit-510k-change-existing-device*). In general, for changes from one ''Established Category A'' method to another ''Established Category A'' method, it is unlikely submission of a new 510(k) is required if the change could not significantly affect the performance or biocompatibility of the device, or constitute a major change or modification in the intended use of the device.

[5] Whenever a manufacturer changes its device, it must take certain actions to comply with the Quality System Regulation (QSR), part 820 (21 CFR part 820), unless a regulatory exemption exists. The QSR requires that design changes and production and process changes be documented prior to implementation. See §§ 820.30(i) and 820.70(b).

[6] See 21 CFR 3.2(e).

[7] Under § 807.81(a)(3), the submission of a new 510(k) is required prior to a change or modification that could significantly affect the safety or effectivess of the device, or that is a major change or modification in the intended use of the device. FDA's guidance entitled ''Deciding When to Submit

6. Sterilization processes used only for intermediate processing prior to final device assembly.

7. Devices with alternate sterility assurance levels (SAL) other than 10^{-6}.

B. Procedures

While the sterilization provider serves as the primary participant of the 510(k) Sterility Pilot Program, FDA anticipates that close collaboration between sterilization providers and 510(k) holders will be necessary to ensure the success of the pilot program. Accordingly, the procedures for sterilization providers and 510(k) holders are set forth below.

1. Procedures for Sterilization Providers

To be considered for the voluntary 510(k) Sterility Pilot Program, a sterilization provider should submit the following information in a Master File for the Agency's review with a cover sheet clearly indicating ''510(k) Sterility Change Master File Pilot Program'' in the subject heading:

1. Name, address, and FDA Establishment Identification (FEI) number of the sterilization facility.

2. Clear identification of all responsibilities of the sterilization facility and device manufacturers with respect to sterilization validation.

3. Information regarding the sterilization method and the operations of the sterilization provider including:

- Methodology for Installation Qualification, Operational Qualification, and Performance Qualification.
- Installation and operational requalification schedule to support continuous process effectiveness.
- Identification and explanation of management structure and involvement for process and facility review.
- Identification and description of a structured program and schedule for independent audits and monitors.
- The sterilization facility's inspectional history and history of compliance with applicable regulations (including, but not limited to, requirements under part 820 (21 CFR part 820).
- Identification and explanation of common potential protocol deviations, along with proposed mitigation of potential deviations. The Master File should also include a strategy to address any deviations that could significantly affect the safety or effectiveness of a device and any deviations not addressed in the Master File.

4. Technical information regarding the sterilization method:

- A description of the sterilization system including system specifications, process parameters and monitors, and a description of the hardware components in the sterilization system.
- An overview of the sterilization cycle(s) and process definition that includes an overview and discussion of the sterilization process and cycle profile(s), as well as a detailed description of the critical parameters, specific exposure conditions for cycles, sterilant, sterilant concentration, and sterilant shelf-life.
- A description of the intended sterilization load and product definition that includes defining the critical load characteristics and ranges, and describes the procedure used to determine if a device meets the product definition.
- Generally applicable microbiological testing information and the validation methodology and results used to demonstrate that the process can achieve an SAL of 10^{-6} when carried out on a device. This information should support that the test microorganism(s) used to validate and monitor the sterilization cycle is the most resistant microorganism(s) and provide resistance characteristics for the most resistant microorganism(s). This testing may include sporicidal testing, D-value determination based upon survivor curve analysis and fraction negative analysis, half cycle testing, total kill endpoint testing, and external process challenge device (ePCD) and internal process challenge device (iPCD) lethality testing. The generalized sterilization method development and validation information provided in the proposed Master File should be consistent with ANSI/AAMI/ISO 14937:2009/(R)2013, *Sterilization of health care products—General requirements for characterization of a sterilizing agent and the development, validation and routine control of a sterilization process for medical devices.*
- A summary of how the biological performance testing is used to define process parameters, and a summary of physical tests which demonstrate that the sterilizer achieves and maintains the required physical/chemical process lethality conditions within specifications. These data should be from repeated runs with varying load conditions (*e.g.,* minimum and maximum loading configurations).
- A description of the validated biological and/or chemical indicators used with the sterilization method and how the indicators are used to monitor sterilization cycles. Describe the types of packaging used with the validated cycles in order to maintain sterility.
- Identification of compatible/incompatible materials and describe how material compatibility is assessed for devices sterilized with the method.
- A description of how biocompatibility is assessed for devices that are switched to the method to ensure that biocompatibility is not significantly affected, and an assessment of toxicity for the sterilant and any common byproducts. Describe how removal or dissipation of the sterilant and byproducts is achieved.
- Identification of all relevant consensus standards used and any aspects of the standards that were not met. Deviations should be identified, addressed and justified or mitigated, as applicable.
- If leveraging or referencing previous interactions with FDA (*e.g.,* Innovation Challenge discussions, Q-Submissions, etc.) in the Master File, provide the submission number as a reference.

For more information on Master Files, see FDA's website: *https://www.fda.gov/medical-devices/premarket-approval-pma/master-files.*

Following receipt of a Master File containing the information described in section I.B.1 of this document, FDA will determine eligibility for the pilot program by evaluating whether the criteria outlined in Sections I.A and I.B.1 of this document have been met, and provide written feedback that FDA either accepts the Master File into the 510(k) Sterility Pilot Program or has determined that the Master File is outside the scope of the pilot program. FDA intends to work interactively with the Master File holder to address any deficiencies with the information provided in the Master File. If a Master File is outside the scope of the pilot program, the written feedback will identify the reasons the Master File was determined to be out of scope.

If accepted into the pilot program, the Master File holder should submit amendments to FDA every 6 months with information on any process changes, a list of devices for which the sterilization method has been changed from fixed chamber EtO sterilization to the sterilization method described in the

a 510(k) for a Change to an Existing Device'' discusses specific factors to consider when assessing if a change to a 510(k) cleared device, including a sterilization change, may require a new 510(k) pursuant to § 807.81. This guidance is available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/deciding-when-submit-510k-change-existing-device.*

[8] The responsibility for determining whether a change from EtO sterilization to the sterilization method described in a Master File could significantly affect the safety or effectiveness of a particular 510(k)-cleared device continues to rest with the 510(k) holder. FDA's acceptance of a Master File into the 510(k) Sterility Pilot Program should not be understood to supplant a 510(k) holder's obligation to conduct a device-specific evaluation of whether the change described in the Master File could significantly affect the safety or effectiveness of a device in a particular case.

Master File and for which a right of reference to the Master File has been granted (except devices which have already been identified in a prior amendment), and any other changes to the information contained in the Master File, to maintain participation in the pilot program. If there have been no updates or changes, the Master File holder should notify FDA of the absence of any updates or changes in lieu of submitting an amendment. The description included in the amendments of devices for which the sterilization method has been changed from fixed chamber EtO sterilization to the sterilization method described in the Master File, and for which a right of reference to the Master File has been granted, should include:

1. The manufacturer(s) of the device(s);
2. Each device name;
3. The 510(k) number(s) for the device(s); and
4. A description of how each device added to the Master File meets the product definition in the accepted Master File.

This information may be used to inform FDA's understanding of how the product definition is being interpreted and applied in practice. Following receipt of an amendment, FDA will evaluate whether the Master File, as amended, remains within the scope of the pilot program, and will notify the Master File holder that FDA either accepts the amendment, or has determined that the amendment, in whole or in part, would cause the Master File to be outside the scope of the pilot program.

If a sterilization provider is accepted into the pilot program and does not maintain participation (*e.g.,* through non-submission of amendments, updates, or other information requested by FDA under the pilot program) or no longer wishes to participate in the pilot program, the sterilization provider should notify 510(k) holders for whom they granted a right of reference to the Master File. If the Master File holder does not maintain participation in the pilot program, FDA may determine that the Master File for that sterilization process is outside the scope of the pilot program.

2. Procedures for 510(k) Holders

510(k) holders who wish to change their sterilization method for a previously cleared device from a fixed chamber EtO sterilization method to the sterilization method described in a Master File that has been accepted into the pilot program should use the following procedures. Once a sterilization provider has proposed, and FDA has accepted, a Master File into the pilot program, interested 510(k) holders may choose to review the information in the Master File in carrying out device-specific analyses of whether the alternative sterilization method could significantly affect safety or effectiveness. If the 510(k) holder has determined that the alternative sterilization method could not significantly affect safety or effectiveness of the subject device, and if the 510(k) holder has a right of reference to the Master File granted by the Master File holder, the 510(k) holder may reference the Master File in internal documentation supporting the change from a fixed chamber EtO sterilization method to the method described in the referenced Master File. The internal documentation supporting the change should include:

1. Name, address, and FEI number of the sterilization facility.
2. Master File number in which the referenced sterilization procedures are described, with signed right of reference from the Master File holder identifying the devices to be sterilized under the Master File.
3. List of device(s) to be sterilized (identified by manufacturer, trade name, model number, and 510(k) number).
4. A summary of the information used to support the conclusion of the 510(k) holder that the method described in the Master File achieves an SAL of 10^{-6} for the subject device and that the sterilization method could not significantly affect the device's design, specifications, performance, or biocompatibility, or otherwise could not significantly affect device safety or effectiveness.

This Pilot Program does not otherwise remove or replace any requirements, such as, but not limited to, recordkeeping requirements under part 820, premarket notification requirements under part 807 (21 CFR part 807), subpart E, and labeling requirements under 21 CFR part 801. It is the manufacturer's responsibility to ensure compliance with applicable laws and regulations.

During this voluntary 510(k) Sterility Pilot Program, CDRH staff intends to be available to answer questions or concerns that may arise. The 510(k) Sterility Pilot Program participants may comment on and discuss their experiences with the Center.

II. Paperwork Reduction Act of 1995

This notice refers to previously approved collections of information found in FDA regulations. 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. 3501–3520). The collections of information in part 820, regarding the Quality System regulations, have been approved under OMB control number 0910–0073. The collections of information in part 807, subpart E, regarding premarket notification submission, have been approved under OMB control number 0910–0120.

III. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**), and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. U.S. Food and Drug Administration, ''Ethylene Oxide Sterilization for Medical Devices,'' available at: *https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/ethylene-oxide-sterilization-medical-devices.*
2. U.S. Food and Drug Administration, ''Statement on Concerns With Medical Device Availability Due to Certain Sterilization Facility Closures,'' available at: *https://www.fda.gov/news-events/press-announcements/statement-concerns-medical-device-availability-due-certain-sterilization-facility-closures.*
3. U.S. Food and Drug Administration, ''FDA Innovation Challenge 1: Identify New Sterilization Methods and Technologies,'' available at: *https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/fda-innovation-challenge-1-identify-new-sterilization-methods-and-technologies.*
4. U.S. Food and Drug Administration, ''FDA Innovation Challenge 2: Reduce Ethylene Oxide Emissions,'' available at: *https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/fda-innovation-challenge-2-reduce-ethylene-oxide-emissions.*
5. U.S. Food and Drug Administration, ''November 6 and 7, 2019: General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee Meeting Announcement,'' available at: *https://www.fda.gov/advisory-committees/advisory-committee-calendar/november-6-7-2019-general-hospital-and-personal-use-devices-panel-medical-devices-advisory-committee.*
6. U.S. Food and Drug Administration, ''Deciding When to Submit a 510(k) for a Change to an Existing Device,'' available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/deciding-when-submit-510k-change-existing-device.*

7. U.S. Food and Drug Administration, ''Submission and Review of Sterility Information in Premarket Notification (510(k)) Submissions for Devices Labeled as Sterile,'' available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/submission-and-review-sterility-information-premarket-notification-510k-submissions-devices-labeled.*

Dated: May 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10925 Filed 5–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances 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 additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by July 19, 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–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' 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: Christine Le, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 301–796–2398, *PSG-Questions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process as a means to

develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on February 18, 2022 (87 FR 9366). This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Arsenic trioxide.
Acetaminophen.
Asenapine.
Bupivacaine.
Cedazuridine; Decitabine.
Chlorhexidine gluconate.
Cocaine hydrochloride.
Exenatide synthetic (multiple referenced listed drugs).
Flunisolide.
Halobetasol propionate.
Hydrocortisone; Neomycin sulfate; Polymyxin B sulfate.
Ibuprofen.
Lorezepam.
Naloxone hydrochloride.
Oliceridine.
Palbociclib.
Pralsetinib.
Risdiplam.
Secretin synthetic human.
Solifenacin succinate.
Tegaserod maleate.
Torsemide.
Triheptanoin.

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Acarbose.
Doxorubicin hydrochloride.
Linaclotide.
Metoprolol succinate.
Midostaurin.
Oseltamivir phosphate.
Selinexor.
Solifenacin succinate.
Theophylline.
Tiopronin.
Torsemide.
Trametinib dimethyl sulfoxide.
Uridine triacetate.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that these draft guidances contain no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Electronic Access

Persons with access to the internet may obtain the 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: May 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10701 Filed 5–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0766]

Hospira, Inc., et al.; Withdrawal of Approval of 21 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 21 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 June 21, 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 040140	Diphenhydramine Hydrochloride (HCl) Injection, 50 milligrams (mg)/milliliters (mL).	Hospira, Inc., 275 North Field Dr., Building H1–3S, Lake Forest, IL 60045.
ANDA 040578	Benzphetamine HCl Tablets, 50 mg	ScinoPharm Taiwan, Ltd., 909 N Ford Ave., Fullerton, CA 92832.
ANDA 065267	Cefprozil Tablets, 250 mg, and 500 mg	Bionpharma Inc., 600 Alexander Rd., Suite 2–4B, Princeton, NJ 08540.
ANDA 065284	Cefprozil Oral Suspension, 125 mg/5 mL and 250 mg/5 mL	Do.

Application No.	Drug	Applicant
ANDA 065301	Cefadroxil Tablets, Equivalent to (EQ) 1 gram (g) base	Do.
ANDA 065307	Cefadroxil Oral Suspension, EQ 250 mg base/5 mL and EQ 500 mg base/5 mL.	Do.
ANDA 065309	Cefadroxil Capsules, EQ 500 mg base	Do.
ANDA 065326	Cephalexin Oral Suspension, EQ 125 mg base/5 mL and EQ 250 mg base/5 mL.	Do.
ANDA 076720	Morphine Sulfate Extended Release Tablets, 30 mg, and 60 mg.	Nesher Pharmaceuticals (USA) LLC., 13910 Saint Charles Rock Rd., Bridgeton, MO 63044.
ANDA 076733	Morphine Sulfate Extended Release Tablets, 15 mg	Do.
ANDA 077855	Morphine Sulfate Extended Release Tablets, 100 mg and 200 mg.	Do.
ANDA 080225	Potassium Chloride Injection, 2 milliequivalent (mEq)/mL and 3 mEq/mL.	Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047.
ANDA 202393	Diclofenac Sodium Topical Solution, 1.5%	TWi Pharmaceuticals, Inc., 536 Vanguard Way, Brea, CA 92821.
ANDA 203581	Glyburide Tablets, 1.25 mg, 2.5 mg, and 5 mg	Sunny Pharmtech Inc., 175 SW 166th Ave., Pembroke Pines, FL 33027.
ANDA 204137	Omeprazole and Sodium Bicarbonate Capsules, 20 mg; 1.1 g.	Unicorn Pharmaceuticals, 5 Links Circle, Durham, NC 27707.
ANDA 206588	Dextroamphetamine Sulfate Tablets, 5 mg, and 10 mg	Nesher Pharmaceuticals (USA) LLC.
ANDA 208263	Doxycycline Hyclate Capsules, EQ 50 mg base and EQ 100 mg base.	Do.
ANDA 209111	Dextroamphetamine Sulfate Extended Release Capsules, 5 mg, 10 mg, and 15 mg.	Do.
ANDA 210079	Oxycodone and Acetaminophen Tablets, 325 mg; 2.5 mg, 325 mg; 5 mg, 325 mg; 7.5 mg, 325 mg; 10 mg.	Do.
ANDA 210080	Dextroamphetamine Saccharate, Amphetamine Aspartate, Dextroamphetamine Sulfate, and Amphetamine Sulfate Extended Release Capsules, 1.25 mg; 1.25 mg; 1.25 mg; 1.25 mg, 2.5 mg; 2.5 mg; 2.5 mg; 2.5 mg, 3.75 mg; 3.75 mg; 3.75 mg; 3.75 mg, 5 mg; 5 mg; 5 mg; 5 mg, 6.25 mg; 6.25 mg; 6.25 mg; 6.25 mg, 7.5 mg; 7.5 mg; 7.5 mg; 7.5 mg.	Do.
ANDA 211543	Butalbital, Acetaminophen, and Caffeine Tablets, 325 mg; 50 mg; 40 mg.	Do.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of June 21, 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 June 21, 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: May 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10924 Filed 5–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0277]

Risk Management Plans To Mitigate the Potential for Drug Shortages; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Risk Management Plans to Mitigate the Potential for Drug Shortages.'' This draft guidance is intended to help stakeholders develop, maintain, and implement, as appropriate, risk management plans (RMPs) to proactively assist in the prevention of human drug product and biological product shortages. In March 2020, with the enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Federal Food, Drug, and Cosmetic Act (FD&C Act) was amended to require certain manufacturers to develop, maintain, and implement, as appropriate, a ''redundancy risk management plan.'' This draft guidance provides information about the development and content of RMPs for those manufacturers as well as for other stakeholders. This draft guidance recommends a framework and factors to consider that stakeholders can use to develop RMPs. This draft guidance is relevant for all stakeholders, including those with oversight and control responsibilities for drug quality and contract establishments, and for manufacturers of active pharmaceutical ingredients (APIs), approved or licensed drug and biological products, and drug products marketed without an application.

DATES: Submit either electronic or written comments on the draft guidance by July 19, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by July 19, 2022.

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–2022–D–0277 for ''Risk Management Plans to Mitigate the Potential for Drug Shortages.'' 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 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; or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Karen Takahashi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6686, Silver Spring, MD 20993–0002, 301–796–3191; 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.

With regard to the proposed collection of information: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Risk Management Plans to Mitigate the Potential for Drug Shortages.'' This draft guidance is intended to help stakeholders [1] develop, maintain, and implement, as appropriate, RMPs to proactively assist in the prevention of human drug product and biological product shortages. In March 2020, with the enactment of the CARES Act (Pub. L. 116–136), Congress added section 506C(j) to the FD&C Act, which requires certain manufacturers to develop, maintain, and implement, as appropriate, a ''redundancy risk management plan that identifies and evaluates risks to the supply of the drug, as applicable, for each establishment in which such drug or active pharmaceutical ingredient of such drug is manufactured.'' Section 506C(j) of the FD&C Act became effective September 23, 2020. This guidance provides information about the development and

[1] For the purposes of this guidance, the term *stakeholder* includes each manufacturer of a drug described in section 506C(a) of the FD&C Act (21 U.S.C. 356c(a)) or of any API included in such drugs. (See generally section 506C(j) of the FD&C Act.) The term *stakeholder* also broadly includes any person or entity who has oversight and control over the manufacture of drugs to ensure quality or owns or operates an establishment (as defined in 21 CFR 207.1 and 600.3) that manufactures a drug or biological product. Examples of stakeholders include contract facilities as referenced in 21 CFR 200.10(b); applicants with an approved new drug application, abbreviated new drug application, or an approved biologics license application; manufacturers of drug products marketed without an approved application; manufacturers of components, including APIs, intended for use in the manufacture of drug products; and manufacturers of drug-led, drug-device or biologic-led, biologic-device combination products (as defined in 21 CFR 3.2(e)) regulated by the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research. This guidance references specific stakeholders individually where appropriate (*e.g.,* if a specific section of the guidance is relevant to specific stakeholders only); otherwise, recommendations that refer to the manufacture of *drugs* are generally relevant to all stakeholders with the roles described above with respect to human drug and biological products.

content of RMPs for those manufacturers as well as for other stakeholders.

Drug shortages pose a significant public health threat that can delay, and in some cases even deny, critically needed care for patients. FDA views RMPs as an important mechanism for stakeholders to proactively identify, assess, and mitigate the risks that might lead to a disruption in the supply of drug products, thus preemptively reducing the probability of a drug shortage, and preserving the private and public resources used in resolving the shortage.

Based on recent publications and reports, the majority of drug shortages are associated with quality issues. This guidance proposes a framework stakeholders can use to develop RMPs that aligns with principles stated in the International Council for Harmonisation guidance for industry entitled ''Q9 Quality Risk Management'' (available at *https://www.fda.gov/media/71543/download*). In addition, FDA also recommends several factors to consider when developing the content of the RMPs. This guidance is relevant for all stakeholders, including those with oversight and control responsibilities for drug quality and contract establishments, and for manufacturers of APIs, approved or licensed drug and biological products, and drug products marketed without an application.

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 ''Risk Management Plans to Mitigate the Potential for Drug Shortages.'' 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

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Discontinuance or Interruption in the Production of Life-Saving Drugs

OMB Control Number 0910–0045—Revision

This information collection helps support implementation of requirements under section 506C(j) of the FD&C Act. Section 506C(j) of the FD&C Act *requires* manufacturers of drug products described in section 506C(a) of the FD&C Act or of any active pharmaceutical ingredient or any associated medical devices used for preparation or administration included in the drug to develop, maintain, and implement, as appropriate, a redundancy RMP that identifies and evaluates risks to the supply of the drug, as applicable, for each establishment in which such drug or active pharmaceutical ingredient of such drug is manufactured.

For purposes of this analysis, respondents are those identified in the draft guidance, section III.A., Stakeholders in the Manufacturing Supply Chain. A primary stakeholders is generally the entity that determines which materials and services are necessary to produce a drug product. Secondary stakeholders are entities that are expected to have more detailed insight into specific segments of the supply chain for a drug product but may not have an understanding of its entirety. Finally, other stakeholders, such as inactive ingredient manufacturers, packagers, and distributors, are involved in other segments of the supply chain. In the draft guidance, section IV., RMP Framework and Development Strategy, we discuss specific recommendations regarding the RMP.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Section 506C(j) of the FD&C Act; recordkeeping activity	Number of recordkeepers	Number of records per recordkeeper	Total records	Average burden per recordkeeping [2]	Total hours
Developing an RMP; Guidance for Industry section IV.B.	2,600	1	2,600	29.32 (range 25 to 250)	76,250
Updating an RMP	5,200	1	5,200	2.93 (range 2.5 to 25)	15,250
Total					91,500

[1] There are no capital costs or operating and maintenance costs associated with this information collection.
[2] Figure has been rounded.

We assume a total of 2,600 respondents will incur an initial burden associated with developing an RMP based on recommendations described in the draft guidance. This figure is comprised of 50 primary stakeholders; 1,125 secondary stakeholders; and 1,425 other stakeholders, and represents half the total number of respondents we identify for each of the three respective categories.

For burden associated with updating an RMP, we include all respondents in the respective three categories, for a total of 5,200.

We believe the overall burden for collecting information and preparing

RMPs depends on the stakeholder type (primary, secondary, or other stakeholder) and its operation.

We anticipate that stakeholders will be able to leverage information across products, but we understand that the actual burden for a given stakeholder will depend on the portfolio of covered products and the complexity of their operations. Our estimate reflects what we believe is the average burden among all respondents.

This draft guidance also refers to previously approved FDA collections of information found in FDA regulations. The collections of information found in 21 CFR 310.306, 314.81(b)(3)(iii), and 600.82 on notifying FDA of a permanent discontinuance or an interruption in manufacturing of certain drugs or biological products, and 21 CFR part 314 new drug and abbreviated new drug applications, and 21 CFR part 600 biologics license applications have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively; the collections of information in 21 CFR parts 210 and 211 on current good manufacturing practice have been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: May 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10698 Filed 5–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Medicare Rural Hospital Flexibility Program Performance, OMB No. 0915–0363—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than June 21, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the acting HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Medicare Rural Hospital Flexibility Program Performance OMB No. 0915–0363—Revision.

Abstract: This information collection comment request is for continued approval of the Medicare Rural Hospital Flexibility Program Performance Measures. HRSA is proposing to continue this data collection with minor changes to the organization of the data. The current performance measures are collected electronically in the Performance Improvement and Measurement System which awardees access securely through the HRSA Electronic Handbooks.

The Medicare Rural Hospital Flexibility Program (Flex Program) is authorized by Section 1820 of the Social Security Act (42 U.S.C. 1395i–4), as amended. The purpose of the Flex Program is to enable state designated entities to support critical access hospitals in quality improvement, quality reporting, performance improvement, and benchmarking; to assist facilities seeking designation as critical access hospitals; and to create a program to establish or expand the provision of rural emergency medical services.

A 60-day notice published in the **Federal Register**, Vol. 87, No. 46, FR 13300–13301 (March 9, 2022). There were no public comments.

Need and Proposed Use of the Information: For this program, performance measures were developed to provide data useful to the Flex program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Modernization Act of 2010. These measures cover principal topic areas of interest to the Federal Office of Rural Health Policy, including: (a) Quality reporting, (b) quality improvement interventions, (c) financial and operational improvement initiatives, (d) population health management, (e) rural emergency medical services integration and (f) innovative care models. In addition to informing the Office's progress toward meeting the goals set in Government Performance and Results Modernization Act of 2010, the information is important in identifying and understanding programmatic improvement across program areas, as well as guiding future iterations of the Flex Program and prioritizing areas of need and support.

This submission includes the addition of minor revisions in the organization of the measures to align with the changes to the organization of the program areas within the Flex Program. The revisions include changes to align with current language and a broadening of scope for some activities. The measures will remain unchanged. For example, population health improvement activities were previously combined with rural emergency medical services integration, and these measures will be separated into two distinct program areas. The burden remains unchanged with these changes.

Likely Respondents: Respondents are the Flex Program coordinators for the states participating in the Flex Program. There are currently 45 states participating in the Flex Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement Measurement System (within the Electronic Handbooks system	45	1	45	70	3,150
	45		45		3,150

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–10808 Filed 5–19–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0275–60D]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the information collection request (ICR) must be received on or before July 19, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier OS–0990–0275–60D and project title for reference. Submit requests to Sherrette A. Funn, the Reports Clearance Officer, at *Sherrette.Funn@hhs.gov* or call (202) 795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: Performance Data System (PDS).

Type of Collection: Renewal.

OMB No.: 0990–0275.

Abstract: This request for clearance is to extend data collection activities for a currently approved collection using the OMB approved Performance Data System (PDS) (OMB No. 0990–0275), the tool used by the Office of Minority Health (OMH) to collect program management and performance data for all OMH-funded projects. The revised data collection instrument keeps all the same data elements, but includes additional formatting to clarify data elements. Additionally, a few columns were reordered in order to make the form more intuitive. Grantee data collection via the UDS (original data collection system) was first approved by OMB on June 7, 2004 (OMB No. 0990–275).

Need and Proposed Use of the Information: The clearance is needed to continue data collection using the PDS, a system that enables OMH to comply with Federal reporting requirements and monitor and evaluate performance by enabling the efficient collection of performance-oriented data tied to OMH-wide performance reporting needs. The ability to monitor and evaluate performance in this manner, and to work towards continuous program improvement are basic functions that OMH must be able to accomplish to carry out its mandate with the most effective and appropriate use of resources.

Likely Respondents: Respondents for this data collection include the project directors for OMH-funded projects and/or the date entry persons for each OMH-funded project. Affected public includes non-profit institutions, State, Local, or Tribal Governments.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Project Directors	100	4	45/60	300

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–10827 Filed 5–19–22; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0475]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the ICR must be received on or before June 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice. To be assured consideration, comments and recommendations must be submitted *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–0475–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: ASPA COVID–19 Public Education Campaign Evaluation Surveys.

Type of Collection: Revision.

OMB No. 0990–0475—Office of the Assistant Secretary for Public Affairs (ASPA) within Office of the Secretary.

Abstract: The Office of the Assistant Secretary for Public Affairs (ASPA), U.S. Department of Health and Human Services (HHS) is requesting a revision on a currently approved collection including two components: 1. COVID–19 Attitudes and Beliefs Survey (CABS), and 2. Monthly Outcome Survey (MOS). This revision supports continuation of the approved data collection by adding burden to support the program through the expiration of the package 0990–0475 on February 29, 2024.

Throughout execution of ASPA's COIVD–19 Public Education Campaign, this information will primarily be used to determine whether the campaign is having the intended impact on target audiences' knowledge, attitudes, and beliefs as they relate to COVID–19, COVID–19 vaccination, boosting, and uptake of vaccination among eligible children, as well as adherence to preventative behaviors. It will also keep key stakeholders informed of the Campaign's progress. Ultimately, the data will inform a thorough evaluation of the efficacy of the campaign and its impact on vaccine and booster uptake.

COVID–19 Attitudes and Beliefs Survey (CABS)

The CABS is a longitudinal survey that fields tri-annually to 4,000 U.S. adults through the duration of 0990–0475 via NORC at the University of Chicago's AmeriSpeak Panel. The survey is fielded online, and each fielding period lasts between 3 and 6 weeks. Those that respond to each wave of the survey are recontacted in each subsequent wave, facilitating a comparison of COVID–19 behavior change over time for a representative sample and evaluation of U.S. adults. Panel members selected to participate in the study received one pre-invitation postcard in the mail, one email invitation, and three email reminders to complete the survey in each wave. There are two CABS supplements to increase robustness of the evaluation, one to obtain enough parent respondents of eligible-to-vaccinate children and another to obtain respondents' media consumption habits.

Monthly Outcome Survey (MOS)

The MOS is a cross-sectional survey fielded monthly to 5,000 U.S. adults over two years (24 waves) via the Ipsos KnowledgePanel 5K Omnibus Survey. The is fielded online, and each fielding period lasts between 7 and 10 days.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
MOS	MOS Survey Questionnaire	120,000	1	15/60	30,000
CABS	CABS Survey Questionnaire	3,800	6	35/60	13,300
	Parent Supplement	2,565	1	35/60	1,497
	Media Diet Supplement	4,500	1	7.5/60	563
Total					45,360

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–10912 Filed 5–19–22; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN F32 Review Meeting.

Date: June 15, 2022.

Time: 10:00 a.m. to 5:00 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: Evon S. Ereifej, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Rockville, MD 20852, *ereifejes@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Social Disconnection and Suicide Risk in Late Life.

Date: June 17, 2022.

Time: 12:00 p.m. to 4:00 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: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Neuroscience Center, Room 6150, Bethesda, MD 20892, 301–435–1260, *jasenka.borzan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 16, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10811 Filed 5–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management in General Care Settings Study Section.

Date: June 13–14, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, (301) 435–6998, *fordycelm@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Promotion in Communities Study Section.

Date: June 14–15, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helena Eryam Dagadu, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, 301–435–1266, *dagaduhe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Therapeutic Development and Preclinical Studies.

Date: June 16–17, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard D. Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

Date: June 16–17, 2022.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, 301–760–8207 *schauweckerpe@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: June 16–17, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Societal and Ethical Issues in Research.

Date: June 16, 2022.

Time: 1:00 p.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Annie Laurie McRee, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 100, Bethesda, MD 20892, (301) 827–7396, *mcreeal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immuno Oncology Research.

Date: June 21–22, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Elena Cardenas-Corona, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD

20817, 301–867–5309, *maria.cardenas-corona@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery Involving the Nervous System.

Date: June 21–22, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lai Yee Leung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011D, Bethesda, MD 20892, (301) 435–1042, *leungl2@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.

Date: June 21–22, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–5902, *caojn@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: June 22–23, 2022.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Angela Y. Ng, MBA, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: June 22–23, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tami Jo Kingsbury, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (410) 274–1352, *tami.kingsbury@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 16, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10810 Filed 5–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 7, 2022.

Open: 10:00 a.m. to 3:20 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Democracy I, Suite 800, Bethesda, MD 20892–4872, *http://videocast.nih.gov/* (Virtual Meeting).

Virtual Access: The meeting will be videocast and can be accessed from the NIH Videocast *http://videocast.nih.gov.* Please note, the link to the videocast meeting will be posted within a week of the meeting date. Any member of the public may submit written comments no later than 15 days after the meeting.

Closed: 3:20 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Democracy I, Suite 800, Bethesda, MD 20892–4872 (Virtual Meeting).

Contact Person: Kathy Salaita, SCD, Chief, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Rm. 800, Bethesda, MD 20892, 301–594–5033, *salaitak@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 16, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10813 Filed 5–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: June 15, 2022.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Margaret A. Morris Fears, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52, Rockville, MD 20852, (301) 761–5444, *maggie.morrisfears@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 16, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

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DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2022–0007]

RIN 1653–ZA27

Employment Authorization for Afghan F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Situation in Afghanistan

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Afghanistan, regardless of country of birth (or individuals having no nationality who last habitually resided in Afghanistan), and who are experiencing severe economic hardship as a direct result of the current situation in Afghanistan. The Secretary is taking action to provide relief to these lawful F–1 nonimmigrant students so the students may request employment authorization, work an increased number of hours while their academic institution is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student who receives employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This F–1 notice is effective May 20, 2022, through November 20, 2023.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Afghanistan, regardless of country of birth (or individuals having no nationality who last habitually resided in Afghanistan), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the current situation in Afghanistan. Effective with this publication, suspension of the employment limitations is available through November 20, 2023, for those who are in lawful F–1 nonimmigrant status. DHS will deem an F–1 nonimmigrant student granted employment authorization through this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are citizens of Afghanistan regardless of country of birth (or individuals having no nationality who last habitually resided in Afghanistan);

(2) Were lawfully present in the United States in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i) on the date of publication of this notice;

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current situation in Afghanistan.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school in grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to Afghan F–1 nonimmigrant students experiencing severe economic hardship due to the current situation in Afghanistan. DHS has reviewed country conditions in Afghanistan and based on that review and input from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Afghanistan to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

DHS has determined that the current situation in Afghanistan s the need for Special Student Relief. On April 18, 2022, DOS issued a Level 4: Do Not Travel advisoryadvisoryabout travel to Afghanistan because of civil unrest, armed conflict, crime, terrorism, and kidnapping.[2] General instability in the country, including instability caused by deep economic challenges, increases the difficulty of establishing security and thwarting the rise of further violent extremism.[3] Internal displacement is rising. As of January 15, 2022, the United Nations High Commissioner for

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of November 20, 2023, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to U.S. Immigration and Customs Enforcement (ICE) coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited May 2, 2022).

[2] *See Afghanistan Travel Advisory,* U.S. Dep't of State (Apr. 18, 2022), *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/afghanistan-advisory.html.*

[3] *Afghanistan's Collapsing Economy Heightens 'Risk Of Extremism,' UN Envoy Warns,* Radio Free Europe (Nov. 18, 2021), *https://gandhara.rferl.org/a/afghanistan-un-lyons-assets-humanitarian-crisis-hunger/31567075.html.*

Refugees reported that there were approximately 3.4 million conflict-induced, internally displaced persons in Afghanistan.[4] Afghanistan also faces significant challenges due to the intentional destruction of vital infrastructure. Numerous countries, including the United States, have condemned the continuation of assassinations, kidnappings, and destruction of vital infrastructure which harm the Afghan people and contribute to an insecure environment in which terrorist and criminal groups are free to operate.[5] Economic ramifications of the August 2021 Taliban takeover include ''millions of dollars in lost income, spiking prices, a liquidity crisis, and shortages of cash.''[6] Since the Taliban takeover of Afghanistan, rising prices, increasing unemployment, and a drop in the value of the local currency have exacerbated food insecurity trends[7] resulting in a deepening and increasingly deadly humanitarian crisis with 95 percent of households experiencing insufficient food consumption and food insecurity.''[8] A survey of 1,400 households across seven provinces of Afghanistan found that since August 2021, more than 80 percent of Afghans have lost income, with about a third having lost all their household income and about 25 percent reporting that they have lost more than half[9] On August 31, 2021, the United States suspended operations at the U.S. Embassy in Kabul, Afghanistan.[10]

United Nations Secretary-General António Guterres has expressed that he is deeply disturbed by early indications that the Taliban are imposing severe restrictions on the exercise of human rights, particularly targeting women and journalists.[11] Since August 2021, the status of women and girls has become ''increasingly precarious,''[12] and new research shows the devastating impact that Taliban rule has had on Afghan women and girls.[13] For instance, on March 21, 2022, the Taliban promised to reopen all schools in Afghanistan, ending their seven-month de-facto ban on girls attending secondary school, but, two days later, the Taliban reversed this decision, announcing that girls' secondary schools were to remain closed indefinitely until the Taliban put in place policies they said were compliant with ''principles of Islamic law and Afghan culture,'' including further restrictions on girls' attire.[14] Human Rights Watch reports that the Taliban have instituted aban on girls' secondary education,[15] and the education system is at risk of collapse due to the economic crisis in the country.[16]

As of March 16, 2022, approximately 368 F–1 nonimmigrant students from Afghanistan (or individuals having no nationality who last habitually resided in Afghanistan) are enrolled at SEVP-certified U.S. academic institutions. Given the extent of the current situation in Afghanistan, affected students whose primary means of financial support comes from Afghanistan may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current situation has made it unfeasible for many students to safely return to Afghanistan for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.[17]

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the course of study is in an English language study program.[18] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of Federal and state labor laws limiting the employment of minors.

[4] *Flash External Update: Afghanistan Situation #13,* U.N. High Commissioner for Refugees (Jan. 25, 2022), *https://reliefweb.int/report/afghanistan/unhcr-regional-bureau-asia-and-pacific-rbap-flash-external-update-afghanistan-4.*

[5] *Statement on Continuation of Assassinations, Kidnappings, and Destruction of Vital Infrastructure,* U.S. Embassy in Afghanistan (Jan. 31, 2021), *https://af.usembassy.gov/statement-on-continuation-of-assassinations-kidnappings-and-destruction-of-vital-infrastructure/.*

[6] *Afghanistan Facing Famine,* Human Rights Watch (Nov. 11, 2021), *https://www.hrw.org/news/2021/11/11/afghanistan-facing-famine#.*

[7] *In the grip of hunger: Only 5 percent of Afghan families have enough to eat,* World Food Programme, Sept. 23, 2021, *https://www.wfp.org/stories/grip-hunger-only-5-percent-afghan-families-have-enough-eat* (last visited May 3, 2022).

[8] *Afghanistan: Economic Roots of the Humanitarian Crisis,* Human Rights Watch (Mar. 1, 2022), *https://www.hrw.org/news/2022/03/01/afghanistan-economic-roots-humanitarian-crisis.*

[9] *Afghanistan: A Fifth of Starving Families sending Children to Work as Incomes Plummet in Past Six Months,* Save the Children (Feb.14, 2022), *https://www.savethechildren.net/news/afghanistan-fifth-starving-families-sending-children-work-incomes-plummet-past-six-months.*

[10] *U.S. Embassy in Afghanistan Security Message: Suspension of Operations,* U.S. Dep't of State (Aug. 31, 2021), *https://af.usembassy.gov/security-message-suspension-of-operations/.*

[11] *Taliban imposing 'horrifying' human rights curbs, UN chief warns,* Aljazeera (Aug. 13, 2021), *https://www.aljazeera.com/news/2021/8/13/afghanistan-taliban-horrifying-human-rights-curbs-un.*

[12] *Afghan Women and Girls: Status and Congressional Action,* Congressional Research Service, p. 1, updated Aug. 18, 2021, *https://crsreports.congress.gov/product/pdf/IF/IF11646* (last visited May 3, 2022).

[13] *Afghanistan: Taliban Deprive Women of Livelihoods, Identity,* Human Rights Watch (Jan 18, 2022), *https://www.hrw.org/news/2022/01/18/afghanistan-taliban-deprive-women-livelihoods-identity#.*

[14] Heather Barr, *Taliban Close Girls' Secondary Schools in Afghanistan, Again,* Human Rights Watch (Mar. 23, 2022), *https://www.hrw.org/news/2022/03/23/taliban-close-girls-secondary-schools-afghanistan-again.*

[15] Sahar Fetrar and Heather Barr, *Dress Restrictions Tighten for Afghanistan Girls' Schools,* Human Rights Watch (Apr. 27, 2022), *https://www.hrw.org/news/2022/04/27/dress-restrictions-tighten-afghanistan-girls-schools#:~:text=After%20taking%20over%20Afghanistan%20in,reopen%20all%20schools%20in%20March.*

[16] *Four Ways to Support Girls' Access to Education in Afghanistan,* Human Rights Watch (Mar. 20, 2022), *https://www.hrw.org/news/2022/03/20/four-ways-support-girls-access-education-afghanistan* (last visited May 4, 2022).

[18] DHS considers students who are compliant with ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such COVID–19 guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, *https://www.ice.gov/coronavirus* (last visited Apr. 25, 2022).

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a citizen of Afghanistan, regardless of country of birth (or an individual having no nationality who last habitually resided in Afghanistan), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that the designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [19] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

[19] *See* 8 CFR 214.2(f)(6).

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are citizens of Afghanistan regardless of country of birth (or individuals having no nationality who last habitually resided in Afghanistan);

(2) Were lawfully present in the United States in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), on the date of publication of this notice;

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current situation in Afghanistan.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current situation in Afghanistan).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Afghanistan enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students covered by this notice who are enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I–20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current situation in Afghanistan. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [20] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[21]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [22] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such a reduced course load would not meet the school's minimum course load requirement.[23]

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current situation in Afghanistan. Filing instructions are located at: *https://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See www.uscis.gov/feewaiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to the student's DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the current situation in Afghanistan.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [24] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Afghanistan regardless of country of birth (or an individual having

[20] *See* 8 CFR 214.2(f)(6).

[21] The minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[22] *See* 8 CFR 214.2(f)(6).

[23] The minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[24] *See* 8 CFR 214.2(f)(6).

no nationality who last habitually resided in Afghanistan), and is experiencing severe economic hardship as a direct result of the current situation in Afghanistan, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; [25] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current situation in Afghanistan.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes all of the following documents:

(1) A completed Form I–765;

(2) The required fee or properly documented fee waiver request, as defined in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[26] under this notice has two options:

Under the first option, the nonimmigrant student may apply for TPS according to the instructions in the USCIS notice announcing the designation of Afghanistan for TPS, published elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status, with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new EAD based on their TPS application that is valid through November 20, 2023, and to be eligible for automatic EAD extensions that may be available to EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** Notice designating Afghanistan for TPS. If the F–1 nonimmigrant student already has applied for employment authorization under Special Student Relief, they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code. The nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [27] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for language students). Once approved for Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current situation in Afghanistan. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

[25] *See* 8 CFR 214.2(f)(5)(v).

[26] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited Apr. 25, 2022).

[27] *See* 8 CFR 214.2(f)(6).

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and, therefore, fell out of student status. The students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief until November 20, 2023,[28] to eligible F–1 nonimmigrant students. DHS will continue to monitor the current situation in Afghanistan. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current situation in Afghanistan must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–10886 Filed 5–19–22; 8:45 am]

BILLING CODE 9111–28–P

[28] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of November 20, 2023, provided the student satisfies the minimum course load requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited May 2, 2022).

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2709–21; DHS Docket No. USCIS–2022–0004]

RIN 1615–ZB94

Designation of Afghanistan for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) designation.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is designating Afghanistan for Temporary Protected Status (TPS) for 18 months, effective May 20, 2022, through November 20, 2023. This designation allows eligible Afghan nationals (and individuals having no nationality who last habitually resided in Afghanistan) who have continuously resided in the United States since March 15, 2022, and who have been continuously physically present in the United States since May 20, 2022 to apply for TPS.

DATES:

Designation of Afghanistan for TPS: The 18-month designation of Afghanistan for TPS is effective on May 20, 2022 and will remain in effect for 18 months, through November 20, 2023.

Registration: The registration period for eligible individuals to submit TPS applications begins May 20, 2022 and will remain in effect through November 20, 2023.

ADDRESSES: For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *uscis.gov/tps.* You can find specific information about Afghanistan's TPS designation by selecting ''Afghanistan'' from the menu on the left side of the TPS web page.

If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *uscis.gov/contactcenter.*

Further information will also be available at local USCIS offices upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: You may contact René Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section

IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for eligible nationals of Afghanistan (or individuals having no nationality who last habitually resided in Afghanistan) to submit an initial registration application under the designation of Afghanistan for TPS and apply for an employment authorization document (EAD). Under the designation, individuals must submit an initial Afghanistan TPS application (Form I–821) and they may also submit an Application for Employment Authorization (Form I–765), during the 18-month initial registration period that runs from May 20, 2022, through November 20, 2023.[1] In addition to demonstrating continuous residence in the United States since March 15, 2022,[2] and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since May 20, 2022, the effective date of this designation of Afghanistan, before USCIS may grant them TPS. DHS estimates that approximately 72,500 individuals are eligible to file applications for TPS under the designation of Afghanistan.

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work so long as they continue to meet the requirements of TPS. They may apply for and receive EADs as evidence of employment authorization.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - ○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - ○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

Why was Afghanistan designated for TPS?

DHS has reviewed conditions in Afghanistan. Based on this review, and after consulting with the Department of State (DOS), the Secretary has determined that an 18-month designation is warranted because of ongoing armed conflict and the extraordinary and temporary conditions described below.

Overview

In August 2021, the Taliban took over Kabul after waging a 20-year insurgency against the government of Afghanistan and U.S. and NATO forces. Armed conflict and insurgency continue throughout the country of Afghanistan.[3] The Taliban is seen as both ill-equipped and unwilling to meet the country's numerous challenges including the current security situation, economic collapse, a crumbling healthcare system, severe food insecurity, and respect for human rights.[4] Afghanistan is undergoing a humanitarian disaster. The United Nations has called the current situation ''unparalleled, with more than 24.4 million people requiring humanitarian assistance to survive.''[5] ''Half the population [is] facing acute hunger, including 9 million people in emergency food insecurity—the highest number globally [with] [m]alnutrition on the rise, and livelihoods [that] have been destroyed.''[6]

Armed Conflict and Security Situation

The Taliban controlled most of Afghanistan from 1996 to 2001, invoking Sharia law to remove women from public life, enforce strict moral codes, and exact draconian punishments for transgressions including dismemberment and public executions.[7] In response to the Taliban harboring al-Qaida and Osama bin Laden after the attacks of September 11, 2001,[8] U.S. forces began airstrikes and a ground invasion that, by mid-November 2001, in concert with actions by remaining Mujahideen fighters under the Northern Alliance, drove the Taliban from most of Afghanistan. Following a transition of security responsibility from the NATO-led International Security Assistance Force (ISAF) to the Afghan National Defense and Security Forces (ANDSF),[9] the Taliban expanded its presence across larger parts of the country[10] and by

[1] In general, individuals must be given an initial registration period of no less than 180 days to register for TPS, but the Secretary has discretion to provide for a longer registration period. *See* 8 U.S.C. 1254a(c)(1)(A)(iv). In keeping with the humanitarian purpose of TPS and advancing the goal of ensuring ''the Federal Government eliminates . . . barriers that prevent immigrants from accessing government services available to them'' under Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, 86 FR 8277 (Feb. 5, 2021), the Secretary has recently exercised his discretion to provide for TPS initial registration periods that coincide with the full period of a TPS country's initial designation or redesignation. *See, e.g.,* 87 FR 23211 (Apr. 19, 2022) (providing 18-mos. registration period under the new TPS designation of Ukraine); 87 FR 23202 (Apr. 19, 2022) (providing 18-mos. registration period under the new TPS designation of Sudan); 86 FR 38744 (July 22, 2021) (providing 18-mos. registration period under the TPS redesignation of Somalia). For the same reasons, the Secretary is similarly exercising his discretion to provide applicants under this TPS designation of Afghanistan with an 18-month initial registration period.

[2] The ''continuous physical presence date'' (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The ''continuous residence date'' (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA section 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (discussing CR and CPP date requirements).

[3] Afghanistan's Collapsing Economy Heightens 'Risk of Extremism,' UN Envoy Warns, Radio Free Europe/Radio Liberty, Nov. 18, 2021, available at: *https://gandhara.rferl.org/a/afghanistan-un-lyons-assets-humanitarian-crisis-hunger/31567075.html* (last visited Apr. 8, 2022).

[4] Nilofar Sakhi, The humanitarian and human security crises in Afghanistan, Middle East Institute (MEI), Oct. 12, 2021, available at: *https://www.mei.edu/publications/humanitarian-and-human-security-crises-afghanistan* (last visited Apr. 8, 2022).

[5] Afghanistan Conference 2022, UN Web TV, Mar. 31, 2022, available at: *https://media.un.org/en/asset/k1p/k1puubpv5u* (last visited Apr. 15, 2022).

[6] Afghanistan Conference 2022, UN Web TV, Mar. 31, 2022, available at: *https://media.un.org/en/asset/k1p/k1puubpv5u* (last visited Apr. 15, 2022).

[7] Carter Malkasian, The American War in Afghanistan, pp. 43 (Oxford University Press, 2021).

[8] Carter Malkasian, The American War in Afghanistan, pp. 53–67 (Oxford University Press, 2021).

[9] Inteqal: Transition to Afghan lead, NATO, updated Nov. 17, 2020, available at: *https://www.nato.int/cps/en/natohq/topics_87183.htm* (last visited Apr. 8, 2022).

[10] Afghanistan: Growing Challenges, International Crisis Group, Apr. 30, 2017, available at: *https://www.crisisgroup.org/asia/south-asia/afghanistan/*

Continued

2017, the Islamic State in Iraq and the Levant-Khorasan Province (ISIS–K) emerged, adding ''a new, dangerous dimension'' to the situation.[11]

Beginning in 2019, the United States engaged with the Taliban to establish an agreement to withdraw troops, with various efforts over the next two years seeking assurances that the Taliban would meet counter-terrorism pledges and participate in intra-Afghan peace talks.[12] In April 2021, President Biden announced a complete U.S. military withdrawal by September 11, 2021, and in early July 2021, U.S. troops began withdrawal operations, including from their largest base at Bagram.[13] The Taliban began rapidly taking territory including regional urban centers, and beginning August 6, provincial capitals.[14] The Taliban took over Kabul on August 15, and on August 30, 2021, the last U.S. forces departed Afghanistan.[15]

Before the withdrawal of U.S. and NATO troops, armed conflict had taken a high toll on Afghan civilians. The U.N. Assistance Mission in Afghanistan (UNAMA) recorded 116,076 civilian deaths and injuries due to armed conflict from 2009 until June 2021 with record numbers of girls and women killed and injured, as well as record numbers of overall child casualties.[16]

Civilians face continuing risk of harm due to ground engagements between the Taliban and ISIS–K, as well as direct punitive targeting by Taliban fighters reportedly taking retaliatory action against people associated with the Ashraf Ghani administration [17] and sectarian attacks on the Shiite minority by ISIS–K.[18] It is reported that ''attacks on civilians made up 36 percent of all disorder events, indicating that civilians will continue to remain at heightened risk of violence under'' the Taliban.[19]

i. Taliban

Following the withdrawal of U.S. and NATO troops and collapse of the Afghan military, armed conflict continues in Afghanistan as the Taliban attempts to impose their rule across the country.[20] Taliban forces have clashed with remaining resistance fighters in Panjshir Province [21] and unknown and little-known groups, including ''Anonymous Fighters'' and ''Turkistan Freedom Tigers,'' have targeted Taliban forces, notably in Jowzjan and Takhar provinces.[22]

Despite their pledge not to do so, reports indicate that the Taliban are targeting old adversaries including former Afghan police and military personnel, increasing the potential for escalating armed conflict.[23] General instability in the country, including instability caused by an economic crisis, increases the difficulty of establishing security and thwarting the rise of further extremism.[24]

The Taliban appear committed to maintaining its methods of warfare that have taken a heavy toll on civilians, including retaining a contingent of trained suicide bombers, as central to its combat and political strategy.[25] Though the Taliban pledged to not allow al-Qaida to ''threaten the security of the United States and its allies'' from Afghan soil, veteran Taliban leaders with deep relationships with al-Qaida organizers have returned to positions of power, raising concern that the Taliban will once again create a safe space for global jihadists.[26] The Taliban have announced the appointment to positions of power members of the Haqqani family, known for operating a brutal terrorist network during the Taliban insurgency,[27] and veteran Taliban leaders with ties to al-Qaida.[28]

ii. Islamic State-Khorasan

The threat of ISIS–K is growing, with increasing risk to civilians. The Department of State designated ISIS–K as a ''foreign terrorist organization'' in

afghanistan-growing-challenges (last visited Apr. 8, 2022).

[11] Special report on the strategic review of the United Nations Assistance Mission in Afghanistan, Report of the Secretary-General, A/72/312–S/2017/696, UN Security Council, p. 3, Aug. 10, 2017, available at: *https://unama.unmissions.org/sites/default/files/special_report_on_the_strategic_review_of_the_united_nations_assistance_mission_in_afghanistan.pdf* (last visited Apr. 8, 2022).

[12] The U.S. War in Afghanistan: 1999–2021, Council on Foreign Relations, 2021, available at: *https://www.cfr.org/timeline/us-war-afghanistan* (last visited Apr. 12, 2022).

[13] Thomas Gibbons-Neff, U.S. Leaves Its Last Afghan Base, Effectively Ending Operations, N.Y. Times, Jul. 4, 2021, available at: *https://www.nytimes.com/2021/07/02/world/asia/afghanistan-bagram-us-withdrawal.html* (last visited Apr. 8. 2022).

[14] The U.S. War in Afghanistan: 1999–2021, Council on Foreign Relations, 2021, available at: *https://www.cfr.org/timeline/us-war-afghanistan* (last visited on Apr. 12, 2022).

[15] The U.S. War in Afghanistan: 1999–2021, Council on Foreign Relations, 2021, available at: *https://www.cfr.org/timeline/us-war-afghanistan* (last visited Apr. 12, 2022).

[16] Afghanistan: Protection of Civilians in Armed Conflict—Annual Report 2020, U.N. Assistance Mission in Afghanistan, Feb. 2021, available at: *https://unama.unmissions.org/sites/default/files/afghanistan_protection_of_civilians_report_2020_revs3.pdf* (last visited Apr. 8, 2022); Afghanistan: Protection of Civilians in Armed Conflict—Midyear Update: 1 January to 30 June 2021, U.N. Assistance Mission in Afghanistan, Jul. 2021, available at: *https://unama.unmissions.org/sites/default/files/unama_poc_midyear_report_2021_26_july.pdf* (last visited Apr. 8, 2022).

[17] ''No Forgiveness for People Like You'' Executions and Enforced Disappearances in Afghanistan under the Taliban, Human Rights Watch, Nov. 30, 2021, available at: *https://www.hrw.org/report/2021/11/30/no-forgiveness-people-you/executions-and-enforced-disappearances-afghanistan* (last visited Apr. 15, 2022).

[18] *See* Afghanistan Security situation update, Country of Origin Information Report, European Asylum Support Office (EASO), Sept. 9, 2021, available at: *https://coi.easo.europa.eu/administration/easo/PLib/2021_09_EASO_COI_Report_Afghanistan_Security_situation_update.pdf* (last visited Apr. 8, 2022).

[19] 10 Conflicts to Worry About in 2022, High risk of violence targeting civilians under Taliban rule, The Armed Conflict Location & Event Data Project (ACLED), Jan. 2022, available at: *https://acleddata.com/10-conflicts-to-worry-about-in-2022/afghanistan/* (last visited Apr. 8, 2022).

[20] *See* Afghanistan Security situation update, Country of Origin Information Report, European Asylum Support Office (EASO), Sept. 9, 2021, available at: *https://coi.easo.europa.eu/administration/easo/PLib/2021_09_EASO_COI_Report_Afghanistan_Security_situation_update.pdf* (last visited Apr. 8, 2022).

[21] Regional Overview: South Asia and Afghanistan 5–11 March 2022, ACLED, Mar. 2022, available at: *https://acleddata.com/2022/03/16/regional-overview-south-asia-and-afghanistan-5-11-march-2022* (last visited Apr. 8. 2022); Regional Overview: South Asia and Afghanistan 19–25 February, ACLED, Feb. 2022, available at: *https://acleddata.com/2022/03/03/regional-overview-south-asia-and-afghanistan-19-25-february-2022/* (last visited Apr. 8, 2022).

[22] Regional Overview: South Asia and Afghanistan 26 February to 4 March 2022, ACLED, Mar. 2022, available at: *https://acleddata.com/2022/03/10/regional-overview-south-asia-and-afghanistan-26-february-4-march-2022/* (last visited Apr. 8, 2022); Regional Overview: South Asia and Afghanistan 5–11 February 2022, ACLED, Feb. 2022, available at: *https://acleddata.com/2022/02/17/regional-overview-south-asia-and-afghanistan-5-11-february-2022/* (last visited Apr. 8, 2022).

[23] Radio Azadi, Michael Scollon, Taliban Takes Revenge On Former Afghan Security Forces, Radio Free Europe/Radio Liberty, Oct. 12, 2021, available at: *https://gandhara.rferl.org/a/taliban-revenge-afghan-security-forces/31505696.html* (last visited Apr. 8. 2022).

[24] Afghanistan's Collapsing Economy Heightens 'Risk of Extremism,' UN Envoy Warns, Radio Free Europe/Radio Liberty, Nov. 18, 2021, available at: *https://gandhara.rferl.org/a/afghanistan-un-lyons-assets-humanitarian-crisis-hunger/31567075.html* (last visited Apr. 8, 2022).

[25] Abubakar Siddique, As Taliban Attempts to Transform from Insurgency to Government, Suicide Bombers Remain Key to Its Strategy, Radio Free Europe/Radio Liberty, November 4, 2021, available at: *https://gandhara.rferl.org/a/taliban-suicide-bombings-afghanistan/31546216.html* (last visited Apr. 8, 2022).

[26] Abubakar Siddique & Abdul Hai Kakar, Al-Qaeda Could Flourish With New Strategy Under Taliban Rule, Radio Free Europe/Radio Liberty, Sept. 30, 2021, available at: *https://gandhara.rferl.org/a/afghanistan-al-qaeda-taliban/31486256.html* (last visited Apr. 8, 2022); Driss El-Bay, Afghanistan: The pledge binding al-Qaeda to the Taliban, BBC News, Sept. 7, 2021, available at: *https://www.bbc.com/news/world-asia-58473574* (last visited Apr. 8, 2022).

[27] Hardliners get key posts in new Taliban government, BBC News, Sept. 7, 2021, available at: *https://www.bbc.com/news/world-asia-58479750* (last visited Apr. 8, 2022).

[28] Hardliners get key posts in new Taliban government, BBC News, Sept. 7, 2021, available at: *https://www.bbc.com/news/world-asia-58479750* (last visited Apr. 8, 2022).

January 2016, and U.S. forces engaged in significant operations to reduce its numbers and to reclaim the small swaths of territory that it held.[29] The Taliban have long engaged in efforts to eradicate the organization, and they continue to fight a renewed ISIS–K insurgency, frequently resulting in civilian casualties.[30] ISIS–K claimed responsibility for the August 26, 2021, suicide attack outside Kabul airport, and has been behind some of the deadliest operations against Afghan civilians.[31] A feature of ISIS–K's attacks is large-scale IED and suicide bombings of Hazara Shia mosques and gatherings, which are dramatically increasing sectarian violence in Afghanistan.[32]

United Nations Special Representative for Afghanistan, Deborah Lyons, indicated that the Taliban have been unable to stem the expansion of ISIS–K, and that it now appears to be present in nearly all provinces.[33] As of November 17, 2021, she stated that the number of attacks attributed to ISIS–K has increased significantly from 60 last year to 334 this year.[34] The Armed Conflict Location & Event Data Project (ACLED), a non-profit data collection, analysis, and crisis mapping project, reports multiple recent attacks by ISIS–K during the months of October and November 2021, including engagements with the Taliban and targeting of civilians.[35]

iii. Destruction of Infrastructure

Afghanistan faces significant challenges due to the destruction of vital infrastructure during armed conflict. There are numerous reports that the Taliban targeted power stations and distribution equipment, dug up roads and destroyed bridges, destroyed cell towers and communications infrastructure, and damaged schools, medical facilities, and government buildings during their insurgency.[36] The education system is also at risk of complete collapse due to the economic crisis.[37]

During the Taliban insurgency in the first half of 2021, the ''39 electricity pylons that bring imported power into Afghanistan [were] damaged.'' [38] Power supply subsequently became ''extremely erratic even in the capital Kabul,'' with notable disruptions to Kunduz, Baghlan, Kabul, Nangarhar and Parwan provinces.[39] ''Millions of Afghans have become intimately familiar with regular power cuts and being forced to navigate daily tasks and chores with just a few hours of electricity supply.'' [40]

In July 2021, the Taliban reportedly frequently attacked power and communications infrastructure in their advance, blowing up fiber optics systems and destroying telecommunications antennas across the country, seriously affecting digital and mobile communication.[41] The Taliban reportedly either torched or destroyed 260 government buildings and assets in 116 districts,[42] leaving more than 13 million people without access to public services and halting ''hundreds of development projects such as the reconstruction of water supply networks, roads, retaining walls, the construction of schools, bridges, hospitals, stadiums, cold storage facilities, [and] drilling wells.'' [43] The armed conflict left the Afghan countryside ''littered with abandoned and decaying power plants, prisons, schools, factories, office buildings and military bases.'' [44]

iv. Danger From Explosive Remnants of War Including Landmines

Explosive remnants of war (ERW) which failed to detonate, including landmines, pose a significant risk to civilians in Afghanistan, killing or injuring tens of thousands during the past three decades.[45] These munitions ''from more recent armed clashes caused over 98 percent of the [ERW] casualties recorded in 2021,'' of which more than 79 percent were children.[46] And ''[d]ue to evolving conflict dynamics, Afghanistan's humanitarian mine action needs are now as great as they have ever

[29] Golnaz Esfandiari, Explainer: Who Are Islamic State-Khorasan and What Are They After?, Radio Free Europe/Radio Liberty, Aug. 27, 2021, available at: *https://gandhara.rferl.org/a/islamic-state-khorasan-expainer/31431763.html* (last visited Apr. 8, 2022).

[30] Golnaz Esfandiari, Explainer: Who Are Islamic State-Khorasan and What Are They After?, Radio Free Europe/Radio Liberty, Aug. 27, 2021, available at: *https://gandhara.rferl.org/a/islamic-state-khorasan-expainer/31431763.html* (last visited Apr. 8, 2022).

[31] Golnaz Esfandiari, Explainer: Who Are Islamic State-Khorasan and What Are They After?, Radio Free Europe/Radio Liberty, Aug. 27, 2021, available at: *https://gandhara.rferl.org/a/islamic-state-khorasan-expainer/31431763.html* (last visited Apr. 8, 2022).

[32] Golnaz Esfandiari, Explainer: Who Are Islamic State-Khorasan and What Are They After?, Radio Free Europe/Radio Liberty, Aug. 27, 2021, available at: *https://gandhara.rferl.org/a/islamic-state-khorasan-expainer/31431763.html* (last visited Apr. 8, 2022).

[33] Afghanistan's Collapsing Economy Heightens 'Risk Of Extremism,' UN Envoy Warns, Radio Free Europe/Radio Liberty, Nov. 18, 2021, available at: *https://gandhara.rferl.org/a/afghanistan-un-lyons-assets-humanitarian-crisis-hunger/31567075.html* (last visited Apr. 8, 2022).

[34] Afghanistan's Collapsing Economy Heightens 'Risk Of Extremism,' UN Envoy Warns, Radio Free Europe/Radio Liberty, Nov. 18, 2021, available at: *https://gandhara.rferl.org/a/afghanistan-un-lyons-assets-humanitarian-crisis-hunger/31567075.html* (last visited Apr. 8, 2022).

[35] Regional Overview: South Asia and Afghanistan 30 October to 5 November 2021, ACLED, Nov. 2021, available at: *https://acleddata.com/2021/11/11/regional-overview-south-asia-and-afghanistan-30-october-5-november-2021/* (last visited Apr. 8, 2022).

[36] Statement on Continuation of Assassinations, Kidnappings, and Destruction of Vital Infrastructure, US Embassy in Afghanistan, Jan. 31, 2021, available at: *https://af.usembassy.gov/statement-on-continuation-of-assassinations-kidnappings-and-destruction-of-vital-infrastructure/* (last visited May 3, 2022); Secretary-General's press encounter on Afghanistan, U.N. Secretary-General, Aug. 13, 2021, available at: *https://www.un.org/sg/en/content/secretary-general%E2%80%99s-press-encounter-afghanistan* (last visited Apr. 8, 2022); Sayed Salahuddin, 10 killed in twin Kabul blasts, power supply disrupted across Afghanistan, Arab News, Jun. 2, 2021, available at: *https://www.arabnews.com/node/1869436/world* (last visited May 3, 2022); Anisa Shaheed, Taliban Destroyed, Damaged Infrastructure in 116 Districts: IARCS, TOLOnews, Jul. 15, 2021, available at: *https://tolonews.com/afghanistan-173540* (last visited May 3, 2022); Country of Origin Information Report: Afghanistan Security Situation Update, European Asylum Support Office (EASO), Sep. 2021, available at: *https://coi.euaa.europa.eu/administration/easo/PLib/2021_09_EASO_COI_Report_Afghanistan_Security_situation_update.pdf* (last visited May 3, 2022).

[37] Four Ways to Support Girls' Access to Education in Afghanistan, Human Rights Watch, Mar. 20, 2022, available at: *https://www.hrw.org/news/2022/03/20/four-ways-support-girls-access-education-afghanistan* (last visited Apr. 8, 2022).

[38] Ruchi Kumar, Taliban targeting Afghanistan's crucial power, IT infrastructure, Al Jazeera, Jul. 15, 2021, available at: *https://www.aljazeera.com/news/2021/7/15/taliban-afghanistan-it-electricity-power* (last visited Apr. 8, 2022).

[39] Ruchi Kumar, Taliban targeting Afghanistan's crucial power, IT infrastructure, Al Jazeera, Jul. 15, 2021, available at: *https://www.aljazeera.com/news/2021/7/15/taliban-afghanistan-it-electricity-power* (last visited Apr. 8, 2022).

[40] Ruchi Kumar, Taliban targeting Afghanistan's crucial power, IT infrastructure, Al Jazeera, Jul. 15, 2021, available at: *https://www.aljazeera.com/news/2021/7/15/taliban-afghanistan-it-electricity-power* (last visited Apr. 8, 2022); Blasts cut power to millions in Afghanistan before Eid holiday, Al Jazeera, Apr. 30, 2022, available at: *https://www.aljazeera.com/news/2022/4/30/blasts-cut-power-to-millions-in-afghanistan-ahead-of-eid* (last visited May 4, 2022).

[41] Ruchi Kumar, Taliban targeting Afghanistan's crucial power, IT infrastructure, Al Jazeera, Jul. 15, 2021, available at: *https://www.aljazeera.com/news/2021/7/15/taliban-afghanistan-it-electricity-power* (last visited Apr. 8, 2022).

[42] Anisa Shaheed, Taliban Destroyed, Damaged Infrastructure in 116 Districts: IARCS, TOLO News, Jul. 15, 2021, available at: *https://tolonews.com/afghanistan-173540* (last visited Apr. 8, 2022).

[43] Anisa Shaheed, Taliban Destroyed, Damaged Infrastructure in 116 Districts: IARCS, TOLO News, Jul. 15, 2021, available at: *https://tolonews.com/afghanistan-173540* (last visited Apr. 8, 2022).

[44] Daniel Nasaw, U.S. Left Afghanistan Littered With Decaying Factories, Schools, Offices, Wall Street Journal, Sept. 6, 2021, available at: *https://www.wsj.com/articles/u-s-left-afghanistan-littered-with-decaying-factories-schools-offices-11630933200* (last visited Apr. 8, 2022).

[45] Afghanistan, The United Nations Mine Action Service (UNMAS), Mar. 2022, available at: *https://www.unmas.org/en/programmes/afghanistan* (last visited May 4, 2022).

[46] Afghanistan, The United Nations Mine Action Service (UNMAS), Mar. 2022, available at: *https://www.unmas.org/en/programmes/afghanistan* (last visited May 4, 2022).

been.'' [47] The Taliban have reportedly agreed to permit the HALO Trust (Hazardous Area Life-Support Organization), a British-American charity in Afghanistan that has been clearing land mines for decades, to continue its work,[48] yet in June 2021 ISIS–K militants attacked HALO staff members, killing 10, suggesting that they continue to face substantial risk.[49] In addition, the organization reports that new mines and explosive devices were laid and left behind in the battles leading up to the Taliban's takeover of Kabul.[50]

v. Rising Internal Displacement

Rising internal displacement emanates from the ongoing armed conflict and the unstable security situation in Afghanistan. Land pressures and related disputes have also been a challenge in Afghanistan, fueling displacements, and complicating the security and relocation options for internally displaced persons (IDPs).[51] As of March 15, 2022, UNHCR reported there were approximately 3.4 million conflict-induced IDPs in Afghanistan—with 736,889 of those added in 2021.[52] The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) noted that these IDPs are from 33 out of the 34 provinces in Afghanistan, and 79 percent of those added in 2021 are women and children.[53] UNOCHA further stated, ''[i]nadequate shelter, food insecurity, insufficient access to sanitation and health facilities, as well as a lack of protection, often result in precarious living conditions that jeopardizes the well-being and dignity of affected families.'' [54] Reports reflect that the Taliban exacerbated the IDP problem by forcing thousands of people from their homes, including Hazaras as well as former government officials, and redistributing their property to Taliban supporters.[55]

Economic Collapse and Health Concerns

i. Economic Impacts of Taliban Takeover

Economic ramifications of the Taliban takeover in August 2021 include ''millions of dollars in lost income, spiking prices, a liquidity crisis, and shortages of cash.'' [56] The cessation of purchasing power of the Afghan population as a result of the termination of international assistance once used to pay salaries has caused an ''enormous number of Afghan households [to] immediately los[e] their primary sources of income. According to a World Food Program survey released in February 2022, four out of five households reported no income or significantly reduced incomes in January 2022.'' [57] In October 2021, the World Bank noted that ''the sudden loss of public sector activity will have impacts throughout the economy, especially in the service and construction sectors (which account for 58 percent of GDP).'' [58]

In November 2021, the Taliban banned the use of foreign currency, which may ''further disrupt an economy on the brink of collapse.'' [59] Banking officials note that ''most Afghan banks cannot cover withdrawals by private actors and aid organizations'' and ''[e]ven when funds are transmitted electronically into banks, the lack of cash means that money is not physically available and therefore cannot flow into the country's economy.'' [60] When compared to the Taliban's previous peak in the 1990s, ''poverty this time can only be predicted to be worse and more keenly felt.'' [61] As of February 2022, the UN Development Programme (UNDP) could not access its funds in the Afghanistan International Bank (AIB) for program implementation because the Taliban-run AIB cannot convert it to Afghani currency.[62] Of the $4 billion worth of afghanis, in the economy, only $500 million worth was in circulation, ''hindering humanitarian operations in Afghanistan, where more than half the country's 39 million people suffer extreme hunger and the economy, education and social services face collapse.'' [63]

ii. Access to Food, Potable Water, and Healthcare

Rising prices, increasing unemployment, and a drop in the value of the local currency exacerbate food insecurity trends.[64] The Executive Director of the World Food Programme

[47] Afghanistan, The United Nations Mine Action Service (UNMAS), Mar. 2022, available at: *https://www.unmas.org/en/programmes/afghanistan* (last visited May 4, 2022).

[48] Clearing Afghanistan's Landmines One Careful Step a Time, Voice of America (VOA) News, Nov. 21, 2021, available at: *https://www.voanews.com/a/clearing-afghanistan-s-landmines-one-careful-step-a-time/6318080.html* (last visited Apr. 28, 2022).

[49] Najim Rahim & Mike Ives, Attack in Afghanistan Kills 10 From Charity That Clears Land Mines, N.Y. Times, Jun. 9, 2021, available at: *https://www.nytimes.com/2021/06/09/world/asia/afghanistan-land-mines-halo-trust.html* (last visited Apr. 8, 2022).

[50] Clearing Afghanistan's Landmines One Careful Step a Time, Voice of America (VOA) News, Nov. 21, 2021, available at: *https://www.voanews.com/a/clearing-afghanistan-s-landmines-one-careful-step-a-time/6318080.html* (last visited Apr. 28, 2022).

[51] *See* Land, People, and the State in Afghanistan: 2002–2012, Afghanistan Research and Evaluation Unit (AREU), Feb. 2013, available at: *http://www.refworld.org/docid/5136fbc72.html* (last visited Apr. 8, 2022); Gulamaiz Sharifi, Abubakar Siddique, Afghan Hazaras Fear The Worst After Forced Taliban Evictions, Radio Free Europe/Radio Liberty, Oct. 6, 2021, available at: *https://gandhara.rferl.org/a/afghanistan-hazaras-taliban/31496224.html* (last visited Apr. 8, 2022).

[52] Flash External Update: Afghanistan Situation #15, U.N. High Commissioner for Refugees (UNHCR), Mar. 15, 2022, available at: *https://data2.unhcr.org/en/documents/details/91524* (last visited Apr. 8, 2022).

[53] Afghanistan: Conflict Induced Displacements, U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA), Nov. 21, 2021, available at: *https://www.humanitarianresponse.info/en/operations/afghanistan/idps* (last visited Apr. 8, 2022).

[54] Afghanistan: Conflict Induced Displacements, U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA), Nov. 21, 2021, available at: *https://www.humanitarianresponse.info/en/operations/afghanistan/idps* (last visited Apr. 8, 2022).

[55] Emma Graham-Harrison, Taliban 'forcibly evicting' Hazaras and opponents in Afghanistan, The Guardian, Oct. 23, 2021, available at: *https://www.theguardian.com/world/2021/oct/23/taliban-forcibly-evicting-hazaras-and-opponents-in-afghanistan* (last visited Apr. 8, 2022).

[56] Afghanistan Facing Famine, UN, World Bank, US Should Adjust Sanctions, Economic Policies, Human Rights Watch, Nov. 11, 2021, available at: *https://www.hrw.org/news/2021/11/11/afghanistan-facing-famine* (last visited Apr. 8, 2022).

[57] Afghanistan: Economic Roots of the Humanitarian Crisis, Questions and Answers on Human Costs of Sanctions, Banking Restrictions, Human Rights Watch, Mar. 1, 2022, available at: *https://www.hrw.org/news/2022/03/01/afghanistan-economic-roots-humanitarian-crisis?gclid=Cj0KCQjw5-WRBhCKARIsAAId9Fnpi5weaKquaERnky8T0Ry0t9FSOsR2mWY_nGA5NmEA3iRz1L8BjF4aAkmGEALw_wcB#_Why_did_the* (last visited Apr. 8, 2022).

[58] The World Bank in Afghanistan Overview, The World Bank, Oct. 8, 2021, available at: *https://www.worldbank.org/en/country/afghanistan/overview#1* (last visited Apr. 8, 2022).

[59] Taliban bans foreign currencies in Afghanistan, BBC News, Nov. 3, 2021, available at: *https://www.bbc.com/news/business-59129470* (last visited Apr. 8, 2022).

[60] Afghanistan Facing Famine, UN, World Bank, US Should Adjust Sanctions, Economic Policies, Human Rights Watch, Nov. 11, 2021, available at: *https://www.hrw.org/news/2021/11/11/afghanistan-facing-famine* (last visited Apr. 8, 2022).

[61] Kate Clark, Killing the Goose that Laid the Golden Egg: Afghanistan's economic distress post-15 August, Afghanistan Analysts Network, Nov. 11, 2021, available at: *https://www.afghanistan-analysts.org/en/reports/economy-development-environment/killing-the-goose-that-laid-the-golden-egg-afghanistans-economic-distress-post-15-august/* (last visited Apr. 8, 2022).

[62] Michelle Nichols, U.N. has millions in Afghanistan bank, but cannot use it, Reuters, Feb. 3, 2022, available at: *https://www.reuters.com/world/asia-pacific/un-has-millions-afghanistan-bank-cannot-use-it-2022-02-03/* (last visited May 4, 2022).

[63] Michelle Nichols, U.N. has millions in Afghanistan bank, but cannot use it, Reuters, Feb. 3, 2022, available at: *https://www.reuters.com/world/asia-pacific/un-has-millions-afghanistan-bank-cannot-use-it-2022-02-03/* (last visited May 4, 2022).

[64] In the grip of hunger: Only 5 percent of Afghan families have enough to eat, World Food Programme, Sept. 23, 2021, available at: *https://www.wfp.org/stories/grip-hunger-only-5-percent-afghan-families-have-enough-eat* (last visited Apr. 8, 2022).

(WFP) described the likelihood of widespread famine in Afghanistan as ''the worst humanitarian crisis on Earth.'' [65] One in three Afghan nationals are acutely food insecure.[66] For the first time, urban and rural areas now experience similar rates of food insecurity.[67] According to recent WFP surveys, ''only five percent of households in Afghanistan have enough to eat every day'' and ''half reported they had run out of food altogether at least once, in the past two weeks.'' [68] As a result of current circumstances, some families are selling their children, especially girls, to obtain food.[69]

The Afghan government officially declared a drought on June 22, 2021.[70] Considered ''one of the worst droughts of the last two decades,'' the resulting conditions ''are particularly severe in the south, western, and northwestern parts of the country.'' [71] Severe drought has impacted 7.3 million people across 25 out of 34 provinces.[72] The U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR) reports that ''drought conditions are likely to persist and even worsen into 2022, further deteriorating food security among Afghans.'' [73] The current drought also ''inhibits hydroelectric production in Afghanistan,'' exacerbating the country's reliance on electricity imports that it can no longer afford.[74] In 2021, ''reduced winter snowfall'' and ''below average spring rainfall in the west'' contributed to ''low river flows and insufficient water in existing reservoirs and dams.'' [75] Some drinking water wells in Kabul went dry due to decreasing groundwater levels, and ''...the groundwater table (meaning the level of the water naturally stored underground) in Kabul city has dropped by 12 meters in 2021 alone.'' [76]

An insufficiently staffed healthcare system predated the Taliban takeover of Kabul.[77] In 2018, Afghanistan ''had a nationwide average of only 4.6 medical doctors, nurses, and midwives per 10,000 people, far below the WHO threshold of 23 per 10,000 people,'' indicating a critical shortage that was more pronounced in rural areas.[78] By September 2021, the World Health Organization (WHO) asserted that the healthcare system was on the brink of collapse.[79] The World Bank and other organizations froze approximately $600 million in health care aid, leaving at risk the effective deployment of a variety of treatments, surgeries, immunizations, and procedures.[80] While there have been recent dispersals of international aid, ''including $308 million in relief authorized by the United States, they have not been enough to cover 1,200 health facilities and 11,000 health workers.'' [81]

Declining staffing levels is a factor during the recent conflict as doctors, nurses, and midwives have ''stopped working or fled the country'' [82] and there have been reported incidents of insurgent groups targeting healthcare workers with threats, intimidation, abduction, and killings.[83] Additionally, Taliban restrictions requiring that women be escorted to health appointments by male family members and bans on male healthcare professionals treating women are further compromising women's access to health care.[84] The International Rescue Committee has predicted that 90 percent of health clinics in Afghanistan will likely close in the near future as a result of the Taliban takeover and the freezing of international funding.[85]

Human Rights Abuses and Repression

The Taliban exclude women, as well as non-Pashtuns with only a few exceptions,[86] and have been described

[65] John Simpson, Afghans facing 'hell on earth' as winter looms, BBC News, Nov. 8, 2021, available at: *https://www.bbc.com/news/world-asia-59202880* (last visited Apr. 8, 2022).

[66] Federica Marsi, Medics overwhelmed as Afghanistan healthcare crumbles, Al Jazeera, Sept. 28, 2021, available at: *https://www.aljazeera.com/features/2021/9/28/medics-in-afghanistan-face-tough-choices-as-healthcare-crumbles* (last visited Apr. 8, 2022).

[67] Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families, UN News, Sept. 22, 2021, available at: *https://news.un.org/en/story/2021/09/1100652* (last visited Apr. 8, 2022).

[68] Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families, UN News, Sept. 22, 2021, available at: *https://news.un.org/en/story/2021/09/1100652* (last visited Apr. 8, 2022).

[69] Afghanistan Facing Famine, UN, World Bank, US Should Adjust Sanctions, Economic Policies, Human Rights Watch, Nov. 11, 2021, available at: *https://www.hrw.org/news/2021/11/11/afghanistan-facing-famine* (last visited Apr. 8, 2022).

[70] Quarterly Report to the United States Congress, SIGAR—Special Inspector General for Afghanistan Reconstruction, Oct. 30, 2021, available at: *https://www.ecoi.net/en/file/local/2063773/2021-10-30qr.pdf* (last visited Apr. 8, 2022).

[71] Global Warming and Afghanistan: Drought, hunger, and thirst expected to worsen, Afghanistan Analysts Network, Nov. 6, 2021, available at: *https://www.afghanistan-analysts.org/en/reports/economy-development-environment/global-warming-and-afghanistan-drought-hunger-and-thirst-expected-to-worsen/* (last visited Apr. 8, 2022).

[72] 'Shah Meer Baloch, 'The challenge for us now is drought, not war': Livelihoods of millions of Afghans at risk, The Guardian, Sept. 21, 2021, available at: *https://www.theguardian.com/global-development/2021/sep/21/drought-war-livelihoods-afghan-farmers-risk-taliban-security-forces-kandahar* (last visited on Apr. 8, 2022).

[73] Quarterly Report to the United States Congress, SIGAR—Special Inspector General for Afghanistan Reconstruction, Oct. 30, 2021, available at: *https://www.ecoi.net/en/file/local/2063773/2021-10-30qr.pdf* (last visited Apr. 8, 2022).

[74] Quarterly Report to the United States Congress, SIGAR—Special Inspector General for Afghanistan Reconstruction, Oct. 30, 2021, available at: *https://www.ecoi.net/en/file/local/2063773/2021-10-30qr.pdf* (last visited Apr. 8, 2022).

[75] Global Warming and Afghanistan: Drought, hunger, and thirst expected to worsen, Afghanistan Analysts Network, Nov. 6, 2021, available at: *https://www.afghanistan-analysts.org/en/reports/economy-development-environment/global-warming-and-afghanistan-drought-hunger-and-thirst-expected-to-worsen/* (last visited Apr. 8, 2022).

[76] Global Warming and Afghanistan: Drought, hunger, and thirst expected to worsen, Afghanistan Analysts Network, Nov. 6, 2021, available at: *https://www.afghanistan-analysts.org/en/reports/economy-development-environment/global-warming-and-afghanistan-drought-hunger-and-thirst-expected-to-worsen/* (last visited Apr. 8, 2022).

[77] Quarterly Report to the United States Congress, SIGAR—Special Inspector General for Afghanistan Reconstruction, p. 139, Oct. 30, 2021, available at: *https://www.ecoi.net/en/file/local/2063773/2021-10-30qr.pdf* (last visited Apr. 8, 2022).

[78] Quarterly Report to the United States Congress, SIGAR—Special Inspector General for Afghanistan Reconstruction, p. 139, Oct. 30, 2021, available at: *https://www.ecoi.net/en/file/local/2063773/2021-10-30qr.pdf* (last visited Apr. 8, 2022).

[79] Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families, UN News, Sept. 22, 2021, available at: *https://news.un.org/en/story/2021/09/1100652* (last visited Apr. 8, 2022).

[80] Apoorva Mandavilli, Health Care in Afghanistan Is Crumbling, Aid Groups Warn, N.Y. Times, Sept. 12, 2021, available at: *https://www.nytimes.com/2021/09/12/health/afghanistan-health-taliban.html* (last visited Apr. 8, 2022).

[81] Afghanistan's Health Care System Is Collapsing Under Stress, N.Y. Times, Feb. 06, 2022, available at: *https://www.nytimes.com/2022/02/06/world/asia/afghanistans-health-care-system.html* (last visited May 3, 2022).

[82] Country Policy and Information Note Afghanistan: Medical treatment and healthcare, UK Home Office, p. 10, Oct. 2021, available at: *https://www.ecoi.net/en/file/local/2062549/AFG_CPIN_Medical_and_healthcare.pdf* (last visited Apr. 8, 2022) (*citing* Giving birth under the Taliban, BBC News, Sept. 20, 2021, available at: *https://www.bbc.com/news/world-asia-58585323*).

[83] Country Guidance: Afghanistan, Common analysis and guidance note, European Asylum Support Office (EASO), p. 65, Nov. 2021. available at: *https://www.easo.europa.eu/sites/default/files/Country_Guidance_Afghanistan_2021.pdf* (last visited Apr. 8, 2022).

[84] Afghanistan: Economic Roots of the Humanitarian Crisis, Questions and Answers on Human Costs of Sanctions, Banking Restrictions, Human Rights Watch, Mar. 1, 2022, available at: *https://www.hrw.org/news/2022/03/01/afghanistan-economic-roots-humanitarian-crisis?gclid=Cj0KCQjw5-WRBhCKARIsAAId9Fnpi5weaKquaERnky8T0Ry0t9FSOsR2mWY_nGA5NmEA3iRz1L8BjF4aAkmGEALw_wcB#_Why_did_the* (last visited Apr. 8, 2022).

[85] Crisis in Afghanistan: Unprecedented hunger after the conflict, International Rescue Committee, Jan. 7, 2022, available at: *https://www.rescue.org/article/crisis-afghanistan-unprecedented-hunger-after-conflict* (last visited Apr. 8, 2022).

[86] Alissa J. Rubin, Taliban Complete Interim Government, Still Without Women, N.Y. Times, Sept. 21, 2021, available at: *https://*

Continued

as highly totalitarian.[87] The Taliban's takeover presents significant concerns about the stability of human rights and safety for segments of the population.

i. Women and Girls

Despite substantial improvements in the social, political, and economic conditions for women and girls since 2001, violence targeting women and girls remained pervasive in Afghanistan before the Taliban takeover.[88] Even before the Taliban takeover of Kabul, ''discrimination, harassment, and violence against women'' were ''endemic in government-controlled areas and in government ministries.'' [89] Studies cited by the former Ministry of Women's Affairs showed that greater than half of Afghan women reported physical abuse, and 17 percent reported sexual violence, with rampant underreporting.[90] Since August 2021, the status of women and girls has become ''increasingly precarious,'' with reports of new restrictions placed on women.[91] In September 2021, the Taliban announced the revival of the so-called Ministry for the Propagation of Virtue and Prevention of Vice,[92] which when it previously existed, ''became a notorious symbol of abuse, particularly against women and girls.'' [93] These developments exist within a broader context of ''traditional, restrictive views of gender roles and rights, including some views consistent with the Taliban's former practices . . . especially in rural areas and among younger men.'' [94]

Since August 2021, specialized courts and prosecution units, ''responsible for enforcing the 2009 Law on the Elimination of Violence Against Women, have been discontinued.'' [95] Many legal professionals involved with women's protections from sexual, domestic, and other violence went into hiding or fled the country, and most domestic violence shelters have closed.[96] As shelters closed some survivors were reportedly sent to detention centers while individuals convicted of gender-based violence were released by the Taliban. [97]

Afghan women are becoming ''socially invisible'' in public life.[98] The By-Law of the Commission for Preaching and Guidance, Recruitment and Propagation of Virtue and the Prevention of Vice, a manual used by the Taliban in a number of provinces since August 2021, and now across the country, place ''tough restrictions on the conduct of women and girls.'' [99] These authorities provide instruction on which family members qualify to be a *mahram,* or chaperone, for women and older girls, and commands women to wear a veil when in the presence of non-*mahrams.*[100] In some parts of the country, women have been barred from leaving their home without a *mahram* [101] and have been attacked or blocked from receiving social services such as healthcare when leaving their home without a *mahram.*[102] The manual also requires women to wear a hijab and veil in public.[103] As punishments for non-conformity, the Taliban has carried out lashings and executions.[104]

Reports indicate that women were forced to marry Taliban fighters prior to the takeover of Kabul in 2021.[105] Although the Taliban has denied the occurrence of forced marriage, local activists report the practice occurs, stating that women are being married as ''sexual slaves.'' [106] A statement shared

www.nytimes.com/2021/09/21/world/asia/taliban-women-government.html (last visited Apr. 8, 2022).

[87] Nilofar Sakhi, The Humanitarian and Human Security Crises in Afghanistan, Middle East Institute (MEI), Oct. 12, 2021, available at: *https://www.mei.edu/publications/humanitarian-and-human-security-crises-afghanistan* (last visited Apr. 8, 2022).

[88] Country Guidance: Afghanistan—Common analysis and guidance note, European Asylum Support Office (EASO), p. 78, Nov. 2021, available at: *https://www.easo.europa.eu/sites/default/files/Country_Guidance_Afghanistan_2021.pdf* (last visited Apr. 8, 2022).

[89] Afghan Women and Girls: Status and Congressional Action, Congressional Research Service, p. 1, updated Aug. 18, 2021, available at: *https://crsreports.congress.gov/product/pdf/IF/IF11646* (last visited Apr. 8, 2022).

[90] Alissa J. Rubin, Threats and Fear Cause Afghan Women's Protections to Vanish Overnight, N.Y. Times, Sept. 4, 2021, updated October 7, 2021, available at: *https://www.nytimes.com/2021/09/04/world/middleeast/afghanistan-women-shelter-taliban.html* (last visited Apr. 8, 2022).

[91] Afghan Women and Girls: Status and Congressional Action, Congressional Research Service, p. 1, updated Aug. 18, 2021, available at: *https://crsreports.congress.gov/product/pdf/IF/IF11646* (last visited Apr. 8, 2022).

[92] Afghanistan: Taliban 'Vice' Handbook Abusive, Discriminatory Rules, Ignored Protections, Human Rights Watch, Oct. 29, 2021, available at: *https://www.hrw.org/news/2021/10/29/afghanistan-taliban-vice-handbook-abusive* (last visited Apr. 8, 2022); Haq Nawaz Khan, Ellen Francis, and Adam Taylor, The Taliban is bringing back its feared ministry of 'vice' and 'virtue', The Washington Post, Sept. 8, 2021, available at: *https://www.washingtonpost.com/world/2021/09/08/afghan-vice-virtue-ministry/* (last visited Apr. 15, 2022); Kathy Gannon, Taliban replace ministry for women with 'virtue' authorities, AP News, Sept. 18, 2021, available at: *https://www.washingtonpost.com/world/2021/09/08/afghan-vice-virtue-ministry/* (last visited Apr. 15, 2022).

[93] Afghanistan: Taliban 'Vice' Handbook Abusive, Discriminatory Rules, Ignored Protections, Human Rights Watch, Oct. 29, 2021, available at: *https://www.hrw.org/news/2021/10/29/afghanistan-taliban-vice-handbook-abusive* (last visited Apr. 8. 2022).

[94] Afghan Women and Girls: Status and Congressional Action, Congressional Research Service, p. 1, updated Aug. 18, 2021, available at: *https://crsreports.congress.gov/product/pdf/IF/IF11646* (last visited Apr. 8, 2022).

[95] Experts decry measures to 'steadily erase' Afghan women and girls from public life, United Nations News, Jan. 17, 2022, available at: *https://news.un.org/en/story/2022/01/1109902* (last visited Apr. 8, 2022).

[96] Fereshta Abbasi, Afghan Women Fleeing Violence Lose Vital Protection, For Survivors of Abuse, Shelters Offered Lifeline, Human Rights Watch, Sept. 24, 2021, available at: *https://www.hrw.org/news/2021/09/24/afghan-women-fleeing-violence-lose-vital-protection* (last visited Apr. 8, 2022).

[97] Freedom of the World 2022, Afghanistan, Freedom House, Feb. 28, 2022, available at: *https://freedomhouse.org/country/afghanistan/freedom-world/2022* (last visited Apr. 8. 2022).

[98] Marie McAuliffe, Struggling to Survive: Gender, Displacement, and Migration in Taliban-Controlled Afghanistan, Center for Strategic & International Studies, Feb. 23, 2022, *https://www.csis.org/analysis/struggling-survive-gender-displacement-and-migration-taliban-controlled-afghanistan* (last visited Apr. 8, 2022).

[99] Afghanistan: Taliban 'Vice' Handbook Abusive, Discriminatory Rules, Ignored Protections, Human Rights Watch, Oct. 29, 2021, available at: *https://www.hrw.org/news/2021/10/29/afghanistan-taliban-vice-handbook-abusive* (last visited Apr. 8. 2022).

[100] Afghanistan: Taliban 'Vice' Handbook Abusive, Discriminatory Rules, Ignored Protections, Human Rights Watch, Oct. 29, 2021, available at: *https://www.hrw.org/news/2021/10/29/afghanistan-taliban-vice-handbook-abusive* (last visited Apr. 8. 2022).

[101] Country of Origin Information (COI) Brief Report, Afghanistan: Recent developments in the security situation, impact on civilians and targeted individuals, Ministry of Immigration and Integration, The Danish Immigration Service, p. 1, Sept. 2021, available at: *https://www.ecoi.net/en/file/local/2060188/Afghanistan_Targetedindiv_FINAL.pdf* (last visited Apr. 8, 2022).

[102] Heather Barr, Afghan Women Watching the Walls Close In, Taliban Crushes Women's Freedom of Movement and Other Rights, Human Rights Watch, Mar. 2, 2022, available at: *https://www.hrw.org/news/2022/03/02/afghan-women-watching-walls-close* (last visited Apr. 8, 2022).

[103] Afghanistan: Taliban 'Vice' Handbook Abusive, Discriminatory Rules, Ignored Protections, Human Rights Watch, Oct. 29, 2021, available at: *https://www.hrw.org/news/2021/10/29/afghanistan-taliban-vice-handbook-abusive* (last visited Apr. 8. 2022).

[104] Country Guidance: Afghanistan, Common analysis and guidance note, European Asylum Support Office (EASO), p. 78, Nov. 2021, available at: *https://www.easo.europa.eu/sites/default/files/Country_Guidance_Afghanistan_2021.pdf* (last visited Apr. 8, 2022).

[105] Country of Origin Information (COI) Brief Report, Afghanistan: Recent developments in the security situation, impact on civilians and targeted individuals, Ministry of Immigration and Integration, The Danish Immigration Service, p. 1, Sept. 2021, available at: *https://www.ecoi.net/en/file/local/2060188/Afghanistan_Targetedindiv_FINAL.pdf* (last visited Apr. 8, 2022) (*citing* Lynne O'Donnell, As Taliban Expand Control, Concerns About Forced Marriage and Sex Slavery Rise, Foreign Policy, Jul. 23, 2021, available at: *https://foreignpolicy.com/2021/07/23/afghanistan-taliban-women-gender/;* and Frud Bezhan & Mustafa Sarwar, Return To The 'Dark Days': Taliban Reimposes Repressive Laws On Women In Newly Captured Areas in Afghanistan, Radio Free Europe/Radio Liberty, Jul. 14, 2021, available at: *https://gandhara.rferl.org/a/taliban-repression-afghan-women/31358597.html*).

[106] Country Policy and Information Note Afghanistan: Fear of the Taliban [Version 1.0], UK

on social media featuring Taliban insignia instructed religious leaders in Takhar and Badakhshan ''to refer girls older than 15 and widows younger than 45'' to the ''Mujahideen Cultural Commission'' for marriage to Taliban fighters.[107]

The Taliban have banned girls from attending secondary school past the sixth grade,[108] although the Taliban permitted women to attend universities in February 2022.[109] Rules segregating teachers and classes according to gender ''exacerbated a severe teacher shortage and threaten to eliminate higher education opportunities for girls.'' [110]

Afghan women are unable to hold positions of authority in almost all spheres of public life.[111] They have been ''barred from paid employment, except as teachers for girls and health-care workers.'' [112] Women aid employees are allowed to work unconditionally in just three out of 34 provinces.[113] In the remaining provinces, ''women aid workers face severe restrictions, such as requirements for a male family member to escort them while they do their jobs, making it difficult or impossible for them to do their job effectively.'' [114] In the legal field, female lawyers and judges ''have left the courts under Taliban pressure'' and ''live in a state of perpetual fear that they or their loved ones could be tracked down and killed.'' [115] Although Taliban representatives claim that female lawyers and judges are protected by a general amnesty for all former government workers, these women fear retribution for their work.[116]

Women activists and former members of public life have been targeted with severe violence since the Taliban takeover of Kabul. Protests by women ''outraged by the . . . hard-line'' nature of the Taliban's so-called ''caretaker government'' have been met by violence from the Taliban fighters.[117] According to ACLED, during the week of October 30 to November 5, 2021, ''the bodies of four women civil society activists were recovered in Balkh province, including a well-known women's rights defender . . . [allegedly] killed by an organized network targeting civil society activists, who introduced themselves as representatives of a human rights organization.'' [118]

ii. Targeted Killings and Evictions of Hazaras

Hazaras have been ''historic victims of prejudice on religious and ethnic grounds.'' [119] Though they made progress in achieving parity with other ethnic groups over the last two decades, Hazaras were particular targets of harm by the Taliban during the Taliban's period of rule from 1996–2001. Recently, Taliban fighters massacred nine ethnic Hazara men after taking control of Ghazni province in July 2021.[120] Hazaras, an ethnic Shia minority, are also enduring a pattern of increasing sectarian attacks from ISIS–K, which over the last several years ''has been blamed for dozens of bombings and gun attacks on mosques, shrines, schools . . . [as] the group views Shiites as apostates.'' [121]

Human Rights Watch and other sources have reported that the Taliban has begun forcibly evicting Hazaras from their homes, including 700 from the central province of Daikundi in late September 2021,[122] hundreds of families from the southern Helmand province and northern Balkh province,[123] and others from Daikundi, Uruzgan, and Kandahar provinces.[124] Human Rights Watch stated that ISIS–K ''has repeatedly carried out devastating attacks that appear designed to spread terror and inflict maximum suffering particularly on Afghanistan's Hazara

Home Office, p. 33–34, Oct. 2021, available at: *https://www.ecoi.net/en/file/local/2061589/AFG_CPIN_Fear_of_the_Taliban.pdf* (last visited Apr. 8, 2022) (*citing* Taliban trying to force Afghan girls as young as 13 into marriage, The National, Aug. 3, 2021, *https://www.thenationalnews.com/world/asia/2021/08/03/taliban-trying-to-force-afghan-girls-as-young-as-13-into-marriage/*).

[107] Country Policy and Information Note Afghanistan: Fear of the Taliban [Version 1.0], UK Home Office, p. 33–34, Oct. 2021, available at: *https://www.ecoi.net/en/file/local/2061589/AFG_CPIN_Fear_of_the_Taliban.pdf* (last visited Apr. 8, 2022) (*citing* Taliban trying to force Afghan girls as young as 13 into marriage, The National, August 3, 2021, available at: *https://www.thenationalnews.com/world/asia/2021/08/03/taliban-trying-to-force-afghan-girls-as-young-as-13-into-marriage/*).

[108] Fereshta Abbasi, Afghan Girls' Education: 'I Don't Think I Have a Future,' Closing Secondary Schools to Girls Causing Lasting Harm, Human Rights Watch, Oct. 31, 2021, available at: *https://www.hrw.org/news/2021/10/31/afghan-girls-education-i-dont-think-i-have-future* (last visited Apr. 8, 2022).

[109] Ayaz Gul, All Public Universities in Afghanistan Open to Male, Female Students, Voice of America (VOA), Feb. 26, 2022, available at: *https://www.voanews.com/a/all-public-universities-in-afghanistan-open-to-male-female-students/6461202.html* (last visited Apr. 15, 2022); The Taliban closes Afghan girls' schools hours after reopening, Al Jazeera, Mar. 23, 2022, available at: *https://www.aljazeera.com/news/2022/3/23/taliban-orders-girls-schools-shut-hours-after-reopening* (last visited May 3, 2022).

[110] Christina Goldbaum, Taliban Allow Girls to Return to Some High Schools, but With Big Caveats, N.Y. Times, Oct. 27, 2021, updated Nov. 3, 2021, available at: *https://www.nytimes.com/2021/10/27/world/asia/afghan-girls-school-taliban.html?searchResultPosition=8* (last visited Apr. 8, 2022).

[111] Marie McAuliffe, Struggling to Survive: Gender, Displacement, and Migration in Taliban-Controlled Afghanistan, Center for Strategic & International Studies, Feb. 23, 2022, available at: *https://www.csis.org/analysis/struggling-survive-gender-displacement-and-migration-taliban-controlled-afghanistan* (last visited Apr. 8, 2022).

[112] HRW Says Donors Should Link Afghan Aid to Taliban's Observing Rights for Girls, Women, Gandahara Radio Free Europe/Radio Liberty, Mar. 21, 2022, available at: *https://gandhara.rferl.org/a/hrw-donors-afghan-aid-taliban-womens-rights/31762920.html* (last visited Apr. 8, 2022).

[113] Afghanistan: Taliban Blocking Female Aid Workers, Human Rights Watch, Nov. 4, 2021, available at: *https://www.hrw.org/news/2021/11/04/afghanistan-taliban-blocking-female-aid-workers* (last visited Apr. 8, 2022).

[114] Afghanistan: Taliban Blocking Female Aid Workers, Human Rights Watch, Nov. 4, 2021, available at: *https://www.hrw.org/news/2021/11/04/afghanistan-taliban-blocking-female-aid-workers* (last visited Apr. 8, 2022.

[115] David Zucchino, Afghan Women Who Once Presided Over Abuse Cases Now Fear for Their Lives, N.Y. Times, Oct. 20, 2021, updated Oct. 22, 2021, available at: *https://www.nytimes.com/2021/10/21/world/asia/afghan-judges-women-taliban.html?searchResultPosition=5* (last visited Apr. 8, 2022).

[116] David Zucchino, Afghan Women Who Once Presided Over Abuse Cases Now Fear for Their Lives, N.Y. Times, Oct. 20, 2021, updated Oct. 22, 2021, available at: *https://www.nytimes.com/2021/10/21/world/asia/afghan-judges-women-taliban.html?searchResultPosition=5* (last visited Apr. 8, 2022).

[117] Yaroslav Trofimov, Afghan Women Protest Hard-Line Taliban Government, Face Violent Crackdown, The Wall Street Journal, Sep. 8, 2021, available at: *https://www.wsj.com/articles/afghan-women-protest-talibans-all-male-government-face-violent-crackdown-11631105098* (last visited May 3, 2022), cited by: Taliban Government in Afghanistan: Background and Issues for Congress, Congressional Research Service, p. 20, Nov. 2, 2021, available at: *https://crsreports.congress.gov/product/pdf/R/R46955* (last visited Apr. 8, 2022).

[118] Regional Overview: South Asia and Afghanistan 30 October to 5 November 2021, ACLED, Nov. 2021, available at: *https://acleddata.com/2021/11/11/regional-overview-south-asia-and-afghanistan-30-october-5-november-2021/* (last visited Apr. 8, 2022).

[119] Thomas Barfield, Afghanistan: A Cultural and Political History, p.26, (Princeton University Press, 2010).

[120] Afghanistan: Taliban responsible for brutal massacre of Hazara men—new investigation, Amnesty International, Aug. 19, 2021, available at: *https://www.amnesty.org/en/latest/news/2021/08/afghanistan-taliban-responsible-for-brutal-massacre-of-hazara-men-new-investigation/* (last visited Apr. 8, 2022).

[121] Pamela Constable, After Kabul school attack, Afghans fear a return to violence, The Washington Post, Apr. 20, 2022, available at: *https://www.washingtonpost.com/world/2022/04/20/afghanistan-school-attack-isis-hazara/* (last visited May 3, 2022).

[122] Gulamaiz Sharifi, Abubakar Siddique, Afghan Hazaras Fear The Worst After Forced Taliban Evictions, Radio Free Europe/Radio Liberty, Oct. 6, 2021, available at: *https://gandhara.rferl.org/a/afghanistan-hazaras-taliban/31496224.html* (last visited Apr. 8, 2022).

[123] Afghanistan: Taliban Forcibly Evict Minority Shia, Hazaras, Former Civil Servants Targets of Collective Punishment, Land-Grabbing, Human Rights Watch, Oct. 22, 2021, available at: *https://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia* (last visited Apr. 8, 2022).

[124] Afghanistan: Taliban Forcibly Evict Minority Shia, Hazaras, Former Civil Servants Targets of Collective Punishment, Land-Grabbing, Human Rights Watch, Oct. 22, 2021, available at: *https://www.hrw.org/news/2021/10/22/afghanistan-taliban-forcibly-evict-minority-shia* (last visited Apr. 8, 2022).

community.'' [125] Reuters reported that ''[w]ith more than 400 Shi'ite mosques in Kabul alone, total security is impossible and no one knows where the next attack will come.'' [126]

iii. Restrictions and Risks in Cases of Nonconformity

Optimism that the current Taliban may be more moderate than the Taliban was from 1996–2001 has faded, as they are reportedly targeting journalists,[127] artists and musicians,[128] barbers and those working in fashion,[129] civil society participants and protestors.[130] According to Amnesty International, these actions have created a climate of fear and intimidation that has caused many Afghan nationals to engage in self-censoring, adopting conservative attire, and abandoning former employment and public life.[131] For example, according to the chairperson of the Afghanistan Independent Human Rights Commission, those formerly employed as ''[l]awyers, judges and prosecutors are mostly in hiding.'' [132] The Taliban have announced that they will once again carry out executions and amputations of hands for criminal offenses, and have begun doing so.[133]

iv. Challenges for Individuals With Disabilities

At least one in five households in Afghanistan includes an adult or child with a serious sensory, psychosocial, intellectual, or physical disability, making Afghanistan one of the largest per capita populations of individuals with disabilities in the world.[134] Unlike many other marginalized populations, merely the removal of discrimination does not automatically enable equal participation in society; rather there are often necessary accommodations or remediations that must happen in physical, communications, or other infrastructures.[135] Access to physical rehabilitation services is ''. . . complicated by poverty, poor quality roads, and danger along the way due to armed conflict.'' [136] After the Taliban takeover in 2021, any strides that Afghanistan had made in protecting the rights of the disabled through the signing and ratifying of conventions under the administrations of Hamid Karzai and Ashraf Ghani ''have been virtually abandoned'' as the withdrawal of foreign aid has ''reduced both the funds to implement these programs and international commitments[,] and the Afghan leadership's interest in carrying them out.'' [137] The European Asylum Support Office (EASO) confirms the stigmatization of individuals with physical and mental disabilities, with ''women, displaced persons and returned migrants with mental health issues'' being particularly vulnerable.[138] EASO also notes the ''lack of appropriate infrastructure and specialist care that covers the needs of people with disabilities.'' [139]

What authority does the Secretary have to designate Afghanistan for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[140] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA section 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A).[141] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S.

[125] Afghanistan: Surge in Islamic State Attacks on Shia, ISIS Affiliate's Targeted Killings Amount to Crimes Against Humanity, Human Rights Watch, Oct. 25, 2021, available at: *https://www.hrw.org/news/2021/10/25/afghanistan-surge-islamic-state-attacks-shia* (last visited Apr. 8, 2022).

[126] Gibran Naiyyar Peshimam, For Afghan Hazaras, where to pray can be life and death choice, Reuters, Oct. 21, 2021, available at: *https://www.reuters.com/world/asia-pacific/afghan-hazaras-where-pray-can-be-life-death-choice-2021-10-21/* (last visited Apr. 8, 2022).

[127] Afghanistan: Journalists tell of beatings by Taliban, BBC News, Sept. 9, 2021, available at: *https://www.bbc.com/news/world-asia-58500579* (last visited Apr. 8, 2022).

[128] Javier C. Hernández, Musicians Flee Afghanistan, Fearing Taliban Rule, N.Y. Times, Nov. 17, 2021, available at: *https://www.nytimes.com/2021/10/03/arts/music/afghanistan-musicians-flee.html* (last visited Apr. 8, 2022); Afghanistan: Gunmen attack wedding to stop music being played, BBC News, Oct. 31, 2021, available at: *https://www.bbc.com/news/world-asia-59107046* (last visited Apr. 8, 2022).

[129] The Taliban Order Barbers Not To Shave Beards In Afghan Province Of Helmand, NPR, Sept. 27, 2021, available at: *https://www.npr.org/2021/09/27/1041025238/the-taliban-order-barbers-not-to-shave-beards-in-afghan-province-of-helmand* (last visited Apr. 8, 2022).

[130] Matthieu Aikins et al., As Taliban Crush Dissent, New Leaders Face Cascading Challenges, N.Y. Times, Nov. 9, 2021, available at: *https://www.nytimes.com/2021/09/08/world/asia/taliban-protests-pakistan.html?referringSource=articleShare* (last visited Apr. 8, 2022).

[131] Afghanistan: Taliban wasting no time in stamping out human rights says new briefing, Amnesty International, Sept. 21, 2021, available at: *https://www.amnesty.org/en/latest/news/2021/09/afghanistan-taliban-wasting-no-time-in-stamping-out-human-rights-says-new-briefing/* (last visited May 4, 2022).

[132] Public Displays of Corpses Signal Return of Hard-Line Afghan Taliban, Voice of America (VOA) News, Sept. 27, 2021, available at: *https://www.voanews.com/a/public-displays-of-corpses-signal-return-of-hard-line-afghan-taliban-/6248297.html* (last visited Apr. 8, 2022).

[133] Taliban Official Says Strict Punishment And Executions Will Return, NPR, Sept. 24, 2021, available at: *https://www.npr.org/2021/09/24/1040339286/taliban-official-says-strict-punishment-and-executions-will-return* (last Apr. 8, 2022); The Taliban's Sharia is the Most Brutal of All, Foreign Policy, Oct.13, 2021, available at *https://foreignpolicy.com/2021/10/13/the-talibans-sharia-is-the-most-brutal-of-all/* (last visited May 4, 2022).

[134] ''Disability Is Not Weakness,'' Discrimination and Barriers Facing Women and Girls with Disabilities in Afghanistan, Human Rights Watch, p. 1, Apr. 2020, available at: *https://www.hrw.org/sites/default/files/report_pdf/afghanistan0420_web_0.pdf* (last visited Apr. 8, 2022).

[135] Convention on the Rights of Persons with Disabilities, The United Nations Human Rights Office (OHCHR), Dec. 13, 2006, available at: *https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities* (last visited May 4, 2022).

[136] ''Disability Is Not Weakness,'' Discrimination and Barriers Facing Women and Girls with Disabilities in Afghanistan, Human Rights Watch, p. 17, Apr. 2020, available at: *https://www.hrw.org/sites/default/files/report_pdf/afghanistan0420_web_0.pdf* (last visited Apr. 8, 2022).

[137] Chris Fitzgerald, Humanitarian Crisis And Neglect In Afghanistan Puts People With Disabilities At Risk, The Organization for World Peace, Jan. 19, 2022, available at: *https://theowp.org/reports/humanitarian-crisis-and-neglect-in-afghanistan-puts-people-with-disabilities-at-risk/* (last visited May 3, 2022).

[138] Country Guidance: Afghanistan, Common analysis and guidance note, European Asylum Support Office (EASO), p. 88, Nov. 2021, available at: *https://www.easo.europa.eu/sites/default/files/Country_Guidance_Afghanistan_2021.pdf* (last visited Apr. 8, 2022).

[139] Country Guidance: Afghanistan, Common analysis and guidance note, European Asylum Support Office (EASO), p. 88, Nov. 2021, available at: *https://www.easo.europa.eu/sites/default/files/Country_Guidance_Afghanistan_2021.pdf* (last visited Apr. 8, 2022).

[140] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. *Id.,* at section 244(b)(1).

[141] This issue of judicial review is the subject of litigation. *See, e.g., Ramos* v. *Wolf,* 975 F.3d 872 (9th Cir. 2020), *petition for en banc rehearing* filed Nov. 30, 2020 (No. 18–16981); *Saget* v. *Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Notice of the Designation of Afghanistan for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Afghanistan's designation for TPS on the basis of ongoing armed conflict and extraordinary and temporary conditions are met. *See* INA section 244(b)(1)(A) and (C), 8 U.S.C. 1254a(b)(1)(A) and (C). I estimate up to approximately 72,500 individuals may be eligible for TPS under the designation of Afghanistan. On the basis of this determination, I am designating Afghanistan for TPS for 18 months, from May 20, 2022 through November 20, 2023. See INA section 244(b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(C), and (b)(2).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees To Register for TPS

To register for TPS based on the designation of Afghanistan, you must submit a Form I–821, Application for Temporary Protected Status, and pay the filing fee or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

TPS beneficiaries are authorized to work in the United States. You are not required to submit Form I–765 or have an EAD but see below for more information if you want to work in the United States.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

How can TPS beneficiaries obtain an Employment Authorization Document (EAD)?

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. TPS applicants who want to obtain an EAD must file the Form I–765, Application for Employment Authorization, and pay the fee or request a fee waiver, by submitting Form I–912, Request for Fee Waiver. TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved.

Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request

If you receive a denial of a fee waiver request, you must refile your Form I–821 for TPS along with the required fees during the registration period, which extends until November 20, 2023. You may also file for your EAD on Form I–765 with payment of the fee along with your TPS application or at any later date you decide you want to request an EAD during the registration period.

Filing Information

USCIS offers the option to applicants for TPS under Afghanistan's designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765, Application for Employment Authorization, with their Form I–821.

Online filing: Form I–821 and Form I–765 are available for concurrent filing online.[142] To file these forms online, you must first create a USCIS online account.[143]

Mail filing: Mail your application for TPS to the proper address in Table 1.

Table 1—Mailing Addresses

Mail your completed Form I–821, Application for Temporary Protected Status, Form I–765, Application for Employment Authorization, and Form I–912, Request for Fee Waiver, if applicable, and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are using the U.S. Postal Service (USPS) and you live in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming.	USCIS, Attn: TPS Afghanistan, P.O. Box 20300, Phoenix, AZ 85036–0300.
You are using FedEx, UPS, or DHL and you live in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming.	USCIS, Attn: TPS Afghanistan (Box 20300), 1820 E. Skyharbor Circle S, Suite 100, Phoenix, AZ 85034–4850.
You are using the U.S. Postal Service (USPS) and live in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin.	USCIS, Attn: TPS Afghanistan, P.O. Box 805282, Chicago, IL 60680–5285.

[142] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[143] *https://myaccount.uscis.gov/users/sign_up.*

TABLE 1—MAILING ADDRESSES—Continued

If . . .	Mail to . . .
You are using FedEx, UPS, or DHL and live in Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin.	USCIS, Attn: TPS Afghanistan, (Box 805282), 131 South Dearborn—3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please mail your Form I–765 application to the appropriate mailing address in Table 1. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (*i.e.,* registering) for TPS on the USCIS website at *uscis.gov/tps* under ''Afghanistan.''

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing the Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for the Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with a Form I–821, Application for Temporary Protected Status	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, 2501 S. State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee for TPS

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *dhs.gov/privacy.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at uscis.gov, or visit the USCIS Contact Center at *uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on the last page of Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page

at *uscis.gov/I–9Central.* An EAD is an acceptable document under List A.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through November 20, 2023, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation such as evidence of my status or proof of my Afghan citizenship or a Form I–797C showing that I registered for TPS for Form I–9 completion?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request proof of Afghan citizenship or proof of registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *justice.gov/ier* and the USCIS and E-Verify websites at *uscis.gov/i-9-central* and *e-verify.gov.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, individuals approved for TPS may show their Form I–797, Notice of Action, indicating approval of their Form I–821 application, or their A12 or C19 EAD to prove that they have TPS or a pending TPS application. However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are covered under TPS or show you are authorized to work based on TPS. Examples of such documents are:

- Your new EAD with a category code of A12 or C19 for TPS, regardless of your country of birth;
- A copy of your Form I–94, Arrival/Departure Record; or
- Form I–797, the notice of approval, for your Form I–821, Application for Temporary Protected Status, if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits. SAVE can verify when an individual has TPS based on the documents above. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *uscis.gov/save/save-casecheck,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and SAVE verification case number or an immigration identifier number that you provided to the benefit-granting agency. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the

opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the final SAVE response is correct, please see the SAVE Records: Fast Facts For Benefit Applicants sheet under SAVE Resources at *https://www.uscis.gov/save/save-resources* for information about how to correct or update your immigration record.

[FR Doc. 2022–10923 Filed 5–19–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GR21EG51TJ50200; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval: National Digital Trails Project—Trail Data Portal

AGENCY: Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Comments may also be sent by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Tatyana DiMascio by email at *tdimascio@usgs.gov,* or by telephone at (303) 202–4206. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 1, 2021 (86 FR 29279). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract

A major component of the Department of Interior's vision is to ''Increase access to outdoor recreation opportunities for all Americans so that our people can be healthier, more fully enjoy the wonderful features of their federal lands, and take advantage of hunting, fishing, and other outdoor recreation pursuits that are the roots of the conservation movement.'' At the direction of DOI, the USGS is advancing that vision with the launch of the National Digital Trails (NDT) project. The two-year project consists of three major goals:

1. Develop a web-based geospatial analysis tool, called Trail Routing Analysis and Information Linkage System (TRAILS), to assist Federal land managers in identifying and prioritizing candidate trails to be connected to existing trails and trail networks.

2. Aid in the creation of a robust nationwide digital trails dataset including, at a minimum, trails on lands managed by key Federal agencies including the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and U.S. Forest Service.

3. Develop a mobile responsive application that will assist trail stewards, land management agencies, and members of the public in the maintenance of trails information.

This information collection request focuses on Goal 2, the digital trails dataset. The Trail Data Portal will support development and maintenance of the robust USGS nationwide digital trails dataset (Goal 2). In turn, the dataset is a primary component of the TRAILS geospatial analysis tool (Goal 1) which provides DOI bureaus and trail managers a tool to improve trail connectivity throughout the Nation's public lands.

The Trail Data Portal will facilitate an efficient digital trails data submission process and communication between the USGS and data providers. Authoritative trail managers will be able to log in to submit their trails data, along with relevant information, for USGS review and integration into the USGS digital trails dataset. USGS staff will be able to log in to download the submitted data, perform preliminary assessment, and provide status updates for every trail data submission. No data edits or integration will take place within the Trail Data Portal.

The following information will be collected for every authoritative data provider that submits trails data for

USGS integration: Name, email, and organization. This information will allow the USGS to identify an appropriate point of contact for every data source in the USGS digital trails dataset. It may be necessary for the USGS to reach this contact to provide status updates, clarify data discrepancies, or obtain the latest trails data to perform updates to the USGS digital trails dataset.

Title of Collection: National Digital Trails Project—Trail Data Portal.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Federal, state or local government agencies; nonprofit organizations.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 26 minutes.

Total Estimated Number of Annual Burden Hours: 43.

Respondent's Obligation: Voluntary.

Frequency of Collection: Occasional.

Total Estimated Annual Non-Hour Burden Cost: None.

An agency may not conduct or sponsor, nor isa person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

David Brostuen,

Director, National Geospatial Technical Operations Center, U.S. Geological Survey.

[FR Doc. 2022–10799 Filed 5–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–SSB–NPS0033505; PX.XCOMP0134.00.1; OMB Control Number 1024–NEW]

Agency Information Collection Activities; National Park Service Recreation Fee Pricing Study Survey Pre-Test and Pilot

AGENCY: National Park Service, Interior.

ACTION: Notice of information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Phadrea Ponds, NPS Information Collection Clearance Officer, 12201 Sunrise Valley Drive (MS–242) Reston, VA 20192; or by email at *phadrea_ponds@nps.gov.* Please reference Office of Management and Budget (OMB) Control Number 1024–NEW (RECFEE) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Bret Meldrum, Chief, Social Science Program, at *bret_meldrum@nps.gov* (email); or 970–267–7295 (phone). Please reference OMB Control Number 1024–NEW (RECFEE) in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.)* and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 2, 2021 (86 FR 41508). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS is authorized by the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. 6801–6814) to collect and retain recreation fees, including entrance fees and amenity fees for certain facilities, equipment, and services (such as campgrounds). Recreation fees collected under FLREA are used for a variety of projects that enhance the visitor experience. The NPS is also mandated by 54 U.S.C. 100701 and 100702 to provide state-of-the-art management, protection, and interpretation of, and research on, the resources of the System that is enhanced by the availability and utilization of a broad program of the highest quality science and information.

The NPS intends to pilot test a general population survey of recent and potential park visitors to evaluate behavior under different entrance fee pricing models. The proposed information collection will inform the design and administration of a future survey that is intended to help determine revenue and access implications of different entrance fee rates and collection models. The pilot study options will include explorations

in, at minimum—increases in entrance fees, different fee structures, and technology-based solutions for collecting entrance fees to make the entrance process more convenient and efficient for visitors. The first step in the process is to create and pretest survey questions. A pretest will be conducted to (1) validate the survey questions, (2) investigate various sampling methods, (3) estimate the respondent burden, and (4) determine the usability of the survey design. Following the pretest, a pilot survey will be administered nationwide to a sample of recent and potential park visitors. The pilot survey will be used to evaluate how visitors might respond to hypothetical questions regarding changes in entrance fees, fee structures, and technology-based solutions for collecting entrance fees. The pilot is designed to understand the effectiveness of the instrument and the response rates for the eventual final survey. A preliminary analysis of these results will demonstrate how different entrance fee rates and collection modes could affect revenue and visitor access. The data will allow the NPS to understand the degree of interest and methods-based considerations for a comprehensive study on fees with the intent of making more transparent and science-informed pricing decisions in the future.

Title of collection: National Park Service Recreation Fee Pricing Study Survey Pre-Test and Pilot.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals/households.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time.

Total Estimated Annual Respondents: 2,770.

Total Estimated Annual Responses: 641.

Estimated Completion Time per Response: 5 minutes to 30 minutes.

Total Annual Burden Hours: 275.

Total Estimated Annual Nonhour Burden Cost: None.

Respondents	Number of contacts	Number of completed responses	Estimated completion time (minutes)	Total burden (hours)
Pre-test				
Past Visitors	220	50	30	25
Future Visitors	220	50	30	25
No Past or Future Visitation	60	15	10	3
Subtotal	500	115		53
Debriefing Interview	20	16	30	8
Pilot				
Past Visitors	880	200	30	100
Future Visitors	880	200	30	100
No Past or Future Visitation	240	60	10	10
Subtotal	2,000	460		210
Nonresponse Survey	250	50	5	4
Total	2,770	641		275

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–10861 Filed 5–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033847; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Arkansas Museum Collections, Fayetteville, AR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The University of Arkansas Museum Collections has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on November 13, 2018. This notice corrects the minimum number of individuals and the number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Arkansas Museum Collections. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Arkansas

Museum Collections at the address in this notice by June 21, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Suter, University of Arkansas Museum Collections, Biomass Building 125, 2435 North Hatch Avenue, Fayetteville, AR 72704, telephone (479) 575–3456, email *msuter@uark.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the University of Arkansas Museum Collections, Fayetteville, AR. The human remains and associated funerary objects were removed from multiple locations in Arkansas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals and number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (83 FR 56371–56374, November 13, 2018). This correction is being made to correct the counts of the minimum number of individuals and the number of associated funerary objects as listed in the original notice. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (83 FR 56372, November 13, 2018), column 1, paragraph 4, sentence 4 is corrected by substituting the following sentence:

The 105 associated funerary objects from the McDuffie Site (3CG21) in Craighead County, AR, are one ceramic jar and 104 ceramic sherds.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 1, the following paragraph is inserted at the end of paragraph 5:

In 1931 and at an unknown date, human remains representing, at minimum, three individuals were removed from unknown sites in Conway County, AR. Accession records for these remains are incomplete. No known individuals were identified. The 53 associated funerary artifacts are two animal bones, 50 arrow points, and one bone awl.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 1, paragraph 6, is corrected by substituting the following paragraph:

In 1933, human remains representing, at minimum, 41 individuals were removed from Togo/Neeley's Ferry Site (3CS24) in Cross County, AR. The human remains and associated funerary objects were excavated by the University of Arkansas Museum. No known individuals were identified. The 487 associated funerary objects are composed of 466 objects present in the Museum collections and 21 objects that are currently missing. The 466 associated funerary objects are one deer antler tine, one arrow point, two gar bill awls, two bone beads, 56 shell beads, 35 animal bones, 32 fish bones, three turkey bones, 19 ceramic bottles, 15 ceramic bowls, one charred corn, two discoidals, two ear bobs, one effigy bottle, three effigy bowls, 19 bone fish hooks, one fired clay object, nine ceramic jars, one matrix sample, 17 nails, one pebble, one pipe with charcoal, 205 pieces of a turtle shell rattle, 34 mussel shells, and three sherds. The University of Arkansas Museum continues to look for the missing 21 associated funerary objects, which are one bone awl, one bone bead, one shell bead, four ceramic bottles, six ceramic bowls, one shell ear plug, one effigy bottle, one bone ring, one gar scale, one shell ornament, two mussel shells, and one vessel.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 2, paragraph 1, is corrected by substituting the following paragraph:

In 1933, human remains representing, at minimum, 107 individuals were removed from the Vernon Paul Site (3CS25) in Cross County, AR. These human remains and associated funerary objects were excavated by the University of Arkansas Museum. No known individuals were identified. The 687 associated funerary objects are composed of 655 objects present in the Museum collections and 32 objects that are currently missing. The 655 associated funerary objects are five deer antler fragments, one arrow point, nine bone awls, 171 shell beads, 29 animal bones, three bird bones, three turtle bones, 44 ceramic bottles, 44 ceramic bowls, 56 pieces of turtle carapace, three celts, one lot of charcoal, two cobbles, one corn, one daub, two ceramic discs, one stone discoidal, six shell ear plugs, 13 ceramic effigy bowls, one antler flaker, one hammer stone, one hematite stone, 21 ceramic jars, two bone needles, two pipes, two pottery supports, 151 pieces of a shell rattle, 12 mussel shells, 37 body sherds, 18 rim sherds, and 12 body sherds. The University of Arkansas Museum continues to look for the missing 32 associated funerary objects, which are one deer antler tine, one arrow point, one sample of ash, two bone awls, five shell beads, five ceramic bottles, two ceramic bowls, one corn cob, one ceramic disc, one shell ear bob, one lot of gravel, one ceramic jar, one pebble, one bone pin, three mussel shells, one sherd, and four ceramic vessels.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 2, paragraph 2, sentence 1, is corrected by substituting the following sentence:

In 1950 and 1967, human remains representing, at minimum six individuals were removed from the Rose Mound Site (3CS27) in Cross County, AR.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 2, paragraph 3, sentence 3, is corrected by substituting the following sentence:

The 73 associated funerary objects from the Delta Site (3CS69) are 21 gastropod shells, 42 mussel shells, and 10 ceramic sherds.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 3, paragraph 1, is corrected by substituting the following paragraph:

In 1932, human remains representing, at minimum, 17 individuals were removed from the Wapanocca Mound Site (3CT9) in Crittenden County, AR. These human remains and associated funerary objects were excavated by the University of Arkansas Museum. No known individuals were identified. The 59 associated funerary objects are composed of 48 objects present in the Museum collections and 11 objects that are currently missing. The 48 associated funerary objects are one animal bone, nine ceramic bottles, eight ceramic bowls, two ceramic effigy bowls, seven ceramic jars, one mano, three mussel shells, and 17 sherds. The University of Arkansas Museum continues to look for the missing 11 associated funerary objects, which are four ceramic bottles, two ceramic bowls, one discoidal, two mussel shells, one sherd, and one vessel.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 3, paragraph 2, is corrected by substituting the following paragraph:

In 1932 and at an unknown date, human remains representing, at minimum, 39 individuals were removed from the Banks Site (3CT13) in Crittenden County, AR. The human remains removed from the site in 1932 were excavated by the University of Arkansas Museum. In 1960, the University of Arkansas Museum received two separate donations of additional human remains from this site. No known individuals were identified. The 10 associated funerary objects are three animal bones, one ceramic bottle, and six sherds.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 3, paragraph 3, is corrected by substituting the following paragraph:

In 1932, human remains representing, at minimum, nine individuals were removed from the Barton Ranch Site (3CT18) in Crittenden County, AR. These human remains and associated funerary objects were excavated by the University of Arkansas Museum. No known individuals were identified. The 14 associated funerary objects are one deer antler tine, four ceramic bottles, four ceramic bowls, two ceramic effigy bowls, 2 ceramic jars, and one vessel.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 3, paragraph 4, sentences 4, 5, and 6, are

corrected by substituting the following sentences:

The 167 associated funerary objects are composed of 146 objects present in the Museum collections and 21 objects that are currently missing. The 146 associated funerary objects are three deer antler tines, three arrow points, one sample of ash, three bone awls, two bird bones, 12 ceramic bottles, 18 ceramic bowls, two ceramic discs, five effigy bowls, five effigy jars, one hammer stone, eight ceramic jars, one lump of clay, one unidentified object, 44 pebbles, 10 mussel shells, 18 pieces of turtle shell and bone, nine ceramic body sherds. The University of Arkansas Museum continues to look for the missing 21 associated funerary objects, which are three ceramic bottles, 10 ceramic bowls, one sample of charcoal, one mussel shell, two sherds, two vessels, and two effigy vessels.

In the **Federal Register** (83 FR 56372, November 13, 2018), column 3, paragraph 5, is corrected by deleting the entire paragraph.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 1, paragraph 2 is corrected by substituting the following paragraph:

In 1932, human remains representing, at minimum, four individuals were removed from the Warner Smith Place Site (3CT44) in Crittenden County, AR. These human remains and associated funerary objects were excavated by the University of Arkansas Museum. No know individuals were identified. The eight associated funerary objects are composed of six objects present in the Museum collections and two objects that are currently missing. The six associated funerary objects are one ceramic bottle, two cobbles, one ceramic jar, one pipe, and one rim sherd. The University of Arkansas Museum continues to look for the missing two associated funerary objects, which are one ceramic bottle and one ceramic bowl.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 1, paragraph 3, sentence 3 is corrected by substituting the following sentence:

The 26 associated funerary objects are one biface and 25 arrow points.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 1, paragraph 5 is corrected by substituting the following paragraph:

In 1932, human remains representing, at minimum, 17 individuals were removed from the Middle Nodena Site (3MS3) in Mississippi County, AR. These human remains and associated funerary objects were excavated by the University of Arkansas Museum. No known individuals were identified. The 32 associated funerary objects are composed of 30 objects present in the Museum collections and two objects that are currently missing. The 30 associated funerary objects are two shell beads, one fish bone, eight ceramic bottles, six ceramic bowls, one effigy bottle, one effigy bowl, two jars, three mussel shells, and six rim sherds. The University of Arkansas Museum continues to look for the missing two associated funerary objects, which are one ceramic bottle and one ceramic bowl.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 1, paragraph 6, sentence 4 is corrected by substituting the following sentences:

The 153 associated funerary objects are composed of 138 objects present in the Museum collections and 15 objects that are currently missing. The 138 associated funerary objects are two arrow points, seven bone awls, 33 shell beads, 21 ceramic bottles, 16 ceramic bowls, nine celts, four ceramic discs, one discoidal, two ear plugs, two effigy bottles, seven effigy bowls, three effigy jars, one hammer stone, one piece of hematite, 11 ceramic jars, one pendant, one pipe, one mussel shell, five body sherds, nine rim sherds, and one ceramic sphere. The University of Arkansas Museum continues to look for the missing 15 associated funerary objects, which are one deer antler tine, one arrow point, one antler awl, one animal bone, one ceramic bottle, five ceramic bowls, one ear plug, one effigy bowl, one ceramic jar, one mussel shell, and one vessel.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 2, paragraph 1 is corrected by substituting the following paragraph:

In 1953, human remains representing 24 individuals were removed from the Gant Site (3MS11) in Mississippi County, AR. These human remains and associated funerary objects were excavated by the University of Arkansas Museum. No known individuals were identified. The 20 associated funerary objects are eight animal bones, two ceramic bottles, five ceramic bowls, four ceramic jars, and one sherd.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 2, paragraph 2, sentence 1 is corrected by substituting the following sentence:

At an unknown date, human remains representing, at minimum, 105 individuals were removed from the Golden Lake Site (3MS60) in Mississippi County, AR.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 2, paragraph 3, sentence 4 is corrected by substituting the following sentences:

The 17 associated funerary objects are composed of 16 objects present in the Museum collections and one object that is currently missing. The 16 associated funerary objects are seven pot sherds and nine fire-cracked rock pieces. The University of Arkansas Museum continues to look for the missing associated funerary object, which is a ceramic bowl.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 3, paragraph 1 is corrected by substituting the following paragraph:

In 1961, human remains representing, at minimum, one individual was removed from the Castile Landing Site (3SF12) in St. Francis County, AR. The human remains removed in 1961 were excavated by the University of Arkansas Museum. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 3, paragraph 2 is corrected by deleting the entire paragraph.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 3, paragraph 3, sentence 1 is corrected by substituting the following sentence:

At an unknown date, human remains representing, at minimum, three individuals were removed from the Hollingsworth Place Site (3WH2) in White County, AR.

In the **Federal Register** (83 FR 56373, November 13, 2018), column 3, paragraph 7, sentences 4 is corrected by substituting the following sentence:

The three associated funerary objects are one ceramic bowl and two ceramic jars.

In the **Federal Register** (83 FR 56374, November 13, 2018), column 1, paragraph 1, is corrected by substituting the following paragraph:

In 1933, 1964, and 1969, human remains representing, at minimum, 260 individuals were removed from the Hazel Site (3PO6) in Poinsett County, AR. These human remains and associated funerary objects were excavated by the University of Arkansas Museum. In 1967, human remains representing, at minimum, one individual were removed from the Hazel Site. These human remains were donated to the University Museum. No known individuals were identified. The 1,318 associated funerary objects are composed of 1,266 objects present in the Museum collections and 52 objects that are currently missing. The 1,266 associated funerary objects are one abrader, six deer antler tines, one arrow point, one artifact sample, two bone awls, one axe, one basketry fragment, 30 bone beads, two ceramic beads, four crinoid beads, 439 shell beads, 83 animal bones, three bird bones, 118 fish bones, 78 ceramic bottles, 83 ceramic bowls, two non-vessel ceramic objects, two lots of charcoal, two clay lumps, two sheets of copper, one corn cob, nine pieces of daub, three ceramic discs, eight ear plugs, two effigy bottles, 12 effigy bowls, one effigy jar, one shell gorget, 43 ceramic jars, one knife, one antler knife, one bone needle, one copper ornament, one shell pendant, 21 bone pins, three pipes, 35 gar scales, two samples of sediment, 26 mussel shells, four pieces of turtle shell, 219 ceramic sherds, one painted stone, two textiles, three animal teeth, two twigs, and two partial vessels. The University of Arkansas Museum continues to look for the missing 52 associated funerary objects, which are one deer antler tine, one artifact sample, one bird bill awl, one bone awl, three shell beads, two worked bones, eight ceramic bottles, 11 ceramic bowls, one ceramic non-vessel objects, one lot of charcoal, one sheet of copper, three ear plugs, one effigy bottle, four effigy bowls, one bone needle, one pipe, four mussel shells, one sherd, and six vessels.

In the **Federal Register** (83 FR 56374, November 13, 2018) column 2, paragraph 1 under the heading ''Determinations Made by the University of Arkansas Museum'' is corrected by substituting the following sentences:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 800 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001 (3)(A), the 3,346 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. (Only 3,189 associated funerary objects have been located at this time.)

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Suter, University of Arkansas Museum Collections, Biomass Building 125, 2435 North Hatch Avenue, Fayetteville, AR 72704, telephone (479) 575–3456, email *msuter@uark.edu,* by June 21, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians) may proceed.

The University of Arkansas Museum Collections is responsible for notifying the Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians) that this notice has been published.

Dated: April 27, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–09893 Filed 5–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 223R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mkelly@usbr.gov;* telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.
2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.
3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.
4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.
5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.
6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.
7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project

CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
XM Extraordinary maintenance
EXM Emergency Extraordinary Maintenance
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District
WIIN Act Water Infrastructure Improvements for the Nation Act

Missouri Basin—Interior Region 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

New contract actions:

35. Slagle, Gayle and Joyce; Canyon Ferry Unit, P–SMBP; Montana: Consideration for a new long-term water service contract for irrigation purposes.

36. Greenfields ID, Sun River Project, Montana: Consideration of a Preliminary Lease of Power Privilege.

37. Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Potential repayment contracts pursuant to Section 40901 of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58).

Modified contract action:

30. H&RW ID; Frenchman-Cambridge Division, P–SMBP; Nebraska: Consideration of a water service contract.

Completed contract actions:

12. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the Arkansas Valley Conduit and signing a contract to use infrastructure owned by the Pueblo Board of Water Works. Contract executed on March 18, 2022.

13. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration for conversion of long-term water service contract No. 5–07–70–W0086. Contract executed on December 28, 2021.

14. Pueblo Board of Water Works, Fryingpan-Arkansas Project, Colorado: Consideration for renewal of contract No. 00XX6C0049. Contract executed on March 18, 2022.

17. Triview Metropolitan District; Pueblo Reservoir, Fryingpan-Arkansas Project; Colorado: Consideration of a 40-year contract for excess capacity. Contract executed on December 29, 2021.

22. Laura Vukasin and Jeff Ivers; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply. Contract executed on February 16, 2022.

34. Grey Reef Ranch, Kendrick Project, Wyoming: Consideration for renewal of excess capacity contract No. 14XX660043. Contract executed on February 16, 2022.

Upper Colorado Basin—Interior Region 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract actions:

31. Public Service Company of New Mexico, Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations for a carriage contract with Public Service Company of New Mexico pursuant to Public Law 111–11, Section 10602(h) which provides conveyance and storage of non-project water through Project facilities and sets forth payment of OM&R costs assignable to the Company for the use of Project facilities.

32. Enchant Energy Corporation, Navajo-Gallup Water Supply Project, New Mexico (Project): Reclamation continues negotiations for a carriage contract with Enchant Energy Corporation pursuant to Public Law 111–11, Section 10602(h) which provides conveyance and storage of non-project water through Project facilities and sets forth payment of OM&R costs assignable to Enchant Energy for the use of Project facilities.

33. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Reclamation has held technical meetings with the Water Authority regarding retention of prior and paramount water in Abiquiu Reservoir on behalf of the six Middle Rio Grande Pueblos. El Vado Reservoir, which normally retains the Pueblo's prior and paramount water, is under construction and will likely not be ready to store water again until 2024.

34. Navajo Tribal Utility Authority, Navajo-Gallup Water Supply Project, New Mexico: Reclamation is entering negotiations with the Navajo Tribal Utility Authority to provide payment for OM&R costs for use of Federal facilities pursuant to Public Law 111–11, Section 10606.

Completed contract actions:

22. North Fork Water Conservancy District and Ragged Mountain Water Users Association, Paonia Project, Colorado: The District has requested a replacement 5-yr contract for the existing water service contract (No.16–WC–40–646) for 2,000 acre-feet of water which expired on December 31, 2021. Contract executed on February 24, 2022.

34. Navajo Tribal Utility Authority, Navajo-Gallup Water Supply Project, New Mexico: Reclamation is entering negotiations with the Navajo Tribal Utility Authority to provide payment for OM&R costs for use of Federal facilities pursuant to Public Law 111–11, Section 10606. Contract executed on March 3, 2021.

Lower Colorado Basin—Interior Region 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

Completed contract actions:

15. Ak-Chin Indian Community and Del Webb Corporation, CAP, Arizona: Execute a First Amendment to (Restated) Option and Lease among the Ak-Chin Indian Community, the Del Webb Corporation, and United States of America. Contract executed March 8, 2022.

23. Marble Canyon Company, Inc. (Marble Canyon) and TV Marble Canyon AZ, LLC (TV Marble Canyon), BCP, Arizona: Enter into a proposed assignment of contract No. 5–07–30–W0322 for 70 acre-feet per year of Arizona fourth-priority Colorado River water and an unspecified amount of Arizona fifth- and/or sixth-priority Colorado River water during periods when the Secretary of the Interior determines that surplus water or unused apportionment entitlement is available, from Marble Canyon Company, Inc. to TV Marble Canyon AZ, LLC and enter into Colorado River water delivery contract No. 20–XX–30–W0689 with TV Marble Canyon AZ, LLC for 70 acre-feet per year of Arizona fourth-priority Colorado River water and an unspecified amount of fifth- and/or sixth-priority Colorado River water during periods when the Secretary of the Interior determines that surplus water or unused apportionment entitlement is available. Contract executed February 11, 2022.

Columbia–Pacific Northwest—Interior Region 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New contract action:

21. Storage Division, Yakima Project, Washington: Contracts with twenty-three water user entities for the repayment of reimbursable shares of the costs of the SOD program modification for Kachess Dam.

California–Great Basin—Interior Region 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract action:

44. Shasta County Water Agency, CVP, California: Proposed partial assignment of 400 acre-feet of the Shasta County Water Agency's CVP water supply to the Shasta Community Services District for M&I use.

Discontinued contract action:

3. Contractors from the Delta Division, Cross Valley Canal, and West San Joaquin Division; CVP; California: Renewal of 10 interim and long-term water service contracts; water quantities for these contracts total in excess of 148,000 acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

Completed contract actions:

14. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam. Contract executed January 27, 2022.

18. State of California, Department of Water Resources; Cross Valley Contractors; CVP; California: Three-party conveyance agreement for conveyance of Cross Valley Contractors' CVP water supplies available pursuant to long-term water service contracts. Eight contracts executed.

23. City of Redding, CVP, California: Proposed partial assignment of 30 acre-feet of the City of Redding's CVP water supply to the City of Shasta Lake for M&I use. Contract executed August 9, 2021.

37. Water user entities responsible for repayment of reimbursable project construction costs in California, Nevada, and Oregon: Contracts for conversion or prepayment executed pursuant to the WIIN Act. Contracts executed December 16, 2021.

39. Truckee-Carson ID, Newlands Project, Nevada: Negotiation and execution of an OM&R transfer agreement. Contract executed August 25, 2021.

40. Tehama-Colusa Canal Authority, CVP, California: Renewal of OM&R contract. Contract executed September 21, 2021.

42. Shasta County Water Agency, CVP, California: Proposed partial assignment of 50 acre-feet of the Shasta County Water Agency's CVP water supply to the City of Shasta Lake for M&I use. Contract executed August 9, 2021.

43. Friant Water Authority, CVP, California: Negotiation and execution of a repayment contract for Friant Kern Canal Middle Reach Capacity Correction Project. Contract executed September 23, 2021.

Lisa A. Vehmas,

Acting Director, Policy and Programs.

[FR Doc. 2022–10913 Filed 5–19–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–681 and 731–TA–1591 (Preliminary)]

White Grape Juice Concentrate From Argentina

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of white grape juice concentrate (''WGJC'') from Argentina, provided for in subheading 2009.69.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Argentina.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 31, 2022, Delano Growers Grape Products, LLC, Delano, California, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of WGJC from Argentina and LTFV imports of WGJC from Argentina. Accordingly, effective March 31, 2022, the Commission instituted countervailing duty investigation no. 701–TA–681 and antidumping duty investigation no. 731–TA–1591 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 April 7, 2022 (87 FR 20458). The Commission conducted its conference on April 21, 2022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on May 16, 2022. The views of the Commission are contained in USITC Publication 5328 (May 2022), entitled *White Grape Juice Concentrate from Argentina: Investigation Nos. 701–TA–681 and 731–TA–1591 (Preliminary).*

By order of the Commission.

Issued: May 16, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10822 Filed 5–19–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 24934 and 87 FR 24934 (April 27, 2022).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1587–1590 (Preliminary)]

Certain Preserved Mushrooms From France, Netherlands, Poland, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain preserved mushrooms from France, Netherlands, Poland, and Spain, provided for in subheading 2003.10.01 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under § 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under § 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 31, 2022, Giorgio Foods Inc., Blandon, Pennsylvania filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain preserved mushrooms from France, Netherlands, Poland, and Spain. Accordingly, effective March 31, 2022, the Commission instituted antidumping duty investigation Nos. 731–TA–1587–1590 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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 April 7, 2022 (87 FR 20460). The Commission conducted its conference on April 21, 2022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determinations in these investigations on May 16, 2022. The views of the Commission are contained in USITC Publication 5329 (May 2022), entitled *Certain Preserved Mushrooms from France, Netherlands, Poland, and Spain: Investigation Nos. 731–TA–1587–1590 (Preliminary).*

By order of the Commission.

Issued: May 16, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–10824 Filed 5–19–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 20460 (April 7, 2022).

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration (ETA) Program Year (PY) 2022 Workforce Innovation and Opportunity Act (WIOA) Section 167, National Farmworker Jobs Program (NFJP) Grantee Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: This Notice announces allotments for Program Year (PY) 2022 for the National Farmworker Jobs Program (NFJP).

DATES: The PY 2022 NFJP allotments become effective for the grant period that begins July 1, 2022. Written comments on this notice are invited and must be received on June 3, 2022.

ADDRESSES: Comments are accepted via email to *NFJP@dol.gov.* Please enter ''PY22 National Farmworker Jobs Program Grantee Allotments Public Comment'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Steven Rietzke, Division Chief of National Programs, Tools, and Technical Assistance, (202) 693–3912, *Rietzke.Steven@dol.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 182(d) of the WIOA, Prompt Allotment of Funds.

I. Background

The Department is announcing final PY 2022 allotments for the NFJP. This notice provides information on the amount of funds available during PY 2022 to state service areas awarded through the PY 2020 Funding Opportunity Announcement (FOA) for the NFJP Career Services and Training and Housing Grants. The allotments are based on the funds appropriated in the Consolidated Appropriations Act, 2022, Public Law 117–103 (from this point forward will be referred to as the ''the Act'').

In appropriating these funds, Congress provided $88,283,000 for formula grants (of which $88,160,000 was allotted after $123,000 was set aside for program integrity), $6,456,000 for migrant and seasonal farmworker housing (of which $6,447,000 was allotted after $9,000 was set aside for program integrity and of which not less than 70 percent shall be for permanent housing), and another $657,000 was set aside for discretionary purposes. The Housing grant allotments are distributed as a result of a competition and according to language in the appropriations law requiring that of the total amount available, not less than 70 percent shall be allocated to permanent housing activities, leaving not more than 30 percent to temporary housing activities.

This Notice includes the following sections:

- Section II of this notice provides a discussion of the data used to populate the formula.
- Section III describes the hold-harmless provision for the implementation year.
- Section IV describes minimum funding provisions to address State service areas that would receive less than $60,000.
- Section V describes the application of the formula and the hold-harmless provision using preliminary planning estimates for PY 2022.

II. Description of Data Files and Allotment Formula

As with all state planning estimates since 1999, the PY 2022 estimates are based on four data sources: (1) State-level, 2017 hired farm labor expenditure data from the United States Department of Agriculture's (USDA) Census of Agriculture (COA); (2) regional-level, 2017 average hourly earnings data from the USDA's Farm Labor Survey; (3) regional-level, 2010–2018 demographic data from the ETA's National Agricultural Workers Survey (NAWS); and, (4) 2015–2019 (5-year file) data from the United States Census Bureau's American Community Survey (ACS).

The formula's original methodology is described in the **Federal Register** notice (64 FR 27390, May 19, 1999). In PY 2018, ETA incorporated two modifications to the allotment formula to provide more accurate estimates of each state service area's relative share of persons eligible for the program. The formula also used updated data from each of the four data files serving as the basis of the formula since 1999. The revised formula methodology is described in the **Federal Register** notice (83 FR 32151, July 11, 2018). In PY 2021, ETA incorporated two modifications to the allotment formula. These modifications are described in **Federal Register** notice (86 FR 32063, June 16, 2021). The **Federal Register** notices are accessible at *https://www.federalregister.gov/*.

The Department will continue to apply the modifications that were incorporated in the PY 2021 allotments to the PY 2022 allotments, including the expansion to include farmworkers who are in families with total family incomes at or below 150 percent of the poverty line rather than the higher of the poverty line or 70 percent of the lower living standard income level. ETA will subsequently revise the PY 2023 guidance regarding the definition of ''low-income individual,'' as needed if the same provision is not included in subsequent appropriations.

III. Description of the Hold-Harmless Provision

ETA will continue the hold-harmless provision as instituted in PY 2018. The hold-harmless provision provides for a stop loss/stop gain limit to transition to the use of the updated data. This approach is based on a state service area's previous year's allotment percentage, which is its relative share of the total formula allotments. The stop gain provision provides that no state service area will receive an amount that is more than 150 percent of their previous year's allotment percentage. The staged transition of the hold-harmless provision is as follows:

(1) In PY 2021, each state service area received an amount equal to at least 95 percent of their PY 2020 allotment percentage, as applied to the PY 2021 formula funds available.

(2) In PY 2022, each state service area will receive an amount equal to at least 90 percent of their PY 2021 allotment percentage, as applied to the PY 2022 formula funds available.

(3) In PY 2023, each state service area will receive an amount equal to at least 85 percent of their PY 2022 allotment percentage, as applied to the PY 2023 formula funds available.

In PY 2024, since the Department has a responsibility to use the most current and reliable data available, amounts for the new awards will be based on updated data from the sources described in Section II, pending their availability. At that time, the Department will determine whether the changes to state allotments are significant enough to warrant another hold-harmless provision. Otherwise, allotments to each state service area will be for an amount resulting from a direct allotment of the proposed funding formula without adjustment.

IV. Minimum Funding Provisions

A state area that would receive less than $60,000 by application of the formula will, at the option of the DOL, receive no allotment or, if practical, be combined with another adjacent state area. Funding below $60,000 is deemed insufficient for sustaining an independently administered program. However, if practical, a state jurisdiction that would receive less than $60,000 may be combined with another adjacent state area.

V. Program Year 2022 Preliminary State Allotments

The state allotments set forth in the Table appended to this notice reflect the distribution resulting from the allotment formula described above. For PY 2021, $86,946,000 was appropriated for career services and training grants, $6,256,000 was appropriated for housing grants, and $557,000 was retained for Training and Technical Assistance.

For PY 2022, the funding level provided for in the Act for the migrant and seasonal farmworker program is $95,396,000. Congress provided $88,283,000 for formula grants (of which $88,160,000 was allotted after $123,000 was set aside for program integrity), $6,456,000 for migrant and seasonal farmworker housing (of which $6,447,000 was allotted after $9,000 was set aside for program integrity and of which not less than 70 percent shall be for permanent housing), and another $657,000 was set aside for discretionary purposes.

For purposes of illustrating the effects of the updates to the allotment formula, columns 2 and 3 show the state allotments with the application of the 95 percent hold-harmless for PY 2021 and 90 percent hold-harmless for PY 2022. The dollar difference between PY 2022 and PY 2021 allotments is shown in column 4. The percent difference is reported in column 5.

Angela Hanks,

Acting Assistant Secretary, Employment and Training, Labor.

U.S. Department of Labor, Employment and Training Administration, National Farmworker Jobs Program—Career Services and Training Grants

[PY 2022 Impact to allotments to states with Stop Loss/Stop Gain]

State	PY 2021 95% StopLoss/ 150% StopGain	PY 2022 90% StopLoss/ 150% StopGain	$ Difference	% Difference
Total	$86,946,000	$88,160,000	$1,214,000	1.40
Alabama	776,866	776,212	(654)	−0.08
Alaska	.....	.....	.....	0.00
Arizona	2,459,822	2,553,478	93,656	3.81
Arkansas	1,193,276	1,265,495	72,219	6.05

U.S. DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, NATIONAL FARMWORKER JOBS PROGRAM—CAREER SERVICES AND TRAINING GRANTS—Continued

[PY 2022 Impact to allotments to states with Stop Loss/Stop Gain]

State	PY 2021 95% StopLoss/ 150% StopGain	PY 2022 90% StopLoss/ 150% StopGain	$ Difference	% Difference
California	22,613,160	23,164,574	551,414	2.44
Colorado	1,662,689	1,763,318	100,629	6.05
Connecticut	501,264	531,602	30,338	6.05
Delaware	154,593	163,949	9,356	6.05
Dist of Columbia	.....	.....	.....	0.00
Florida	3,647,531	3,328,614	(318,917)	−8.74
Georgia	1,656,566	1,756,823	100,257	6.05
Hawaii	312,122	284,832	(27,290)	−8.74
Idaho	2,194,625	2,327,447	132,822	6.05
Illinois	1,829,288	1,939,999	110,711	6.05
Indiana	1,229,140	1,303,529	74,389	6.05
Iowa	1,756,778	1,863,100	106,322	6.05
Kansas	1,243,435	1,318,690	75,255	6.05
Kentucky	1,011,993	923,511	(88,482)	−8.74
Louisiana	782,626	829,992	47,366	6.05
Maine	408,044	432,739	24,695	6.05
Maryland	521,061	552,597	31,536	6.05
Massachusetts	512,780	543,815	31,035	6.05
Michigan	2,073,573	2,199,069	125,496	6.05
Minnesota	1,579,601	1,668,177	88,576	5.61
Mississippi	995,074	924,370	(70,704)	−7.11
Missouri	1,219,415	1,293,215	73,800	6.05
Montana	699,452	741,784	42,332	6.05
Nebraska	1,255,552	1,322,506	66,954	5.33
Nevada	223,924	237,476	13,552	6.05
New Hampshire	145,953	154,787	8,834	6.05
New Jersey	769,856	816,449	46,593	6.05
New Mexico	1,067,856	1,132,485	64,629	6.05
New York	2,169,172	2,300,453	131,281	6.05
North Carolina	2,556,903	2,333,344	(223,559)	−8.74
North Dakota	802,462	780,688	(21,774)	−2.71
Ohio	1,437,210	1,524,192	86,982	6.05
Oklahoma	976,292	928,725	(47,567)	−4.87
Oregon	2,371,922	2,340,449	(31,473)	−1.33
Pennsylvania	1,762,208	1,868,860	106,652	6.05
Puerto Rico	2,346,090	2,140,963	(205,127)	−8.74
Rhode Island	64,858	68,784	3,926	6.05
South Carolina	786,239	717,495	(68,744)	−8.74
South Dakota	665,710	706,000	40,290	6.05
Tennessee	867,124	791,308	(75,816)	−8.74
Texas	5,118,941	4,671,373	(447,568)	−8.74
Utah	653,979	693,559	39,580	6.05
Vermont	204,723	217,113	12,390	6.05
Virginia	971,653	886,698	(84,955)	−8.74
Washington	4,510,391	4,783,367	272,976	6.05
West Virginia	150,612	137,443	(13,169)	−8.74
Wisconsin	1,719,060	1,823,100	104,040	6.05
Wyoming	312,536	331,452	18,916	6.05

[FR Doc. 2022–10895 Filed 5–19–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0022]

Bay Area Compliance Laboratories Corporation: Grant of Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to grant renewal of recognition to Bay Area Compliance Laboratories Corporation (BACL) as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The renewal of recognition becomes effective on May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of

Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA hereby gives notice that it is granting the renewal of recognition of Bay Area Compliance Laboratories (BACL) as a NRTL under 29 CFR 1910.7.

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications by a NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, Appendix A, paragraph II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA, not less than nine months or no more than one year, before the expiration date of its current recognition. The submission includes a request for renewal and any additional information the NRTL wishes to submit to demonstrate its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL's headquarters and key sites within the past 18 to 24 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicit comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

BACL initially received OSHA recognition as a NRTL on April 6, 2017 (82 FR 16856) for a five-year period ending April 6, 2022. BACL submitted a timely request for renewal, dated July 6, 2021 (OSHA–2016–0022–0014), and has retained its recognition pending OSHA's final decision in this renewal process. The current address of the BACL facility recognized by OSHA and included as part of the renewal request is:

- Bay Area Compliance Laboratories Corporation, 1274 Anvilwood Avenue, Sunnyvale, California 94089.

OSHA evaluated BACL's application for renewal and made a preliminary determination that BACL can meet the requirements prescribed by 29 CFR 1910.7 for NRTL recognition.

OSHA published the preliminary notice announcing BACL's renewal application in the **Federal Register** on March 23, 2022 (87 FR 16500). The agency requested comments by April 7, 2022, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to renew BACL's NRTL recognition.

To obtain or review copies of all public documents pertaining to the BACL renewal application, go to *www.regulations.gov* or contact the Docket Office. Docket No. OSHA–2016–0022 contains all materials in the record concerning BACL's NRTL recognition. *Please note:* Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

II. Final Decision and Order

OSHA hereby gives notice of the renewal of recognition of BACL as a NRTL. OSHA examined BACL's renewal application for renewal and all pertinent information related to BACL's request for renewal of NRTL recognition. Based on this review of the renewal request and other pertinent information, OSHA finds that BACL meets the requirements of 29 CFR 1910.7 for renewal of recognition as a NRTL, subject to the specific limitation and conditions. OSHA limits the renewal of BACL's recognition to include the terms and conditions of BACL's recognition found in 82 FR 16856. The NRTL scope of recognition for BACL is also available on the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/bacl.html.* This renewal extends BACL's recognition as a NRTL for a period of five years from May 20, 2022.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, BACL must abide by the following conditions of recognition:

1. BACL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. BACL must meet all the terms of their recognition and comply with all OSHA policies pertaining to this recognition; and

BACL must continue to meet the requirements for recognition, including all previously published conditions on BACL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of BACL as a NRTL.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on May 12, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–10887 Filed 5–19–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2020–0010]

Maritime Advisory Committee on Occupational Safety and Health (MACOSH): Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of MACOSH meeting.

SUMMARY: The Maritime Advisory Committee on Occupational Safety and Health (MACOSH) will meet June 9, 2022, by WebEx.

DATES: MACOSH will meet from 1:00 p.m. to 3:00 p.m., ET, Thursday, June 9, 2022.

ADDRESSES:

Submission of comments and requests to speak: Submit comments and

requests to speak at the MACOSH meeting by June 1, 2022, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2020–0010), using the following method:

Electronically: Comments and requests to speak, including attachments, must be submitted electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submissions.

Requests for special accommodations: Submit requests for special accommodations for this MACOSH meeting by June 1, 2022, to Ms. Carla Marcellus, Occupational Safety and Health Administration, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–1865; email *marcellus.carla@dol.gov.*

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions at (202) 693–2350 (TTY (877) 889–5627).

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2020–0010). OSHA will place comments and requests to speak, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general information about MACOSH: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA, U.S. Department of Labor; telephone (202) 693–2066; email: *wangdahl.amy@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Carla Marcellus, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–1865; email *marcellus.carla@dol.gov.*

*For copies of this **Federal Register** Notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Attendance at the MACOSH meeting will be by WebEx. The WebEx link is: *https://usdolevents.webex.com/usdolevents/j.phpMTID=mdc44fa031bf41679d38d3bc32fc898e9.*

The event password is Welcome!24. The event may also be accessed by dialing 877–465–7975. The dial-in access code is 2762 793 4224.

The tentative agenda for the full Committee will include reports from the Shipyard and Longshoring workgroups, including discussions on incident response for workers, severe weather preparedness, rescue of persons in the water, and on-dock rail safety.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(d), 5 U.S.C. app. 2, Secretary of Labor's Order No. 8–2020 (85 FR 58393), and 29 CFR part 1912.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–10888 Filed 5–19–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0010]

1,2-Dibromo-3-Chloropropane (DBCP) Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the 1,2-Dibromo-3-Chloropropane (DBCP) Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by July 19, 2022.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2012–0010) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of

1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that employment has been tested and is in safe operating condition.

The information collection requirements in the DBCP Standard provide protection for workers from the adverse health effects associated with exposure to DBCP. In this regard, the DBCP Standard requires employers to: monitor workers' exposure to DBCP; monitor worker health and provide workers with information about their exposures and the health effects of exposure to DBCP.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

EPA canceled the registration of 1,2-dibromo-3-chloropropane in 1985. According to the TRI (Toxic Release Inventory) (2017), a single facility was associated with 1,2-dibromo-3-chloropropane in the United States in 2016. This facility is a waste disposal company in Ohio. (*https://www.atsdr.cdc.gov/toxprofiles/tp36-c5.pdf*). This information will not affect the 1-hour place holder for burden purposes because there are less than 10 respondents (industry) that currently follow the standard. There are no program changes or adjustments associated with this ICR.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: The 1,2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044).

OMB Control Number: 1218–0101.

Affected Public: Business or other for-profits.

Number of Respondents: 1.

Number of Responses: 1.

Frequency of Responses: On occasion.

Average Time per Response: N/A.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. or (3) by hard copy. *Please note:* While OSHA's Docket Office is continuing to accept and process submissions by regular mail due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0010). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on May 10, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–10797 Filed 5–19–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for SGS North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on May 20, 2022.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of

Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition for SGS North America, Inc. (SGS) as a NRTL. SGS's expansion covers the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS submitted an application to OSHA to expand the scope of recognition as a NRTL to include six additional test standards on April 19, 2018 (OSHA–2006–0040–0074). This application was amended on January 19, 2022 (OSHA–2006–0040–0075), to remove four standards from the original application. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing SGS's expansion application in the **Federal Register** on March 21, 2022 (87 FR 16031). The agency requested comments by April 5, 2022, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to grant expansion to SGS's scope of recognition.

To obtain or review copies of all public documents pertaining to SGS's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

II. Final Decision and Order

OSHA staff examined SGS's expansion application, the capability to meet the requirements of the test standards, and other pertinent information. Based on the review of this evidence, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for expansion of the NRTL scope of recognition, subject to the limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant SGS's scope of recognition. OSHA limits the expansion of SGS's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 991	Tests for Safety-Related Controls Employing Solid-State Devices.
UL 2111	Overheating Protection for Motors.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), only standards determined to be appropriate test standards may be approved for NRTL recognition. Any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, SGS must abide by the following conditions of the recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. SGS must meet all the terms of the NRTL recognition and comply with all OSHA policies pertaining to this recognition; and

3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of SGS, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020)), and 29 CFR 1910.7.

Signed at Washington, DC, on May 12, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–10898 Filed 5–19–22; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 22–06]

Notice of Entering Into a Compact With the Government of Lesotho

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Millennium Challenge Act of 2003, as amended, the Millennium Challenge Corporation (MCC) is publishing a summary of the Millennium Challenge Compact (Compact) between the United States of America, acting through MCC, and the Kingdom of Lesotho (Lesotho), acting through its Ministry of Foreign Affairs and International Relations. Representatives of MCC and Lesotho signed the Compact on May 12, 2022. The complete text of the Compact has been posted at: *https://assets.mcc.gov/content/uploads/compact-lesotho-health-and-horticulture.pdf.*

(Authority: 22 U.S.C. 7709 (b)(3))

Dated: May 16, 2022.

Thomas G. Hohenthaner,

Acting VP/General Counsel and Corporate Secretary.

Summary of Lesotho Compact

Overview of MCC Lesotho Compact

MCC's five-year Compact with the Kingdom of Lesotho in the amount of $300 million aims to reduce poverty through economic growth, targeting key binding constraints in the health, finance, and agriculture sectors. The compact will address these constraints through four key projects that seek to grow, strengthen, and organize the private sector in Lesotho by improving health outcomes for a healthy workforce, investing in the horticulture sector, and supporting the creation and viability of private businesses unconnected to existing patronage systems. MCC expects that providing infrastructure and capacity building in a specific sector, promoting business development, and ensuring access to healthcare will contribute to broader, longer-term efforts to support private sector growth to create a constituency that demands more effective and efficient governance. The Government of Lesotho will also contribute approximately $22 million to support the compact program.

Project Summaries

The compact is comprised of four projects:

(1) The Health Systems Strengthening Project aims to improve the delivery of health services and management of the primary health care system in Lesotho resulting in improved health outcomes and reduced treatment costs. The project includes three activities:

- *Primary Health Care Service Provision Activity*—This activity will support the Ministry of Health to improve primary healthcare services from ministry-level management to clinic-level standards of care.
- *District Health Management Team Reform Activity*—This activity will expand health financial systems and management capacity to the district level.
- *Digital Health Services Activity*—This activity will work with the Ministry of Health and other stakeholders to ensure that health data systems are interoperable and protect sensitive personal information.

(2) The Market Driven Irrigated Horticulture Project aims to: Increase rural incomes related to commercial horticulture, including for women, youth, and the rural poor, and establish a sustainable and inclusive model of irrigation, water resource, and land management. The project's implementation is contingent upon the identification of one or more commercial anchor farmers who will collaborate with local smallholder famers to improve and sustain best practices in horticulture and to provide a financially viable path for all project stakeholders to remain active in horticulture production after the end of the compact. The project is composed of three activities:

- *Institutional Reform Activity*—This activity will work directly with Government of Lesotho partners to ensure that irrigation has strong legal and policy frameworks to support the growth of equitable and sustainable irrigation throughout the country.
- *Irrigated Horticulture Support Services Activity*—This activity will help participants overcome the obstacles to sustaining irrigation schemes by providing relevant technical assistance and attracting experienced commercial farmers in the form of an anchor farmer or joint venture partnership to help leverage smallholder efforts and sustain the infrastructure investment.
- *Irrigation Infrastructure Development Activity*—This activity includes the development of up to 2,000 hectares of irrigated land at several sites still under study. Further feasibility and design work to be conducted prior to entry into force of the compact will refine the size and location of the irrigation perimeters and identify measures for environmental and social sustainability. Commercial farmer investments are necessary to ensure economic justification and sustainability of the investment.

(3) The Business Environment and Technical Assistance Project aims to stimulate an increase in firm-level profits and formal employment from a pipeline of supported firms, including for micro, small, and medium enterprises owned by women and youth and in rural areas. These businesses will participate in the Public-Private Dialogue, which results in provision of critical services to improve the business enabling environment. This project is organized into three activities:

- *Pipeline Development Activity*—This activity will identify, build and connect existing and new high-growth potential firms to direct technical assistance and business development services to support increased firm level profits and business maturation. This activity will provide grants to select women- and youth-owned businesses to purchase equipment and goods to facilitate business plan implementation.
- *Business Ecosystem Strengthening Activity*—This activity strengthens the Public-Private Dialogue mechanism to increase private sector participation in policy decisions and improve delivery of critical services to improve the business environment.
- *Financial Ecosystem Strengthening Activity*—This activity will increase financing options for micro, small, and medium enterprises and large firms by structuring financing vehicles that address access to credit issues for firms and building the capacity of financial sector actors to develop and deliver innovative financial products.

(4) The compact program also includes a $3 million allocation for the American Catalyst Facility for Development (ACFD) Project. The purpose of this funding is to support blended finance transactions that will catalyze private investment into Lesotho. MCC and the U.S. International Development Finance Corporation have discussed potential investments including a small and medium enterprise working and growth capital fund, agriculture sector investments, and projects in the health sector.

Compact Budget

The table below presents the compact budget and sets forth both the MCC funding allocation by compact components and the Government of Lesotho's expected contribution toward the objectives of the compact.

LESOTHO COMPACT TOTAL BUDGET

Component	Total funds
Health Systems Strengthening Project	$75,405,000
Activity 1: Primary Health Care Service Provision	30,338,000
Activity 2: District Health Management Team Reform	22,541,000
Activity 3: Digital Health	22,526,000
Market-Driven Irrigated Horticulture Project	118,622,000
Activity 1: Institutional Reform	22,200,000
Activity 2: Irrigated Horticulture Support Services	29,110,000
Activity 3: Irrigation Infrastructure Development	67,312,000
Business Environment and Technical Assistance Project	62,000,000
Activity 1: Pipeline Development	29,000,000
Activity 2: Strengthening the Business Ecosystem	20,000,000
Activity 3: Financial Ecosystem Strengthening	13,000,000
American Catalyst Facility for Development Project	3,000,000
Activity 1: American Catalyst Facility for Development	3,000,000
Monitoring and Evaluation	3,000,000
Activity 1: Monitoring and Evaluation	3,000,000
Program Administration	37,973,000
Activity 1: MCA-Lesotho II Administration	25,953,000
Activity 2: Fiscal Agent	5,700,000
Activity 3: Procurement Agent	5,700,000
Activity 4: Audits	620,000
Total Compact Investment	322,273,000
MCC Funding	300,000,000
Government of Lesotho Contribution	22,273,000

[FR Doc. 2022–10812 Filed 5–19–22; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0010; NARA–2022–048]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by July 5, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-22-0010/document*. This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov*. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq*.

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via *regulations.gov,* you may contact *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov*. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal

memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at regulations.gov to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Army, Agency-wide, Safety of Use Messaging Management System (DAA–AU–2018–0015).
2. Department of the Army, Agency-wide, Electronic Disability Evaluation System (DAA–AU–2019–0017).
3. Department of the Army, Agency-wide, Commanders Risk Reduction Dashboard Increment II (DAA–AU–2019–0026).
4. Department of the Army, Agency-wide, Revision of Army Inspector General Agency Records Retention Periods for Army Regulation 20–1 (DAA–AU–2020–0024).
5. Department of Education, Office of Inspector General, Simplified Records Schedule (DAA–0441–2021–0001).
6. Department of Energy, Agency-wide, Employee Compensation and Benefits Records (DAA–0434–2020–0013).
7. Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products (DAA–0088–2020–0001).
8. Department of Homeland Security, U.S. Citizenship and Immigration Services, Internal Self-Inspection, Tracking and Evaluation (INSITE) Program Records (DAA–0566–2022–0004).
9. Department of Homeland Security, U.S. Customs and Border Protection, Customs Broker Licensing Exam—Remote Proctored Records (DAA–0568–2022–0008).
10. Central Intelligence Agency, Agency-wide, One-time Disposition for Email in Legacy Repository (DAA–0263–2022–0002).
11. National Aeronautics and Space Administration, Agency Wide, Radiation Safety (DAA–0255–2022–0004).
12. National Archives and Records Administration, Government-wide, GRS 3.2 Cybersecurity Logging Records (DAA–GRS–2022–0005).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–10862 Filed 5–19–22; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for Appointment to the Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for resumes.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) seeks qualified candidates for appointment to the Advisory Committee on Reactor Safeguards (ACRS or Committee). Submit resumes to Ms. Jamila Perry and Ms. Sandra Walker, ACRS, Mail Stop: T2B50, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or email *Jamila.Perry@nrc.gov* and *Sandra.Walker@nrc.gov.* This announcement replaces the request for resumes that NRC issued in the **Federal Register** on September 8, 2021, in 86 FR 50380.

SUPPLEMENTARY INFORMATION: The ACRS is a part-time advisory group, which is statutorily mandated by the Atomic Energy Act of 1954, as amended. The ACRS provides independent expert advice on matters related to the safety of existing and proposed nuclear reactor facilities and on the adequacy of proposed reactor safety standards. Of primary importance are the safety issues associated with the operation of commercial nuclear power plants in the United States and regulatory initiatives, including risk-informed and performance-based regulation, license renewal, new licensing applications for non-light water reactors, and the use of mixed oxide and high burnup fuels.

An increased emphasis is being given to safety issues associated with new light water and non-light water reactor designs and technologies, including topics related to: Neutronics and reactor kinetics analyses, thermal-hydraulics phenomena, passive and inherently safe design features, and integrated reactor core and systems performance; nuclear fuels, chemistry, and materials; structural and seismic design; radiation protection, shielding, and health physics; use of digital instrumentation

and control; and international codes and industrial standards used in multinational and domestic design certifications and reviews.

In addition, the ACRS may be requested to provide advice on radiation protection, radioactive waste management, and earth sciences in the agency's licensing reviews for fuel fabrication and enrichment facilities, and for waste disposal facilities. The ACRS also has some involvement in security matters related to the integration of safety and security of commercial reactors. See the NRC website at *https://www.nrc.gov/about-nrc/regulatory/advisory/acrs.html* for additional information about the ACRS.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear reactor safety matters, the ability to solve complex technical problems, and the ability to work collegially on a board, panel, or committee. The Commission, in selecting its Committee members, also considers the need for specific expertise to accomplish the work expected to be before the ACRS. ACRS members are appointed for four-year terms with no term limits. The Commission looks to appoint two members to the Committee as a result of this request. Candidates are desired that have broad, extensive experience in nuclear safety, such as multiple areas of current emphasis (listed in the second paragraph under **SUPPLEMENTARY INFORMATION**) or similar fields of nuclear reactor and nuclear fuel cycle safety. Candidates with broad nuclear safety experience in industry, academia, laboratory, or regulatory backgrounds, or work between those environments, are encouraged to apply. The candidates must also have at least 20 years of education and broad experience and a distinguished record of achievement in one or more areas of nuclear science and technology or related engineering disciplines. Candidates with pertinent graduate level experience will be given additional consideration.

This announcement supersedes NRC's request for resumes in the **Federal Register** on September 8, 2021, in 86 FR 50380. Since that time, the needs for specific expertise on the ACRS have changed, and now the Commission seeks to fill two Committee vacancies. Candidates are sought who are ''generalists,'' with more broad nuclear safety experience than in the previous announcement. All applicants for NRC's September 8, 2021, announcement [86 FR 50380] will be considered for these two positions based on material already submitted, but previous applicants are also welcome to update, re-submit, or withdraw from consideration as appropriate.

Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee is fairly balanced in terms of the points of view represented and functions to be performed by the Committee. Candidates will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACRS members. The security background check will involve the completion and submission of paperwork to the NRC. Candidates for ACRS appointment may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. However, because conflict-of-interest considerations may restrict the participation of a candidate in ACRS activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request. As a part of the Stop Trading on Congressional Knowledge Act of 2012, which bans insider trading by members of Congress, their staff, and other high-level federal employees, candidates for appointments will be required to disclose additional financial transactions.

A resume describing the educational and professional background of each candidate, including any special accomplishments, publications, and professional references should be provided. Candidates should provide their current address, telephone number, and email address. All candidates will receive careful consideration. The NRC does not discriminate in employment on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor. Candidates must be citizens of the United States and be able to devote approximately 100 days per year to Committee business, but may not be compensated for more than 130 calendar days. Appointees may be able to attend some Committee meetings virtually. Resumes will be accepted until July 5, 2022.

Dated: May 17, 2022.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

[FR Doc. 2022–10841 Filed 5–19–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 25–15, Notice of Change in Student's Status, 3206–0042

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the public and other federal agencies the opportunity to comment on an expiring information collection request (ICR) with change, RI 25–15, Notice of Change in Student's Status.

DATES: Comments are encouraged and will be accepted until July 19, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation may be obtained by contacting the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or you may obtain this information by emailing *Cyrus.Benson@opm.gov,* sending a fax to (202) 606–0910, or calling (202) 606–4808.

SUPPLEMENTARY INFORMATION: RI 25–15, Notice of Change in Student's Status, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

As required by the Paperwork Reduction Act of 1995, Public Law 104–13, 94 Stat. 2812 (1980), and as amended by the Clinger-Cohen Act, Public Law 104–106, 110 Stat. 186 (1996), OPM is soliciting comments for this collection of information (OMB No. 3206–0211). The Office of Management and Budget is particularly interested in comments that consider the following:

1. Whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Whether the quality, utility, and clarity of the information collected could be enhanced; and
4. Whether the burden of the collection of information could be minimized on those who are responsible for providing this information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Analysis

Agency: Retirement Services, Office of Personnel Management.

Title: Notice of Change in Student's Status.

OMB Number: 3206–0042.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,500.

Estimated Time per Respondent: 20 minutes.

Total Burden Hours: 835.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–10880 Filed 5–19–22; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2022–60; Order No. 6174]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is initiating a filing requesting an examination of the potential need to make modifications to the Mail Classification Schedule. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 30, 2022.

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. Background
III. Notice of Commission Action
IV. Ordering Paragraphs

I. Introduction

The Postal Regulatory Commission (Commission) initiates the instant docket to examine the potential need to make a modification to the Mail Classification Schedule (MCS) in order to fulfill the Commission's responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), the Postal Service Reform Act of 2022, Public Law 117–89, 136 Stat. 1127 (2022), and pursuant to 39 CFR 3040 subpart D.[1] Specifically, the Commission seeks information on the Postal Service's recent pilot program in which it added to the accepted payment methods, at specifically-identified Post Offices, in order to allow postal retail customers to exchange payroll and business checks for stored value Gift Cards (Pilot Program). The Commission seeks the information to determine whether the Pilot Program has changed the nature of the Competitive product at issue (Special Services—Greeting Cards and Stationery) to the degree that the Gift Cards price category (or an undefined sub-component) may be categorized as a non-postal product.[2] A finding that the price category, product, or sub-component is a non-postal product would require its termination.[3]

II. Background

In FY 2014, the Commission approved the Postal Service's sale of Gift Cards[4] as a product that was ''likely to be mailed, similar to greeting cards and stationery'' and was often involved in the sale of other postal retail products such as greeting cards.[5] In the Docket No. MC2014–26 Request, the Postal Service stated that it ''d[id] not intend to use th[e] filing as a step into offering banking services,'' and if any Postal Service proposal should ever offer banking services, ''such proposals would be done in a separate filing.'' *See* Docket No. MC2014–26, Request, Attachment B at 3 n.2.

Following the Postal Service's publication of the FY 2021 Annual Compliance Report (ACR), the Commission submitted an information request for the Postal Service to provide additional insight regarding a pilot program to allow postal retail customers to cash payroll and business checks in exchange for stored value Gift Cards.[6]

[1] 39 CFR 3040 subpart D contains multiple requirements for proposals of the Commission to modify the Competitive product list, including an indication of whether a proposal would add, move, or remove a product, as well as providing justification supporting the proposal. In this instance, it is not appropriate to include this information, as the proposal is a vehicle to receive information to make a determination of whether a concerted proposed action is required.

[2] As discussed further below, the Commission, in approving the Gift Cards price category within the Greeting Cards and Stationery product, determined that it was appropriately a postal product (as opposed to a non-postal product).

[3] 39 U.S.C. 404(e) details the statutory authority for terminating non-postal products, and the statutory authority is noted in multiple precedents, including a 2010 ruling in the United States Court of Appeals for the District of Columbia Circuit, which noted that ''Congress[. . .] provide[d] that the Postal Regulatory Commission was to conduct a review of 'each nonpostal service offered by the Postal Service' . . . to determine whether it should be terminated. . . .'' *USPS* v. *Postal Regul. Comm'n,* 599 F.3d 705, 707 (D.C. Cir. 2010). Additionally, the United States Postal Service Office of Inspector General published a management advisory report in 2012 that stated that the PAEA ''repealed the Postal Service's authority to offer 'non-postal services' and prohibited offering any new non-postal services.'' United States Postal Service, Office of Inspector General, Report No. DA–MA–12–005, 21st Century Post Office: Non-Postal Products and Services, July 16, 2012, at 9, available at *https://www.uspsoig.gov/sites/default/files/document-library-files/2015/DA-MA-12-005.pdf.*

[4] Gift Cards is a price category within the Gift Cards and Stationery product. The Commission and the Postal Service have both referred to Gift Cards as a product in multiple filings, and for the purposes of this inquiry, the Commission will continue to do so throughout this Order to avoid confusion.

[5] *See* Docket No. MC2014–26, Request of the United States Postal Service to Add Gift Cards as a New Price Category in the Greeting Cards and Stationery Product, June 9, 2014, Attachment B at 7 (Docket No. MC2014–26 Request). *See also* Docket No. MC2014–26, Order Granting Request to Add Gift Cards to the Competitive Product List, August 8, 2014 (Order No. 2145).

[6] *See* Docket No. ACR2021, Commission Information Request No. 1, January 7, 2022 (Docket No. ACR2021, CIR No. 1). *See also* Docket No. ACR2021, Responses of the United States Postal Service to Questions 1–7 of Commission Information Request No. 2, PowerPoint file ''CIR.2.Q.4.Pictures of Promo Items.pptx,'' February 4, 2022 (Docket No. ACR2021, Response to CIR No. 2).

The Postal Service provided a response to Docket No. ACR2021, CIR No. 1 detailing that in FY 2021, the Postal Service initiated such a Pilot Program, stating that it was ''merely testing a new form of payment for an established postal product—gift cards.'' [7]

The Postal Service initiated the Pilot Program on September 13, 2021, at four Post Office retail locations in response to a request from a stakeholder that identified the program as ''an initiative that could potentially be useful for a segment of consumers.'' [8] The Postal Service stated that in order to gain insight into this market, it considered secondary research, including a 2019 survey by the Federal Deposit Insurance Corporation called ''How America Banks: Household Use of Banking and Financial Services'' as well as USPS Office of Inspector General reports on potential postal financial services. *Id.* question 1.b.

Under the Pilot Program, the additional forms of payment accepted for Gift Cards at the four test sites are payroll or business checks, defined as a printed check with a company's name pre-printed, made payable to the customer, and accepted in accordance with Handbook F–101. *See* Docket No. ACR2021, Response to CIR No. 1, questions 1.a.–1.q.; *see also* Docket No. ACR2021, Response to CIR No. 2, question 5. The customer is charged a fee of $5.95 for a variable Gift Card up to $500 (or $5.95 per Gift Card, if the customer elects to put the value on multiple cards), the total amount loaded on the Gift Card(s) cannot exceed $500 per day per customer, and no cash is disbursed to the customer. As with the policy for all Gift Card purchases, once the Gift Card is activated it cannot be returned for a refund or credit. *See* Docket No. ACR2021, Response to CIR No. 1, questions 1.a.–1.q.

While the Pilot Program only accepts business and payroll checks made payable to the customer in connection with the sale of Gift Cards at the four test sites, the Postal Service noted that for many years it has cashed or redeemed salary checks or Money Orders in a limited number of circumstances. *See* Docket No. ACR2021, Response to CIR No. 2, question 5. Specifically, the Postal Service has been issuing Money Orders since the Civil War, and for the past 50 years, the Postal Service has been cashing Postal Service-issued salary checks and Money Orders at no additional charge. *Id.* The Postal Service also noted that in the last 10 years, and ''in cooperation with the United States Treasury, the Postal Service has cashed Treasury checks for a nominal fee.'' *Id.* It further noted that ''[c]ommerical checks have long been accepted as payment for purchase of postage.'' *Id.*

The Postal Service stated in Docket No. ACR2021, Response to CIR No. 2 that ''no new products or services are involved,'' but the market research referred to in Docket No. ACR2021, Response to CIR No. 1 suggested that the new payment option is targeted specifically at a market looking for financial services. *Compare* Docket No. ACR2021, Response to CIR No. 2, question 6, *with* Docket No. ACR2021, Response to CIR No. 1, question 1.b. The Postal Service's own promotional materials market the product using the language, ''Need to 'cash' a check?'' [9] The Postal Service's payment change coupled with changes in the marketing and planned usage of the product have the potential to change the nature of the product, thereby necessitating the examination of the impact of the Pilot Program to the underlying Gift Cards product.

Additionally, although the Postal Service asserts that the Gift Cards product was already approved by the Commission, the approval of the product was based on the premise that the availability of Gift Cards ''stimulates demand for postal services'' and ''enhances the use of the mail.'' *See* Order No. 2145 at 4. The Postal Service's evidence in Docket No. MC2014–26 demonstrated at the time that the majority of Gift Cards sales not only involved the purchase of other postal items but were more likely to be mailed than Gift Cards purchased elsewhere. *Id.* at 5–6. From September 13, 2021, to January 12, 2022, a total of six Gift Cards were purchased under the Pilot Program (using the business or payroll check payment method) generating a total fee revenue of $35.70. *See* Docket No. ACR2021, Response to CIR No. 1, questions 1.d., 1.g., 1.h. Additionally, the Postal Service provided the total fee revenue for the Gift Cards associated with business checks in Quarter 2 of $5.95, representing one single transaction.[10] The Commission notes that under the current Pilot Program, none of the transactions have involved the sale of other postal products. Furthermore, the Postal Service does not track whether Gift Cards are mailed (regardless of the method of purchase) and has not made an attempt as of yet to determine via surveys or other tools whether customers are likely to mail the Gift Cards purchased under the Pilot Program. *See* Docket No. ACR2021, Response to CIR No. 2, questions 2–3.

In its FY 2021 Annual Compliance Determination (ACD), the Commission directed the Postal Service to report quarterly information on the Pilot Program, including updates on volume and revenue, as well as future plans for the Pilot Program as long as it remains in effect.[11] In addition, the Commission directed the Postal Service to file a notice of termination with the Commission when the Pilot Program ends, including notification no later than 14 days after the publication of the ACD of whether the Postal Service is continuing the program past its initially anticipated end date of March 2022. *Id.*

The Postal Service provided a response to the Pilot Program ACD directive, stating that ''the Postal Service has continued the pilot program,'' and ''[n]o final determinations have been reached with regard to ending the pilot, or with regard to any other potential steps that might be taken to modify the pilot.'' [12] The Postal Service further stated that it ''remains of the view that the pilot program is an appropriate and limited test of an alternative payment method for the established gift card product, which does not implicate the current Mail Classification Schedule, and that

[7] *See* Docket No. ACR2021, Responses of the United States Postal Service to Questions 1–2 of Commission Information Request No. 1, January 14, 2022, question 1.c. (Docket No. ACR2021, Response to CIR No. 1).

[8] *See* Docket No. ACR2021, Response to CIR No. 1, questions 1.a.–1.b. The four locations are: Baychester Post Office, 1525 E Gun Hill Road, Bronx, NY 10469; Bailey Crossroads Post Office, 6021 Leesburg Pike, Falls Church, VA 22041; National Capitol (Dorothy Height) Post Office, 2 Massachusetts Ave. NE, Washington, DC 20002; and Baltimore Post Office, 900 E Fayette Street, Baltimore, MD 21233. *Id.* question 1.a. Since all four locations already offered Gift Cards, the Postal Service asserts that minimal training was necessary for the 28 clerks and 8 management staff to allow for the additional form of payment. *Id.* questions 1.o.–1.p. The training was ''[i]n partnership with a major postal union'' and ''consisted of content providing a background of the pilot, . . . discussions of check handling processes, standard work instruction for the transaction including Point-of-Sale workflow, and FAQs.'' *Id.* question 1.p.

[9] *See* Docket No. ACR2021, Response to CIR No. 2, PowerPoint file ''CIR.2.Q.4.Pictures of Promo Items.pptx.''

[10] *See* Docket No. ACR2021, Second Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2021 Annual Compliance Determination, May 10, 2022, at 11.

[11] Docket No. ACR2021, Annual Compliance Determination, March 29, 2022, at 103.

[12] Docket No. ACR2021, First Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2021 Annual Compliance Determination, April 12, 2022, at 2.

no further regulatory action is warranted at this time.'' *Id.*

The Commission noted in the ACD that should the Pilot Program remain in effect after March 2022, the Commission would initiate this Mail Classification proceeding pursuant to 39 CFR 3040 to explore and review the issues discussed in the ACD. During this Mail Classification proceeding, the Commission will conduct information gathering to explore and review the product at issue and may determine in the course of this proceeding whether the product at issue, or a defined sub-unit of that product, must be categorized as non-postal and therefore terminate.

III. Notice of Commission Action

Pursuant to 39 CFR 3040.173, the Commission establishes Docket No. MC2022–60 to gather information to determine appropriate classification action and invites comments on whether the Postal Service's Pilot Program comports with 39 CFR 3035, 39 CFR 3040, 39 CFR 3045, 39 U.S.C. 404, 39 U.S.C. 3632, 39 U.S.C. 3633, and 39 U.S.C. 3641. Comments are due no later than June 30, 2022. The filing can be accessed via the Commission's website (*https://www.prc.gov*).

The Commission appoints Kenneth E. Richardson to represent the interests of the general public (Public Representative) in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2022–60 to consider matters raised by this Notice.
2. Comments are due no later than June 30, 2022.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this Notice in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10899 Filed 5–19–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2022–65; Order No. 6173]

Inbound Competitive Multi-Service Agreements With Foreign Postal Operators

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing 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:* May 23, 2022.

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. Initial Administrative Actions
III. Ordering Paragraphs

I. Introduction

On May 13, 2022, 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 Foreign Postal Operators (FPOs). The Notice concerns the inbound portions of the competitive product agreement PRIME United States Postal Service Registered Service Agreement (PRIME–USPS Registered Agreement). Notice at 1. The Postal Service seeks to include the PRIME–USPS Registered Agreement within the Inbound Multi-Service Agreement with Foreign Postal Operators 1 (MC2010–34) product. *Id.* The PRIME–USPS Registered Agreement contains rates for registered services. *Id.* at 6.

The Postal Service asserts that the PRIME–USPS Registered Agreement ''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. It also asserts that the PRIME–USPS Registered Agreement is similar to other agreements reviewed by the Commission in the past, including the PRIME–USPS Tracked Agreement in Docket No. CP2020–169.[2]

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 PRIME–USPS Registered Agreement;
- Attachment 3—Governors' Decision No. 19–1; and
- Attachment 4—a certified statement required by 39 CFR 3035.105(c)(2).

Notice at 5.

The Postal Service intends for the PRIME–USPS Registered Agreement to become effective June 1, 2022, and continue indefinitely. *Id.* at 6. The Postal Service states that counterparties to this agreement are FPOs that exchange mail with the Postal Service and apply the Universal Postal Convention and Universal Postal Convention Regulations to those exchanges, unless otherwise agreed by contract. *Id.* The Postal Service provides that additional FPOs may become party to the agreement and states that it will update this docket should additional FPOs accede to the PRIME–USPS Registered Agreement. *Id.*

The Postal Service states that one of the goals of the PRIME–USPS Registered Agreement is to ''enable and incentivize the parties to provide optimal services in the interest of their customers.'' *Id.* Additionally, the Postal Service notes that the PRIME–USPS Registered Agreement does not affect any other PRIME agreements. *Id.*

The Postal Service asserts that the PRIME–USPS Registered Agreement is in compliance with 39 U.S.C. 3633 and is functionally equivalent to the inbound competitive portions of the baseline agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010–34). *Id.* at 10. For these reasons, the Postal Service contends that the PRIME–USPS Registered Agreement should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34) product. *Id.*

II. Initial Administrative Actions

The Commission establishes Docket No. CP2022–65 for consideration of

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[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, May 13, 2022 (Notice). Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

[2] *Id.* at 3–5. *See* Docket No. CP2020–169, Order Approving Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, June 25, 2020 (Order No. 5563).

matters raised by the Notice. Interested persons may submit comments on whether the PRIME–USPS Registered Agreement is consistent with 39 U.S.C. 3633 and 39 CFR 3035.105 and whether it is functionally equivalent to the baseline agreement included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product (MC2010–34). The public portions of the filing can be accessed via the Commission's website (*http://www.prc.gov*). Comments are due by May 23, 2022.

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.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2022–65 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 Operators, filed May 13, 2022.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due by May 23, 2022.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10809 Filed 5–19–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–173; CP2020–246]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 24, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2020–173; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 2 Negotiated Service Agreement; *Filing Acceptance Date:* May 16, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 24, 2022.

2. *Docket No(s):* CP2020–246; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 8 Negotiated Service Agreement; *Filing Acceptance Date:* May 16, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* May 24, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10902 Filed 5–19–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94922; File No. SR–GEMX–2022–06]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the GEMX Pricing Schedule at Options 7, Section 3

May 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2022, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 GEMX's Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/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

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3 to: (1) Decrease the Priority Customer [3] Tier 4 Maker Rebate in Penny Symbols,[4] and (2) decrease the Non-Priority Customer [5] and Priority Customer Penny Symbol Taker Fees in note 13. Each amendment is described below.

Priority Customer Maker Rebate

Today, the Exchange provides Priority Customers Penny Symbol Maker Rebates as follows: $0.25 per contract (Tier 1), $0.40 per contract (Tier 2), $0.48 per contract (Tier 3), and $0.53 per contract (Tier 4). Priority Customers are eligible for the higher tiers of Maker Rebates based on achieving the tiered volume thresholds in Table 1 in Options 7, Section 3. The Exchange now proposes to lower the Tier 4 Priority Customer Maker Rebate from $0.53 to $0.52 per contract.

Note 13 Taker Fees

Today, the Exchange assesses all market participants Penny Symbol Taker Fees in Tiers 1–4 as follows:

Market participant	Taker fee: Tier 1	Taker fee: Tier 2	Taker fee: Tier 3	Taker fee: Tier 4
Market Maker	$0.50	$0.50	$0.50	$0.48
Non-Nasdaq GEMX Market Maker (FarMM)	0.50	0.50	0.50	0.48
Firm Proprietary/Broker-Dealer	0.50	0.50	0.50	0.49
Professional Customer	0.50	0.50	0.50	0.49
Priority Customer	0.48	0.48	0.48	0.43

Market participants are eligible for the higher tiers of Penny Taker Fees based on achieving the tiered volume thresholds in Table 1 in Options 7, Section 3. The tiered Penny Taker Fees set forth above apply when the market participant trades against a Non-Priority Customer. When the market participant trades against a Priority Customer, the Exchange assesses the Penny Taker Fees set forth in note 13 of Options 7, Section 3, regardless of tier. Specifically, note 13 currently provides that Non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume will be charged a Penny Taker Fee of $0.50 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a Penny Taker Fee of $0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Penny Taker Fee of $0.49 per contract for trades executed against a Priority Customer. For purposes of note 13, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

The Exchange now proposes to lower the: (i) $0.50 Taker Fee for Non-Priority Customers that execute less than 4.0% of Customer Total Consolidated Volume to $0.48 per contract when trading against a Priority Customer, and (ii) the $0.49 Taker Fee for Priority Customers that trade against another Priority Customer to $0.48 per contract. In other words, all market participants would be charged a base Penny Taker Fee of $0.48 per contract if they trade against a Priority Customer. Non-Priority Customers will continue to have an opportunity to lower that fee to $0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume.

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.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution

[3] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36).

[4] ''Penny Symbols'' are options overlying all symbols listed on Nasdaq GEMX that are in the Penny Interval Program. *See* Options 7, Section 1.

[5] ''Non-Priority Customer'' includes Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

of order flow from broker dealers'. . . .''[8]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[9]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Priority Customer Maker Rebate

The Exchange believes that its proposal to lower the Tier 4 Penny Maker Rebate for Priority Customers from $0.53 to $0.52 per contract is reasonable, equitable and not unfairly discriminatory. While the Exchange is lowering this rebate, Priority Customers will continue to receive the highest Penny Maker Rebates with the proposed changes. No market participants other than Market Makers and Priority Customers are offered enhanced Penny Maker Rebates in Tier 4, and the proposed $0.52 Tier 4 Maker Rebate for Priority Customers continues to be significantly higher than the $0.41 Tier 4 Maker Rebate currently provided to Market Makers.[10] The Exchange therefore believes that the proposed pricing will continue to be attractive for Priority Customer order flow.

The Exchange believes that the proposed Tier 4 Priority Customer Maker Rebate changes are equitable and not unfairly discriminatory. As discussed above, the Exchange believes the proposed pricing will continue to attract Priority Customer order flow to the Exchange. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Note 13 Taker Fees

The Exchange believes that its proposal in note 13 of Options 7, Section 3 to lower the Penny Taker Fees that apply when trading against a Priority Customer is reasonable. As discussed above, the Exchange is proposing to lower the base Penny Taker Fee for all market participants to $0.48 per contract if they trade against a Priority Customer. Non-Priority Customers would continue to have an opportunity to lower that fee to $0.47 per contract if they execute 4.0% or greater of Customer Total Consolidated Volume. The Exchange notes that the proposed Penny Taker Fees for trading against Priority Customers will generally be lower or comparable to the current tiered Penny Taker Fees for trading against Non-Priority Customers. The only exception is the Tier 4 Penny Taker Fee for Priority Customers when trading against a Non-Priority Customer. As described above, this fee is currently $0.43 per contract. Otherwise, the proposed Taker Fees are lower or comparable for all market participants, regardless of tier.[11] The Exchange believes that its proposal will enhance Priority Customer experience on the Exchange by incentivizing market participants with a lower Penny Taker Fee to remove Priority Customer liquidity. At the same time, the Exchange believes the proposed pricing (including the Priority Customer Taker Fee when the counter party is another Priority Customer) appropriately balances the Exchange's intent to offset the favorable Penny Symbol pricing currently offered to Priority Customers through higher Maker Rebates and lower Taker Fees. With the proposed changes, the Exchange continues to believe that its pricing structure for Penny Symbols will continue to attract additional volume to GEMX.

The Exchange further believes that the proposed changes to lower the Penny Taker Fees in note 13 are equitable and not unfairly discriminatory. In particular, the Exchange is lowering the Penny Taker Fee to $0.48 per contract for all market participants when the counter party is a Priority Customer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed Tier 4 Priority Customer Maker Rebate changes do not impose an undue burden on intra-market competition. As discussed above, Priority Customers will continue to receive the highest Penny Maker Rebates on the Exchange with the proposed changes, so the Exchange believes its proposal will continue to attract Priority Customer order flow to the Exchange. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. As it relates to proposed note 13 Taker Fee changes, the Exchange will assess the same Taker Fee to all market participants when the counter party is a Priority Customer. Accordingly, the Exchange does not believe that its pricing proposal will place any market participant at a competitive disadvantage.

As it relates to inter-market competition, the Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the

[8] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] As set forth in Options 7, Section 3, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers are eligible to receive a $0.20 Penny Maker Rebate in Tier 1 only.

[11] Specifically, all Non-Priority Customers are currently assessed a Penny Taker Fee of $0.50 per contract in Tiers 1–3 when trading against Non-Priority Customers, while this fee is $0.48 per contract for Priority Customers in Tiers 1–3. In Tier 4, Market Makers and Non-Nasdaq GEMX Market Makers are currently assessed a $0.48 per contract Penny Taker Fee when trading against Non-Priority Customers. For Firm Proprietary/Broker-Dealers and Professional Customers, the Tier 4 fee is currently $0.49 per contract. As previously discussed, the Tier 4 fee is currently $0.43 per contract for Priority Customers.

Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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.[12] 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–GEMX–2022–06 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–GEMX–2022–06. 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–GEMX–2022–06 and should be submitted on or before June 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94920; File No. SR–BOX–2022–18]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 7350 To Provide for the New "Liquidity Taker Event Report—Complex Orders"

May 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2022, BOX Exchange LLC ("BOX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7350 to provide for the new "Liquidity Taker Event Report—Complex Orders." The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently offers the Liquidity Taker Event Report, which is a Participant[3] specific report and helps Participants to better understand by how much time a particular order missed executing against a specific order resting on the BOX Book.[4] The current Liquidity Taker Event Report is described under BOX Rule 7350(b).[5]

The Exchange now proposes to amend BOX Rule 7350 to provide for the new Liquidity Taker Event Report—Complex

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "Participant" means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange. *See* BOX Rule 100(a)(41).

[4] "BOX Book" means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10).

[5] *See* Securities Exchange Act Release No. 94563 (March 31, 2022), 87 FR 19985 (April 6, 2022) (SR–BOX–2022–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt BOX Rule 7350, Reports and Market Data Products, to Provide for the New "Liquidity Taker Event Report").

Orders'' (the ''Complex Order Report'') which would be substantially similar to the existing Liquidity Taker Event Report, but would include data concerning a Participant's Complex Orders.[6] The Exchange also proposes to change the name of the existing Liquidity Taker Event Report to ''Liquidity Taker Event Report—Simple Orders'' and amend BOX Rule 7350(b) accordingly (the ''Liquidity Taker Event Report—Simple Orders'' shall be referred to herein as the ''Simple Order Report''). This is a competitive filing that is based on a proposals recently submitted by Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald'') and noticed by the Commission.[7]

The Simple Order Report includes information about incoming orders seeking to remove resting orders from the BOX Book. The proposed Complex Order Report would include the same information about incoming Complex Orders that seek to remove Complex Orders resting on the Complex Order Book.[8] Two other differences between the proposed Complex Order Report and the Simple Order Report are that the proposed Complex Order Report will include the Complex BBO (''cBBO'')[9] in place of the BBO and Complex NBBO (''cNBBO'')[10] in place of the NBBO, as described further below. These are minor differences designed to provide the BBO and NBBO that are relevant to trading Complex Orders. Otherwise, the content and dissemination of the proposed Complex Order Report set forth under amended BOX Rule 7350(c) will be identical to that of the Simple Order Report under BOX Rule 7350(b). Other than the difference set forth above, the Exchange represents that there are no other differences between Simple Orders and Complex Orders that would necessitate any other changes to the proposed Complex Order Report or render the effects or use of the proposed Complex Order Report as different from the Simple Order Report.

Like the Simple Order Report, the proposed Complex Order Report is an optional product[11] that would be made available to Participants. Currently, the Exchange provides real-time prices and analytics in the marketplace. The Exchange believes the additional data points from the matching engine outlined below may help Participants gain a better understanding about their Complex Order interactions with the Exchange. The Exchange believes the proposed Complex Order Report will provide Participants with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates when trading Complex Orders. Specifically, the proposed Complex Order Report will provide greater visibility into the missed trading executions, which could allow Participants to optimize their trading systems to yield better execution results when trading Complex Orders. The proposed Complex Order Report will increase transparency and democratize information so that all firms that subscribe to the proposed Complex Order Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange. Like the Simple Order Report, none of the components of the proposed Complex Order Report include real-time market data.

Participants generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Complex Order Book. Like the Simple Order Report, the proposed Complex Order Report would identify by how much time an order that may have been marketable missed an execution. In the case of the proposed Complex Order Report, the incoming order would be a Complex Order submitted to trade against a resting order for a Complex Strategy. The proposed Complex Order Report will provide greater visibility into the missed trading executions, which could allow Participants to optimize their models and trading systems to yield better execution results when trading Complex Orders.

Like the Simple Order Report, the proposed Complex Order Report will be a Participant specific report and will help Participants to better understand by how much time a particular order, in this case a Complex Order, missed executing against a specific resting order, thus allowing that Participant to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Complex Order Book. For example, Participant A submits a Complex Order that is posted to the Complex Order Book and then, within 200 microseconds of the entry of Participant A's Complex Order, Participant B enters a marketable Complex Order to execute against Participant A's resting Complex Order. Immediately thereafter, Participant C also within 200 microseconds of the entry of Participant A's Complex Order, sends a marketable Complex Order to execute against Participant A's resting Complex Order. Because Participant B's Complex Order is received by the Exchange before the Complex Order for Participant C, Participant B's Complex Order executes against Participant A's resting Complex Order. If Participant C were to subscribe to the proposed Complex Order Report, it would be provided the data points necessary for that firm to calculate by how much time they missed executing against Participant A's resting Complex Order.

Like the Simple Order Report, the Exchange proposes to provide the proposed Complex Order Report on a T+1 basis. As further described below, the proposed Complex Order Report will be specific and tailored to the Participant that is subscribed to the Complex Order Report and any data included in the Complex Order Report that relates to a Participant other than the Participant receiving the Complex Order Report will be anonymized.

Similar to current BOX Rule 7350(b) regarding the Simple Order Report, amended Exchange Rule 7350(c) would provide that the proposed Complex Order Report is a daily report that provides a Participant (''Recipient Participant'') with its liquidity response time details for executions of an order resting on the Complex Order Book, where that Recipient Participant submitted a Complex Order that attempted to execute against such resting Complex Order within a certain timeframe.

[6] The term ''Complex Order'' means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. *See* BOX Rule 7240(a)(7).

[7] *See* Securities Exchange Act Release No. 94136 (February 2, 2022), 87 FR 7223 (February 8, 2022) (SR–EMERALD–2022–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 531, Reports, to Provide for a New ''Liquidity Taker Event Report—Complex Orders''). *See also* Securities Exchange Act Release No. 94135 (February 2, 2022), 87 FR 7217 (February 8, 2022) (SR–MIAX–2022–06). *See also* MIAX Rule 531(b) and MIAX Emerald Rule 531(b).

[8] The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* BOX Rule 7240(a)(8).

[9] The term ''cBBO'' means the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of such Strategy. *See* BOX Rule 7240(a)(1).

[10] The term ''cNBBO'' means the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy. *See* BOX Rule 7240(a)(3).

[11] The Exchange intends to submit a separate filing with the Commission pursuant to Section 19(b)(1) to propose fees for the proposed Complex Order Report.

Report Content

The content of the proposed Complex Order Report would be identical to the Simple Order Report, but for two minor differences discussed below. Paragraph (c)(1) of Rule 7350 would describe the content of the proposed Complex Order Report and delineate which information would be provided regarding the resting order,[12] the response that successfully executed against the resting order, and the response submitted by the Recipient Participant that missed executing against the resting order. It is important to note that the content of the proposed Complex Order Report will be specific to the Recipient Participant and the proposed Complex Order Report will not include any information related to any Participant other than the Recipient Participant. The Exchange will restrict all other market participants, including the Recipient Participant, from receiving another market participant's data.

Resting Order Information. The content of the proposed Complex Order Report set forth under amended Exchange Rule 7350(c)(1)(i) is identical to the content of the Simple Order Report under Exchange Rule 7350(b)(1)(i). However, as noted above, the content of the proposed Complex Order Report would be limited to incoming Complex Orders that seek to remove liquidity from the Exchange's Complex Order Book.

Exchange Rule 7350(c)(1)(i) would provide that the following information would be included in the proposed Complex Order Report regarding the resting order: (A) The time the resting order was received by the Exchange; [13] (B) symbol; [14] (C) order ID, which is a unique reference number assigned to a new Complex Order at the time of receipt; [15] (D) whether the Recipient Participant is an Affiliate [16] of the Participant that entered the resting order; [17] (E) Whether the resting order is from a Public Customer or non- Public Customer; [18] (F) side (buy or sell); [19] and (G) displayed price and size of the resting order.[20]

Execution Information. Proposed Exchange Rule 7350(c)(1)(ii) would provide that the following information would be included in the proposed Complex Order Report regarding the execution of the resting order: (A) Complex BBO (''cBBO''), as defined in Rule 7240(a)(1), at the time of the execution; [21] (B) the Complex NBBO (''cNBBO''), as defined in Rule 7240(a)(3), at the time of execution; [22] (C) the time the first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response; [23] (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange; [24] and (E) whether the response was entered by the Recipient Participant.[25] If the resting order executes against multiple contra-side responses, only the cBBO and cNBBO at the time of the execution against the first response will be included.

The content of the proposed Complex Order Report set forth under amended Exchange Rule 7350(c)(1)(ii) is identical to the content of the Simple Order Report under Exchange Rule 7350(b)(1)(ii) with two minor differences. The Simple Order Report includes the BBO, which is the Exchange's best bid or offer, and the NBBO, which is the best bid or offer of away exchanges. In their place, the proposed Complex Order Report would include the Complex BBO and Complex NBBO. The Exchange is providing the Complex BBO and Complex NBBO because both are relevant and tailored to a Participant that is entering a Complex Order to remove liquidity as part of a Complex Strategy and, therefore, more germane to the purpose of the Complex Order Report.

Recipient Participant's Response Information. The content of the proposed Complex Order Report set forth under proposed Rule 7350(c)(1)(iii) is identical to the content of the Simple Order Report under Rule 7350(b)(1)(iii). Proposed Rule 7350(c)(1)(iii) would provide that the following information would be included in the Complex Order Report regarding Complex Order(s) sent by the Recipient Participant: (A) Recipient Participant ID; [26] (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each Complex Order sent by the Recipient Participant, regardless of whether it executed or not; [27] (C) Time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange; [28] (D) size and type of each Complex Order submitted by the Recipient Participant; [29] and (E) response ID, which is a unique reference

[12] Like the Simple Order Report, only displayed orders will be included in the proposed Complex Order Report. The Exchange notes that it does not currently offer any nondisplayed order types on its options trading platform.

[13] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(i)(A).

[14] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(i)(B).

[15] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(i)(C).

[16] The term ''Affiliate'' means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term ''control'' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership. *See* BOX Rule 100(a)(1).

[17] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(i)(D). The Report will simply indicate whether the Recipient Participant is an Affiliate of the Participant that entered the resting order and not include any other information that may indicate the identity of the Participant that entered the resting order.

[18] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(i)(E).

[19] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(i)(F).

[20] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(i)(G). The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds.

[21] Similar information is included in the Simple Order Report. Exchange Rule 7350(b)(1)(ii)(A) would similarly provide that if the resting order executes against multiple contra-side responses, only the cBBO at the time of the execution against the first response will be included. The Exchange is proposing to include this information to provide context to the Participants regarding what BOX's market looked like at the time the order was submitted.

[22] Similar information is included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(ii)(B). Exchange Rule 7350(b)(1)(ii)(B) would similarly provide that if the resting order executes against multiple contra-side responses, only the cNBBO at the time of the execution against the first response will be included. The Exchange is proposing to include this information to provide context to the Participants regarding what the away market looked like at the time the order was submitted.

[23] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(ii)(C). The Exchange notes that the type of the response provides whether the response was received from a Public Customer or non-Public Customer.

[24] The time difference would be provided in nanoseconds. This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(ii)(D).

[25] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(ii)(E).

[26] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(iii)(A).

[27] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(iii)(B).

[28] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(iii)(C).

[29] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(b)(1)(iii)(D).

number attached to the response by the Recipient Participant.[30]

Timeframe for Data Included in Report

The timeframe for data to be included the proposed Complex Order Report set forth under proposed Exchange Rule 7350(c)(2) is identical to the timeframe for data included in the Simple Order Report under Exchange Rule 7350(b)(2). Paragraph (c)(2) of Exchange Rule 7350 would provide that the Complex Order Report would include the data set forth under Exchange Rule 7350(c)(1) described above for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Exchange believes 200 microseconds is the appropriate timeframe because it understands most Participants that would be interested in subscribing to the proposed Complex Order Report would submit their incoming liquidity removing Complex Orders within 200 microseconds of the time a contra-side Complex Order is posted to the Complex Order Book.

Scope of Data Included in the Report

The scope of data to be included [sic] the proposed Complex Order Report set forth under proposed Exchange Rule 7350(c)(3) is identical to the scope of data included in the Simple Order Report under Exchange Rule 7350(b)(3). Paragraph (c)(3) of Exchange Rule 7350 would provide that the Complex Order Report will only include trading data related to the Recipient Participant and, subject to the proposed paragraph (4) of Exchange Rule 7350(c) described below, will not include any other Participant's trading data other than that listed in paragraphs (1)(i) and (ii) of Exchange Rule 7350(c), described above. Like the Simple Order Report, the proposed Complex Order Report will not include information related to any Participant other than the Recipient Participant.

Historical Data

Proposed paragraph (c)(4) of Exchange Rule 7350 would specify that the Complex Order Report will contain historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. This is identical to the timeframe for when the Simple Order Report is made available.[31]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[32] in general, and Section 6(b)(5) of the Act.[33] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[34] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the optional Complex Order Report to those interested in subscribing to receive the data. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[35] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed Report is similar to reports previously adopted by MIAX and MIAX Emerald.[36]

But for three differences, the description of the proposed Complex Order Report under Exchange Rule 7350(c) is identical to that of the Simple Order Report under Exchange Rule 7350(b). The first difference concerns the content of the proposed Complex Order Report, which would be limited to incoming Complex Orders that seek to remove liquidity from the Exchange's Complex Order Book. The Simple Order Report includes information about incoming orders seeking to remove liquidity from the BOX Book. This difference is immaterial because both reports include basically the same information and seek to serve the same purpose, to provide the Recipient Participant with the same type of data necessary for them to evaluate their own trading behavior and order interactions on the Exchange; however, the Simple Order Report contains data relevant to the BOX Book while the proposed Complex Order Report contains data relevant to the Complex Order Book.

The other two differences are that the Simple Order Report includes the BBO, which is the Exchange's best bid or offer, and the NBBO, which is the best bid or offer of away exchanges. In their place, the proposed Complex Order Report would include the cBBO and cNBBO. The Exchange is providing the cBBO and cNBBO because both are relevant and tailored to a Participant that is entering a Complex Order to remove liquidity as part of a Complex Strategy and, therefore, more germane to the purpose of the Complex Order Report. The Exchange believes these differences are appropriate because providing the cBBO in place of the BBO and the cNBBO in place of the NBBO are more germane to the purpose of the proposed Complex Order Report.

Like the Simple Order Report, the Exchange believes the proposed Complex Order Report will serve to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest by providing Participants access to information regarding their trading activity that they may utilize to evaluate their own Complex Order trading behavior and order interactions. Also, like the Simple Order Report, the proposed Complex Order Report is designed for Participants that are interested in gaining insight into latency in connection with Complex Orders that failed to execute against an order resting on the Exchange's Complex Order Book by providing those Participants data to analyze by how much time their Complex Order may have missed an execution against a contra-side order resting on the Complex Order Book. The Exchange believes that providing this optional latency data to interested Participants is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides greater visibility into the latency of Participants' incoming orders that they may use to optimize their models and trading systems in an effort to yield better execution results by calculating by how much time their order may have missed an execution. This would, in turn, benefit other market participants who may experience better executions on the Exchange because those that use the proposed Complex Order Report may re-calibrate their trading models and then increase their trading on the Exchange and volume of liquidity removing orders. This could lead to an increase in

[30] This information is also included in the Simple Order Report. *See* Exchange Rule 7350(a)(1)(iii)(E).

[31] *See* Exchange Rule 7350(b)(4).

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78f(b)(5).

[35] *Id.*

[36] *See supra* note 7.

incoming liquidity removing orders resulting in higher execution rates for Participants who primarily place resting orders on the Complex Order Book. The proposed Complex Order Report may benefit other market participants who would receive greater fill rates, thereby facilitating transactions in securities and perfecting the mechanism of the national market system.

The Exchange believes this proposal promotes just and equitable principles of trade because it would provide latency information in a systematized way and standardized format to any Participant that chooses to subscribe to the proposed Complex Order Report. As a result, the proposal would also remove impediments to and perfect the mechanism of a free and open market and a national market system by making latency information for liquidity-seeking orders available in a more equalized manner. The proposal further promotes just and equitable principles of trade by increasing transparency, particularly for Recipient Participants that may not have the expertise to generate the same information on their own. The proposed Complex Order Report may better enable Recipient Participants to increase the fill rates for their liquidity-seeking Complex Orders. At the same time, as is also discussed above, the Complex Order Report promotes just and equitable principles of trade and protects investors and the public interest because it is designed to prevent a Recipient Participant from learning other Participants' sensitive trading information. The Complex Order Report would not be a real-time market data product, as it would provide only historical trading data for the previous trading day, generally on a T+1 basis. In addition, the data in the Complex Order Report regarding incoming orders that failed to execute would be specific to the Recipient Participant's Complex Orders, and other information in the proposed Complex Order Report regarding resting orders and executions would be anonymized if it relates to a Participant other than the Recipient Participant.

The Complex Order Report generally contains three buckets of information. The first two buckets include information about the resting order and the execution of the resting order. Some of this information is available from other public sources or derivable from other public sources, such as OPRA and the Exchange's proprietary data feed, or is similar to information included in a report offered by another exchange. For example, OPRA provides bids, offers, and consolidated last sale and quotation information for options trading on all national securities exchanges, including the Exchange. In addition, the Exchange offers the High-Speed Vendor Feed (''HSVF'') which broadcasts BOX's real-time trading and statistical information (comprised of trades, quotes, market depth, complex order strategies, bulletins, summaries, auctions, and other statistics).[37]

The first bucket of information contained in the Complex Order Report for the resting order includes the time the resting order was received by the Exchange, the symbol, unique reference number assigned at the time of receipt, side (buy or sell), and the displayed price and size of the resting order. Further, the symbol, whether the resting order is from a Public Customer or non-Public Customer, side (buy or sell), and displayed price and size are also available either via OPRA or the Exchange's HSVF.[38] The first bucket of information also indicates whether the Recipient Participant is an Affiliate of the Participant that entered the resting order. This data field will not indicate the identity of the Participant that entered the resting order and would simply allow the Recipient Participant to better understand the scenarios in which it may execute against the orders of its Affiliates.[39]

The second bucket of information contained in the proposed Complex Order Report regards the execution of the resting order and includes the cBBO and cNBBO at the time of execution. These data points are also available via the Exchange's HSVF. The second bucket of information will also indicate whether the response was entered by the Recipient Participant. This data point is simply provided as a convenience. If not entered by the Recipient Participant, this data point will be left blank so as not to include any identifying information about other Participant activity. The second bucket of information also includes the size, time and type of first response that executes against the resting order; as well as the time difference between the time the resting order and first response that executes against the resting order are received by the Exchange. These data points would assist the Recipient Participant in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Complex Order Book.

The third bucket of information is about the Recipient Participant's response(s) and the time their response(s) is received by the Exchange. This includes the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Participant, regardless of whether it executed or not. Also included is the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange. As stated above, these data points would assist the Recipient Participant in analyzing by how much time their order may have missed an execution against a contra-side order resting on the Complex Order Book. This bucket would also include the size and type of each response submitted by the Recipient Participant, the Recipient Participant identifier, and a response reference number which is selected by the Recipient Participant. Each of these data points are unique to the Recipient Participant and should already be known by Recipient Participant even if not included in the proposed Report.[40]

[37] *See* current BOX Rule 7130(a)(2). The Exchange notes that the cBBO and cNBBO are provided in BOX's HSVF. BOX makes the HSVF available to all market participants pursuant to current Rule 7130(a)(2).

[38] The Exchange also notes that the proposed information in the first bucket is identical to the information provided in the Simple Order Report. *See* BOX Rule 7350(b)(1)(i).

[39] The Exchange surveils to monitor for aberrant behavior related to internalized trades and identify potential wash sales.

[40] The Exchange notes that the proposed information in the third bucket is identical to the information provided in the Simple Order Report. *See* BOX Rule 7350(b)(1)(iii).

The Exchange notes one additional data point included in the third bucket of information that is not included in the information provided in MIAX Emerald's Complex Order Liquidity Taker Event Report. Specifically, the Exchange proposes to include the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange.[41] As discussed herein, the Exchange believes that providing this information is reasonable and appropriate as this data point is being derived from information already provided in the Complex Order Report that is identical to information already provided in the MIAX Emerald Complex Order Liquidity Taker Event Report. Specifically, Participants can take the sum of the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange[42] and the time difference between the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Participant, regardless of whether it executed or not.[43] By summing these values, the Participant could derive the time difference between the time the resting order was received by the Exchange and the time the response submitted by the Recipient Participant was received by the Exchange, regardless of whether it executed or not. This time difference would be provided in nanoseconds. Further, the Exchange believes providing this additional information in the proposed Complex Order Report is reasonable and appropriate as it will provide greater visibility into the missed trading execution, which will allow Participants to optimize their trading systems to yield better execution results.

The Exchange proposes to provide the Complex Order Report on a voluntary basis and no Participant will be required to subscribe to the Complex Order Report. The Exchange notes that there is no rule or regulation that requires the Exchange to produce, or that a Participant elect to receive, the Complex Order Report. It is entirely a business decision of each Participant to subscribe to the Complex Order Report. The Exchange proposes to offer the Complex Order Report as a convenience to Participants to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Participant that chooses to subscribe to the Complex Order Report may discontinue receiving the Complex Order Report at any time if that Participant determines that the information contained in the Complex Order Report is no longer useful.

In summary, the proposed Complex Order Report will help to protect a free and open market by providing additional data (offered on an optional basis) to the marketplace and by providing investors with greater opportunities to understand by how much time a particular order missed executing against a specific order resting on the Complex Order Book. This, in turn, could allow Participants to optimize their models and trading systems to yield better execution results when trading Complex Orders. Additionally, the proposal would not permit unfair discrimination because the proposed Complex Order Report will be available to all Exchange Participants.

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 proposed Complex Order Report will allow the Exchange to provide a new option for Participants to receive historical latency related data. The proposed Complex Order Report will also further enhance inter-market competition between exchanges by allowing the Exchange to expand its product offerings. The latency information that would be provided in the proposed Complex Order Report would enhance competition between exchanges that offer complex order functionality because it would allow Recipient Participants to recalibrate their models and trading strategies to improve their overall trading experience on the Exchange. This may improve the Exchange's overall trading environment resulting in increased liquidity and order flow on the Exchange. In response, other exchanges may similarly seek ways to provide latency related data in an effort to improve their own market quality. The Exchange notes that the rule change is being proposed as a competitive response to filings submitted by MIAX and MIAX Emerald that were recently noticed by the Commission.[44]

Intra-Market Competition

The Exchange does not believe the proposed Complex Order Report will have an inappropriate burden on intra-market competition between Recipient Participants and other Participants who choose not to receive the Complex Order Report. As discussed above, the first two buckets of information included in the Complex Order Report contain information about the resting order and the execution of the resting order, both of which are generally available to Participants that choose not to receive the Complex Order Report from other sources, such as by deriving these data points from OPRA or obtaining them from the Exchange's HSVF. The third bucket of information is about the Recipient Participant's response and the time their response is received by the Exchange, information which the Recipient Participant would be able to obtain without receiving the Complex Order Report. Additionally, some Participants may already be able to derive a substantial amount of the same data that is provided by some of the components based on their own executions and algorithms.

In sum, if the proposed Complex Order Report is unattractive to Participants, Participants will opt not to receive it. Additionally, the proposal would not permit unfair discrimination because the proposed Report will be available to all Exchange Participants. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[41] *See* Proposed Rule 7350(c)(1)(iii)(C).

[42] *See* proposed Rule 7350(c)(1)(ii)(D).

[43] *See* proposed Rule 7350(b)(1)(iii)(B).

[44] *See supra* note 7.

19(b)(3)(A)(iii) of the Act[45] and subparagraph (f)(6) of Rule 19b–4 thereunder.[46]

A proposed rule change filed under Rule 19b–4(f)(6)[47] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[48] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the 30-day operative delay would benefit investors by enabling the Exchange to make latency information for liquidity-seeking Complex Orders available to Exchange Participants in a more equalized and timely manner, allow the Exchange to compete with other exchanges that currently offer substantially similar reports for complex orders,[49] and provide the Exchange with an opportunity to attract additional order flow from Participants that find value in the proposed report. The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As discussed above, the Exchange states that the proposed reports could provide Participants that subscribe to the reports with increased visibility into missed executions against orders resting on the Exchange's Complex Order Book, thereby allowing Participants to determine whether to invest in the resources and technology needed to mitigate missed executions. The Exchange notes that all firms that choose to subscribe to the proposed reports, which are optional, will have access to the same information on an equal basis, including firms that lack the resources to generate similar reports regarding interactions with the Exchange. In addition, the proposal does not raise new or novel regulatory issues because other options exchanges currently offer substantially similar reports for complex orders.[50] For these reasons, the Commission designates the proposal operative upon filing.[51]

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–BOX–2022–18 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–BOX–2022–18. 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–BOX–2022–18, and should be submitted on or before June 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10804 Filed 5–19–22; 8:45 am]

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[45] 15 U.S.C. 78s(b)(3)(A)(iii).

[46] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[47] 17 CFR 240.19b–4(f)(6).

[48] 17 CFR 240.19b–4(f)(6)(iii).

[49] *See supra* note 7.

[50] *See supra* note 7.

[51] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–188, OMB Control No. 3235–0212]

Submission for OMB Review; Comment Request; Extension: Rule 12b–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 12b–1 under the Investment Company Act of 1940 (17 CFR 270.12b–1) permits a registered open-end investment company (''fund'') to bear expenses associated with the distribution of its shares, provided that the fund complies with certain requirements, including, among other things, that it adopt a written plan (''rule 12b–1 plan'') and that it preserves in writing any agreements relating to the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the fund's directors, including its independent directors, and, in certain circumstances, its shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b–1 plan; and (iii) the board, including the independent directors, consider continuation of the rule 12b–1 plan and any related

agreements at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

Rule 12b–1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions. The rule requires funds that use broker-dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser, or its principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.

The board and shareholder approval requirements of rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan and, thus, are necessary for investor protection. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Commission staff estimates that there are approximately 6,358 funds (for purposes of this estimate, registered open-end investment companies or series thereof) that have at least one share class subject to a rule 12b–1 plan and approximately 454 fund families with common boards of directors that have at least one fund with a 12b–1 plan. The Commission further estimates that the annual hour burden for complying with the rule is 425 hours for each fund family with a portfolio that has a rule 12b–1 plan. We therefore estimate that the total hourly burden per year for all funds to comply with current information collection requirements under rule 12b–1 is 192,950 hours. Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. The staff further estimates that the cost of each fund's proxy is $30,000. Thus, the total annual cost burden of rule 12b–1 to the fund industry is $90,000.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The 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 by June 21, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 16, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10816 Filed 5–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94921; File No. SR–ICC–2022–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Parameter Setting and Review Policy

May 16, 2022.

I. Introduction

On March 22, 2022, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Risk Parameter Setting and Review Policy (the ''RPSR Policy''). The proposed rule change was published for comment in the **Federal Register** on April 4, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The RPSR Policy describes ICC's process of setting and reviewing the risk management model core parameters and the performance of sensitivity analyses related to certain parameter settings.[4] Overall, ICC represents the proposed amendments would be clarifications needed to address an independent model validation and would not change the methodology.[5]

The proposed rule change would amend Section 1.7, which describes the parameters associated with the integrated spread response component of ICC's CDS risk model. The RPSR Policy categorizes these parameters as Univariate, Multivariate, and Anti-Procyclicality Level Parameters. The proposed rule change would make amendments to Subsection 1.7.1, which describes the Univariate Level Parameters.

As part of these Univariate Level Parameters, ICC derives the end-of-day

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Risk Parameter Setting and Review Policy; Exchange Act Release No. 34–94544 (March 29, 2022); 87 FR 19563 (April 4, 2022) (SR–ICC–2022–002) (''Notice'').

[4] The description is substantially excerpted from the Notice, 87 FR at 19563. Capitalized terms not defined herein have the meanings assigned to them in the RPSR Policy or the ICC Rules, as applicable.

[5] Notice, 87 FR at 19563.

(''EOD'') recovery rate for single name risk factors (meaning each single name CDS contract).[6] The proposed rule change would add text to explain how ICC derives the EOD recovery rate from price quotes submitted by Clearing Members. For each single name risk factor, the EOD recovery rate would reflect the smaller of the standard market convention recovery rate and the minimum submitted EOD bid price submitted by Clearing Members. The proposed changes would explain that the EOD recovery rate would be the minimum submitted EOD bid price, and therefore would deviate from the standard market convention, when the single name risk factor itself is distressed. The proposed language would further specify the role of the established EOD recovery rate in using the ISDA Standard Model for price-to-spread mapping.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[7] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(e)(6)(vi)(B) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions.[10] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to RPSR Policy are consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

The Commission believes that the change should improve the RPSR Policy by documenting how ICC derives the EOD recovery rate from price quotes submitted by Clearing Members for Univariate Level Parameters. The Commission believes that documenting ICC's approach should help to ensure that ICC derives the EOD recovery rate and related Univariate Level Parameters in a clear and consistent manner. Because ICC uses the RPSR Policy to set and review core parameters for ICC's risk management model, the Commission believes that this improvement to the RPSR should help to ensure the continued efficacy of the risk management model. An effective risk management model should help to ensure that ICC collects sufficient margin, commensurate with the risks presented by the transactions its clears. The Commission thus believes the proposed rule change should ultimately help to ensure that ICC collects sufficient margin, and in doing so should help improve ICC's ability to avoid losses that could result during periods of market stress. Because such losses could disrupt ICC's ability to operate and thus promptly and accurately clear and settle security based swap transactions, the Commission finds the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(6)(vi)(B)

Rule 17Ad–22(e)(6)(vi)(B) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum is monitored by management on an ongoing basis and is regularly reviewed, tested, and verified by conducting a sensitivity analysis of its margin model and a review of its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of ICC's margin resources.[12] As discussed above, the proposed rule change would document how ICC derives the EOD recovery rate from price quotes submitted by Clearing Members for Univariate Level Parameters. In doing so, the Commission believes the proposed rule change would help to ensure that ICC analyzes this particular aspect of the Univariate Level Parameters, which the RPSR Policy requires ICC's Risk team to estimate and review, and perform sensitivity analysis on, at least monthly. Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(6)(vi)(B).[13]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[14] and Rule 17Ad–22(e)(6)(vi)(B) thereunder.[15]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[16] that the proposed rule change (SR–ICC–2022–002), be, and hereby is, approved.[17]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10805 Filed 5–19–22; 8:45 am]

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[6] As explained in ICC's Risk Management Model Description, every index, sub-index, or underlying single name is deemed a Risk Factor. *See* Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Management Model Description, Exchange Act Release No. 91918 (May 18, 2021), 86 FR 27927 (May 24, 2021).

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(6)(vi)(B).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(6)(vi)(B).

[13] 17 CFR 240.17Ad–22(e)(6)(vi)(B).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(6)(vi)(B).

[16] 15 U.S.C. 78s(b)(2).

[17] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–774, OMB Control No. 3235–0727]

Submission for OMB Review; Comment Request; Extension: Rules 400–404 of Regulation Crowdfunding (Intermediaries)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

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 Rules 300–304 of Regulation Crowdfunding.[1]

The collections of information required under Rules 400 through 404 is mandatory for all funding portals. Form

[1] *See Regulation Crowdfunding,* Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71387 (Nov. 16, 2015) (Final Rule) (''Regulation Crowdfunding'').

Funding Portal helps ensure that the Commission can make information about funding portals transparent and easily accessible to the investing public, including issuers and obligated persons who engage funding portals; investors who may purchase securities through offerings on funding portals; and other regulators. Further, the information provided on Form Funding Portal expands the amount of publicly available information about funding portals, including disciplinary history. Consequently, the rules and forms allows issuers and the investing public, as well as others, to become more fully informed about funding portals in a more efficient manner.

Rule 400 requires each person applying for registration with the Commission as a funding portal to file electronically with the Commission Form Funding Portal. Rule 400(a) requires a funding portal to become a member of a national securities association registered under Section 15A of the Exchange Act. Rule 400(b) requires a funding portal to file an amendment to Form Funding Portal if any information previously submitted on Form Funding Portal becomes inaccurate for any reason. Rule 400(c) provides that a funding portal can succeed to the business of a predecessor funding portal upon the successor filing a registration on Form Funding Portal and the predecessor filing a withdrawal on Form Funding Portal.

Rule 400(d) requires a funding portal to promptly file a withdrawal of registration on Form Funding Portal upon ceasing to operate as a funding portal. Rule 400(e) states that duplicate originals of the applications and reports provided for in this section must be filed with surveillance personnel designated by any registered national securities association of which the funding portal is a member. Rule 400(f) requires a nonresident funding portal to: (1) Obtain a written consent and power of attorney appointing an agent for service of process in the United States; (2) furnish the Commission with the name and address of its agent for services of process on Schedule C of Form Funding Portal; (3) certify that it can, as a matter of law, and will provide the Commission and any registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member; and (4) provide the Commission with an opinion of counsel and certify on Schedule C on Form Funding Portal that the firm can, as a matter of law, provide the Commission and registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member.[2]

Rule 403(a) requires a funding portal to implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder relating to its business as a funding portal. Rule 403(b) provides that a funding portal must comply with privacy rules. Rule 404 requires all registered funding portals to maintain certain books and records relating to their funding portal activities, for not less than five years, the first two in an easily accessible place. Rule 404(e) requires funding portals to furnish promptly to the Commission, its representatives, and the registered national securities association of which the funding portal is a member true, correct, complete and current copies of such records of the funding portal that are requested by the representatives of the Commission and the registered national securities association.

The Commission staff estimates that annualized industry burden would be 36,775 hours to comply with Rules 400–404. The Commission staff estimates that the costs associated with complying with Rules 400–404 are estimated to be approximately a total amount of $671,793.

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 by June 21, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: May 16, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10817 Filed 5–19–22; 8:45 am]

BILLING CODE 8011–01–P

[2] Exchange Act Section 3(h)(1)(C) permits us to impose, as part of our authority to exempt funding portals from broker registration, ''such other requirements under [the Exchange Act] as the Commission determines appropriate.''

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94915; File No. SR–EMERALD–2022–16]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt Fees for the High Precision Network Time Signal Service

May 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to adopt fees for a new service known as the ''High Precision Network Time Signal Service.''[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, generally,* Exchange Rule 531(d).

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange provides a resilient and robust technology platform, deterministic functionality, transparent trading platform, and a culture of technological innovation to the U.S. options market. In keeping with its culture of innovation, the Exchange recently established a new service known as the ''High Precision Network Time Signal Service'' (''HPNTSS'' or the ''Service''),[4] which is available for purchase by subscribers on a voluntary basis. The Exchange now proposes to adopt fees for the Service, which is described under Exchange Rule 531(d).[5] In sum, Members are able to utilize the Service to synchronize their time recording systems to those of the Exchange at sub-nanosecond level accuracy for correlated latency measurements between the Exchange's and the Members' systems time measurements related to the same message or order. The Service is an optional product available to any Member that chooses to subscribe. However, the Exchange anticipates that latency sensitive Members would primarily subscribe to the Service to help them measure latency in a manner consistent with their trading behavior and the evolving pace of trading and technology in today's markets. The Exchange anticipates that Members that employ business models that are not latency sensitive, such as those that only enter resting liquidity, may not find interest in the Service and elect not to subscribe to it. The Service may also not be useful for order routing firms that connect to the Exchange solely as part of their best execution obligations or to comply with the trade-through requirements under Chapter XIV of the Exchange's Rules.[6]

The Exchange proposes to assess a monthly fee of $3,600 for subscribing to the Service. As such, the Exchange proposes to amend the Fee Schedule to adopt new Section 8), Services, to provide that subscribers may purchase the Service for a monthly fee of $3,600. Subscribers may cancel their subscription at any time. The Exchange proposes to specify that for mid-month subscriptions to the Service, new subscribers will be charged for the full calendar month for which they subscribe. A second time signal is available with each subscription to the Service for redundancy and disaster recovery purposes. The Exchange initially filed the proposed fee change on March 30, 2022 with the fees being effective on April 1, 2022.[7] The Exchange withdrew that proposed fee change and submitted this filing on May 5, 2022. The purpose of this revised filing is to provide additional description and justification for the proposed fee.

In sum, the Service enables subscribers to synchronize their own primary clock devices to the Exchange's primary clock device, by receiving time signals from the Exchange via a separate and dedicated 1 gigabit (''Gb'') connection that is currently offered by the Exchange and utilized by market participants to connect to the Exchange's System.[8] The Service simply provides subscribers with the Exchange's time signal at a sub-nanosecond level and nothing else. The sub-nanosecond time signal would tell the subscriber the Exchange's time at a sub-nanosecond level at a particular point in time. The subscriber may then use that time signal to synchronize their own primary clock to the Exchange's primary clock at the more acute sub-nanosecond level.[9] Subscribers would utilize their own Enhanced PTP device[10] to synchronize the clocks within the subscriber's computer and network infrastructure, as appropriate, at a sub-nanosecond level. This would enable the subscriber to record certain times an order or message traveled through and leaves the subscriber's system at a sub-nanosecond level.

The Service is not a connectivity product and subscribers are able to utilize an existing connectivity method (separate and dedicated 1Gb connection) offered by the Exchange to utilize the Service. The Service simply provides enhanced time synchronization that may be utilized by a subscriber to adjust their own systems. The Service is not a market data product or access/connectivity service. Subscribers may continue to use their existing methods to connect to and send orders to the Exchange. The Service will not include any trading data regarding the subscriber's activity on the Exchange or include any data from other trading activity on the Exchange.

The Exchange established the Service in response to demand for tighter and more accurate clock synchronization options with the Exchange's network and requests for tools that would enable Members to better measure traversal times between their network and that of the Exchange at a more granular level. As described above, the Exchange anticipates that a small subset of Members who are latency sensitive would find the Service useful. The Service is offered to subscribers on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make the Service available. It is a business decision of each Member whether to subscribe to the Service and each Member may choose to do so based on their business models and needs.

The Exchange began to offer the Service and charge the proposed fees on April 1, 2022. The Exchange anticipates that at most five to six Members may find the Service useful and ultimately choose to subscribe.

[4] *See* Securities Exchange Act Release No. 94335 (March 1, 2022), 87 FR 12756 (March 7, 2022) (SR–EMERALD–2021–38) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 531 To Provide for a New Service Called the High Precision Network Time Signal Service) (''Approval Order'').

[5] *See* Exchange Rule 531(d).

[6] *See* Amendment No. 1 at note 26 and accompanying text available on the Commission's website at *https://www.sec.gov/comments/sr-emerald-2021-38/sremerald202138-20116580-268058.pdf. See also* Chapter XIV of the Exchange's Rules, which incorporates by reference Rule 1401, Order Protection, of the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX'').

[7] *See* Securities Exchange Act Release No. 94697 (April 12, 2022), 87 FR 23000 (April 18, 2022) (SR–EMERALD–2022–12).

[8] The Exchange did not provide a new connectivity option to receive time signals via the Service. The Service is not a connectivity product and subscribers would only need to utilize an existing connectivity method offered by the Exchange to utilize the Service via a dedicated connection. *See* Approval Order, *supra* note 4 at note 22 and accompanying text. *See also* MIAX Emerald Options Alert, ''Update: The Introduction of the High Precision Network Time Signal (Enhanced PTP/White Rabbit) Beginning April 1, 2022,'' March 3, 2022 (notifying potential subscribers that the Service requires a dedicated 1Gb connection), *available at https://www.miaxoptions.com/alerts/2022/03/03/miax-emerald-options-update-introduction-high-precision-network-time-signal. See* Fee Schedule, Section 5, System Connectivity Fees, for information regarding 1Gb connectivity. A Members that subscribes to the Service would also have to pay $1,400 per month for a 1Gb connections. *Id.*

[9] *See supra* note 4 for a detailed description of the Service. *See also* MIAX Emerald Options—Update: The Introduction of the High Precision Network Time Signal (Enhanced PTP/White Rabbit) Beginning April 1, 2022 (March 3, 2022), *available at https://www.miaxoptions.com/alerts/2022/03/03/miax-emerald-options-update-introduction-high-precision-network-time-signal.*

[10] An Enhanced PTP clock synchronization device captures time and coordinates time synchronization within a network at a sub-nanosecond level.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Service is consistent with Section 6(b)(4) of the Act [13] because it represents an equitable allocation of reasonable dues, fees and other charges among market participants.

The Exchange operates in a highly competitive environment in which 16 U.S. registered equity options exchanges compete for market share. Based on publicly available information, no single options exchange has more than 13% of the equity options market share and currently the Exchange represents only approximately 3.97% of the market share.[14] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The Service provides subscribing Members with a tool to assist them in recalibrating their own models and trading strategies to improve their overall experience on the Exchange, thereby potentially improving execution and order fill rates. This may improve the Exchange's overall market quality through increased liquidity and improved execution opportunities for resting orders, enhancing the Exchange's overall competitive position. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Service.

If the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's Service, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable products with lower prices to better compete with the Exchange's offering. The Service may not provide utility to all Members based on their business models, and such Members may choose to use existing time synchronization methods, or rely on other methods, including similar products potentially offered by other exchanges, to measure latency between the Member's system and an exchange's system or to test their systems' performance to ensure it is operating as intended. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar services. Moreover, if a market participant views another exchange's potential service as more attractive, then such market participant can merely choose not to subscribe to the Exchange's Service and instead subscribe to another exchange's similar product, which may offer similar data points, albeit based on that other market's trading systems.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new product to subscribers. As discussed above, the Service is an optional product available to any Member that chooses to subscribe. To date, no Member has elected to subscribe to the Service and the Exchange anticipates that five to six latency sensitive Members may find the Service useful and ultimately choose to subscribe. If the Exchange prices the fees for the Service too high, these Members may choose not to subscribe and potentially utilize other methods to measure latency or monitor the health of their systems. Members that employ business models that are not latency sensitive, such as those that only enter resting liquidity and order routing firms that connect to the Exchange solely as part of their best execution obligations or to comply with the trade-through requirements, may not find the Service useful for their business models and elect not to subscribe to it regardless of the level of the fee. The Exchange anticipates a small subset of its overall membership would find utility in the Service and must consider this fact when pricing the Service to encourage those Members to subscribe.

The Exchange believes the proposed fees are reasonable in order to support the introduction of the new Service, which may be used for numerous optional purposes. For example, the Service would allow subscribers to more precisely measure latency between their network and that of the Exchange at a sub-nanosecond level, allowing subscribers to better understand the times at which their order or message reached certain points when traveling from their network to the Exchange. The Service would also allow subscribers to analyze the efficiency of their network and connections when not only routing orders to the Exchange, but also when receiving messages back from the Exchange (including communications regarding whether their order was accepted, rejected, or executed). Subscribers utilizing the Service may measure message traversal times by comparing their messages' (*e.g.,* order, quote, cancellation) timestamps to the Exchange's matching engine timestamps from the Exchange-generated acknowledgement messages (*e.g.,* order acknowledgment, quote acknowledgment, cancellation acknowledgment).[16] Subscribers would then be able to enhance their own systems to ensure that they are receiving such communications in a timelier manner and to verify that their systems are working as intended.

In addition, subscribers may utilize these enhanced latency measurements to better analyze latencies within their own systems and use this analysis to optimize their network, models and trading patterns to potentially improve their interactions with the Exchange.[17] In particular, subscribers may use these metrics to better assess the health of their network and that their systems are working as intended. For example, a subscriber may use this information when analyzing the efficacy of their various connections and whether a connection is performing as expected or experiencing a delay. A subscriber may then decide to rebalance the amount of orders and/or messages over its various connections to ensure each connection is operating with maximum efficiency. Subscribers may also use the Service for other purposes, such as enhancing their ability to determine compliance with certain regulatory requirements [18] and

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(4).

[14] *See* ''The Market at a Glance,'' (last visited April 26, 2022), *available at https://www.miaxoptions.com/.*

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[16] The Exchange sends subscribers an acknowledgement message that their order or message was received by the Exchange. This acknowledgement includes the time of receipt at a nanosecond level.

[17] Based on their business models and needs, Members may elect to purchase an enhanced PTP device from a third party and use that devise to measure latency at a sub-nanosecond level within their own systems. In such case, the Member would be limited to time measurements within its own system and would not be privy to the Exchange's own sub-nanosecond timestamp.

[18] *See, e.g.,* Chapter III of the Exchange's Rules, which incorporates by reference Rule 301, Interpretation and Policy .02 (Just and Equitable Principles of Trade), of the Exchange's affiliate,

trade surveillance. Subscribers may also utilize time synchronization to assist them in better evaluating compliance with certain clock synchronization requirements. The Exchange therefore believes the proposed fees are reasonable because of the numerous benefits provided to subscribers that subscribe to the Service. Selling different products and services, such as HPNTSS, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Service, it may earn trading revenues and further enhance market participants' interactions on the Exchange, which would increase value of its products and services. If the market deems the proposed fees to be unfair or inequitable, firms can choose not to use or discontinue their use of the Service. The Exchange therefore believes that the proposed fees for the Service reflect the competitive environment of U.S. exchanges and would be properly assessed to market participants that subscribe to the Service. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to subscribe to the Service. It is a business decision of each market participant that chooses to subscribe to the Service. The Exchange's proposed fees would not differentiate between subscribers that purchase the Service and are set at a modest level that would allow any interested market participant to purchase the Service based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Service is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Service and the Exchange is not required to make the Service available to all investors. It is entirely a business decision of each market participant to subscribe to the Service. The Exchange offers the Service as a convenience to market participants to provide them with the ability to synchronize their own primary clock devices to the Exchange's primary clock device at a sub-nanosecond level. A market participant that chooses to subscribe to the Service may discontinue the use of the Service at any time if that market participant determines that the synchronization of its primary clock devices to the Exchange's primary clock device is no longer useful.

The Exchange believes it is reasonable to not pro-rate mid-month subscriptions and to charge mid-month subscribers for the full month in which they initially subscribe to the Service. The Exchange seeks to encourage Members to subscribe to the Service at the beginning of each month to ease the strain on administrative resources and synchronize potential new subscriptions to the Service. The Exchange believes not pro-rating mid-month subscriptions is a reasonable means to achieve this goal. Members that elect to subscribe mid-month would be aware that they would be liable for the full monthly fee and may elect to wait until the first of the next month to subscribe if they wish to receive the Service for the first full month they subscribe. Lastly, not pro-rating mid-month subscriptions is not novel and is currently done by the Exchange for other products and other exchanges.[19]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Service available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange believes the proposed fees would not cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Service is constrained by the optional nature of the Service and competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for market share. The Exchange anticipates that most, if not all, subscribers to the Service would be those Members whose trading models are latency sensitive and primarily seek to remove liquidity. These Members may increase their volume of liquidity removing orders as a result of re-calibrating their trading models based on their use of the Service. The increase in incoming liquidity removing orders may result in higher execution rates for Members who are less latency sensitive and primarily place resting orders on the Exchange's Simple Order Book[20] and/or Strategy Book.[21] The proposed Service may benefit those market participants who would receive greater fill rates, thereby improving the Exchange's competitive standing through increased order flow, execution rates, and enhancing the quality of the Exchange's market.

The Exchange believes that if it were to propose fees that are excessively higher than fees for potentially similar products, it would simply serve to reduce demand for the Exchange's product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for time synchronization. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Service. The proposed fees are set at a modest level that would allow any interested market participant to purchase the Service based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

MIAX; *and* Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 5320.

[19] For example, the Exchange does not currently pro-rate mid-month subscriptions to its Open-Close Report or its Liquidity Taker Event Report. *See* Sections (6) and (7) of the Exchange's Fee Schedule, *available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_04182022.pdf.* Cboe BZX Exchange, Inc. (''BZX'') and Cboe EDGX Exchange, Inc. (''EDGX'') also do not pro-rate mid-month subscriptions for certain products. *See, e.g.,* the Market Data and Cboe LiveVol, LLC Market Data Fees sections of BZX's options fee schedule and EDGX's options fee schedule, *available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/* (last visited April 26, 2022) *and https://www.cboe.com/us/options/membership/fee_schedule/edgx/* (last visited April 26, 2022).

[20] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[21] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

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,[22] and Rule 19b–4(f)(2)[23] thereunder. 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–EMERALD–2022–16 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–EMERALD–2022–16. 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–EMERALD–2022–16 and should be submitted on or before June 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10800 Filed 5–19–22; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94924; File No. SR–MEMX–2022–13]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Connectivity Fees

May 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] and non-Members (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

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

Background

The Exchange is re-filing its proposal to amend the Fee Schedule regarding fees the Exchange charges to Members and non-Members for physical connectivity to the Exchange and for application sessions (otherwise known as ''logical ports'') that a Member utilizes in connection with their participation on the Exchange (together with physical connectivity, collectively referred to in this proposal as ''connectivity services,'' as described in greater detail below and in Exhibit 5). The Exchange is proposing to implement the proposed fees immediately.

The Exchange filed its Initial Proposal on December 30, 2021,[4] and began charging fees for connectivity services for the first time in January of 2022. On February 28, 2022, the Commission suspended the Initial Proposal and asked for comments on several

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] The Exchange received one comment letter on the Initial Proposal, which asserted that the Exchange did not address the Exchange's ownership structure and that revenues from connectivity services could have a ''disparate impact'' on certain Members. *See* Letter from Tyler Gellasch, Healthy Markets Association, dated January 26, 2022. The Exchange notes that the ownership of an exchange by members is not unprecedented and that the ownership structure of the Exchange and related issues were addressed during the process of the Exchange's registration as a national securities exchange. *See* Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (approval order related to the application of MEMX LLC to register as a national securities exchange). The Exchange does not believe that the Initial Proposal or this proposal raises any new issues that have not been previously addressed.

questions.[5] The Exchange then filed the Second Proposal, which has recently been withdrawn. The Exchange has collected fees for connectivity services for four months now and is thus able to supplement its filing with additional details that were not available at the time of filing of the Initial Proposal or the Second Proposal and is also able to respond to certain questions raised in the OIP. As set forth below, the Exchange believes that both the Initial Proposal and the Second Proposal provided a great deal of transparency regarding the cost of providing connectivity services and anticipated revenue and that both the Initial Proposal and the Second Proposal were consistent with the Act and associated guidance. The Exchange is re-filing this proposal promptly following the withdrawal of the Second Proposal (and SR–MEMX–2022–12, which was substantively identical to the current proposal but was withdrawn due to a technical error) with the intention of maintaining the existing fees for connectivity services while at the same time providing additional details not contained in prior proposals. The Exchange believes that this approach is appropriate and fair for competitive reasons as several other exchanges currently charge for similar services, as described below, and because others have followed a similar approach when adopting fees.[6]

As set forth in the Initial Proposal, the Second Proposal and this filing, the Exchange does incur significant costs related to the provision of connectivity services and believes it should be permitted to continue charging for such services while also providing additional time for public comment on the level of detail contained in this proposal and other questions posed in the OIP. Finally, the Exchange does not believe that the ability to charge fees for connectivity services or the level of the Exchange's proposed fees are at issue, but rather, that the level of detail required to be included by the Exchange when adopting such fees is at issue. The Exchange notes that despite two public comment periods related to the proposed fees, other than a comment that the Exchange does not believe to be relevant to the proposal,[7] no commenters have raised issues about the level of fees proposed by the Exchange or the level of detail provided by the Exchange in justifying the proposed fees. For these reasons, the Exchange believes it is appropriate to re-file this proposal and to continue charging for connectivity services.

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity services, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[8] and Rule 19b–4 thereunder,[9] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[10] which requires, among other things, that exchange fees be reasonable and equitably allocated,[11] not designed to permit unfair discrimination,[12] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[13] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[14]

Prior to January 3, 2022, MEMX did not charge fees for connectivity to the Exchange, including fees for physical connections or application sessions for order entry purposes or receipt of drop copies. The objective of this approach was to eliminate any fee-based barriers to connectivity for Members when MEMX launched as a national securities exchange in 2020, and it was successful in achieving this objective in that a significant number of Members are directly or indirectly connected to the Exchange.

As detailed below, MEMX recently calculated its aggregate monthly costs for providing physical connectivity to the Exchange at $795,789 and its aggregate monthly costs for providing application sessions at $347,936. Because MEMX offered all connectivity free of charge until January of this year, MEMX has borne 100% of all connectivity costs. In order to cover the aggregate costs of providing connectivity to its Users (both Members and non-Members [15]) going forward and to make a modest profit, as described below, the Exchange is proposing to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), to charge a fee of $6,000 per month for each physical connection in the data center where the Exchange primarily operates under normal market conditions (''Primary Data Center'') and a fee of $3,000 per month for each physical connection in the Exchange's geographically diverse data center, which is operated for backup and disaster recovery purposes (''Secondary Data Center''), each as further described below. The Exchange also proposes to modify its Fee Schedule, pursuant to

[5] *See* Securities Exchange Act Release No. 94332 (February 28, 2022) (SR–MEMX–2021–22) (Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to Amend the Exchange's Fee Schedule to Adopt Connectivity Fees) (the ''OIP'').

[6] *See, e.g.,* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51) (notice of filing and immediate effectiveness of changes to the Miami International Securities Exchange LLC, or ''MIAX'', fee schedule). The Exchange notes that the MIAX filing was the eighth filing by MIAX to adopt the fees proposed for certain connectivity services following multiple times of withdrawing and re-filing the proposal. The Exchange notes that MIAX charged the applicable fees throughout this period while working to develop a filing that met the new standards being applied to fee filings. *See also* Fee Guidance, *infra* note 14.

[7] *See supra,* note 4.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

[14] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

[15] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services to Members, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

MEMX Rules 15.1(a) and (c), to charge a fee of $450 per month for each application session used for order entry (''Order Entry Port'') and application session for receipt of drop copies (''Drop Copy Port'') in the Exchange's Primary Data Center, as further described below.[16]

Cost Analysis

Background on Cost Analysis

In October 2021, MEMX completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis''). The Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers''). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (75%), with smaller allocations to logical ports (2.6%), and the remainder to the provision of transaction execution and market data services (22.4%). In contrast, costs that are driven largely by client activity (*e.g.,* message rates), were not allocated to physical connectivity at all but were allocated primarily to the provision of transaction execution and market data services (90%) with a smaller allocation to application sessions (10%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: Transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue.

Through the Exchange's extensive Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. In turn, the Exchange allocated certain costs more to physical connectivity and others to applications, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, MEMX estimates that the cost drivers to provide connectivity services, including both physical connections and application sessions, result in an aggregate monthly cost of $1,143,715, as further detailed below.

Costs Related to Offering Physical Connectivity

The following chart details the individual line-item costs considered by MEMX to be related to offering physical connectivity as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 13.8% of its overall Human Resources cost to offering physical connectivity).

Costs drivers	Costs	% of all
Human Resources	$262,129	13.8
Connectivity (external fees, cabling, switches, etc.)	162,000	75.0
Data Center	219,000	75.0
External Market Data	n/a	n/a
Hardware and Software Licenses	4,507	1.2
Monthly Depreciation	99,328	18.5
Allocated Shared Expenses	48,826	18.9
Total	795,789	20.1

Below are additional details regarding each of the line-item costs considered by MEMX to be related to offering physical connectivity.

Human Resources

For personnel costs (Human Resources), MEMX calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the MEMX network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity) and for which the Exchange allocated 75% of each employee's time. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security and finance personnel), for which the Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who do support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 20%). The Exchange notes that it has fewer than seventy (70)

[16] As proposed, fees for connectivity services would be assessed based on each active connectivity service product at the close of business on the first day of each month. If a product is cancelled by a Member's submission of a written request or via the MEMX User Portal prior to such fee being assessed then the Member will not be obligated to pay the applicable product fee. MEMX will not return pro-rated fees even if a product is not used for an entire month.

employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing physical connectivity. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches required to operate the Exchange. The Exchange notes that it previously labeled this line item as ''Infrastructure and Connectivity'' but has eliminated the reference to Infrastructure because several other line-item costs could be considered infrastructure given the generality of that term. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange notes that it did not allocate any External Market Data fees to the provision of physical connectivity as market data is not related to such services.

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. As noted above, the Exchange allocated 18.5% of all depreciation costs to providing physical connectivity. The Exchange notes, however, that it did not allocate depreciation costs for any depreciated software necessary to operate the Exchange to physical connectivity, as such software does not impact the provision of physical connectivity.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall physical connectivity costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide physical connectivity. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is also included in the Exchange's general shared expenses, and thus a portion of such overall cost amounting to less than 20% of the overall cost for directors was allocated to providing physical connectivity. The total monthly cost of $795,789 was divided by the number of physical connections the Exchange maintained at the time that proposed pricing was determined (143), to arrive at a cost of approximately $5,565 per month, per physical connection.

Costs Related to Offering Application Sessions

The following chart details the individual line-item costs considered by MEMX to be related to offering application sessions as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 7.7% of its overall Human Resources cost to offering application sessions).

Costs Drivers [17]	Costs	% of all
Human Resources	$147,029	7.7
Connectivity (external fees, cabling, switches, etc.)	5,520	2.6
Data Center	7,462	2.6
External Market Data	10,734	7.5
Hardware and Software Licenses	37,771	10.1
Monthly Depreciation	44,843	8.3
Allocated Shared Expenses	94,567	8.3
Total	347,926	8.8

Human Resources

With respect to application sessions, MEMX calculated Human Resources cost by taking an allocation of employee time for employees whose functions

[17] The Exchange notes that the total monthly cost set forth for application sessions ($347,926) is the same as that used for the Initial Proposal and the Second Proposal, however the Exchange has modified the categorization of such fees in the table above as such categorization was inconsistent in the prior proposals between physical connectivity and application sessions. For instance, the Exchange included applicable depreciation expenses in the Hardware and Software Licenses category with respect to application sessions instead of the Monthly Depreciation category. As another example, the Exchange included applicable Data Center costs in the Connectivity category with respect to application sessions. The revised chart above corrects these inconsistencies.

include providing application sessions and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). The estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing application sessions and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing application sessions and maintaining performance thereof. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing application sessions and maintaining performance thereof. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches, as described above.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange allocated a small portion of External Market Data fees (7.5%) to the provision of application sessions as such market data is necessary to offer certain services related to such sessions, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted or subject to a short sale circuit breaker).

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 8.3% of all depreciation costs to providing application sessions. In contrast to physical connectivity, described above, the Exchange did allocate depreciation costs for depreciated software necessary to operate the Exchange to application sessions because such software is related to the provision of such connectivity.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall application session costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 10% of the overall cost for directors was allocated to providing application sessions. The total monthly cost of $347,926 was divided by the number of application sessions the Exchange maintained at the time that proposed pricing was determined (835), to arrive at a cost of approximately $417 per month, per application session.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or application sessions) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filing it recently submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to physical connections, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (75%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 2.5% to application sessions and the remaining 22.5% was allocated to transactions and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group outside of a smaller allocation (19%) of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (11% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing application sessions. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain application sessions but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 13.8% of its personnel costs to providing physical connections and 7.7% of its personnel costs to providing application sessions, for a total allocation of 21.5% Human Resources expense to provide connectivity services. In turn, the Exchange allocated the remaining 78.5% of its Human Resources expense to membership (less than 1%) and transactions and market data (77.5%). Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical

connections and application sessions, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 27% of the Exchange's overall depreciation and amortization expense to connectivity services (18.5% attributed to physical connections and 8.3% to application sessions). The Exchange allocated the remaining depreciation and amortization expense (approximately 73%) toward the cost of providing transaction services and market data.

Looking at the Exchange's operations holistically, the total monthly costs to the Exchange for offering core services is $3,954,537. Based on the initial four months of billing for connectivity services, the Exchange expects to collect its original estimate of $1,233,750 on a monthly basis for such services.[18] Incorporating this amount into the Exchange's overall projected revenue, including projections related to recently adopted market data fees, the Exchange anticipates monthly revenue ranging from $4,296,950 to $4,546,950 from all sources (*i.e.,* connectivity fees and membership fees that were introduced in January 2022, transaction fees, and revenue from market data, both through the fees adopted in April 2022 and through the revenue received from the SIPs). As such, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues, the Exchange would earn approximately 8.5% to 15% margin on its operations as a whole. The Exchange believes that this amount is reasonable.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. As a new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or application sessions or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

To the extent the Exchange is successful in gaining market share, improving its net capture on transaction fees, encouraging new clients to connect directly to the Exchange, and other developments that would help to increase Exchange revenues, the Exchange does not believe it should be penalized for such success. The Exchange, like other exchanges, is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins as well as periodic review of costs and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact.

The Exchange notes that the Cost Analysis was based on the Exchange's first year of operations and projections for the next year (which is currently underway). As such, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases. However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, we believe that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Proposed Fees

Physical Connectivity Fees

MEMX offers its Members the ability to connect to the Exchange in order to transmit orders to and receive information from the Exchange. Members can also choose to connect to MEMX indirectly through physical connectivity maintained by a third-party extranet. Extranet physical connections may provide access to one or multiple Members on a single connection. Users of MEMX physical connectivity services (both Members and non-Members[19]) seeking to establish one or more connections with the Exchange submit a request to the Exchange via the MEMX User Portal or directly to Exchange personnel. Upon receipt of the completed instructions, MEMX establishes the physical connections requested by the User. The number of physical connections assigned to each User as of April 29, 2022, ranges from one to ten, depending on the scope and scale of the Member's trading activity on the Exchange as determined by the Member, including the Member's determination of the need for redundant connectivity. The Exchange notes that

[18] The Exchange notes that it has charged connectivity services for four months and so far the average amount expected is very close to the estimated revenue provided in the Initial Proposal. Specifically, the Exchange has earned an estimated $1,246,700 ($12,950 more than projected) for connectivity services on an average basis over January through April. The Exchange believes this difference is immaterial for purposes of this proposal and thus, will continue to use the original estimated revenue of $1,233,750 for purposes of this proposal.

[19] *See supra* note 15.

44% of its Members do not maintain a physical connection directly with the Exchange in the Primary Data Center (though many such Members have connectivity through a third-party provider) and another 44% have either one or two physical ports to connect to the Exchange in the Primary Data Center. Thus, only a limited number of Members, 12%, maintain three or more physical ports to connect to the Exchange in the Primary Data Center.

As described above, in order to cover the aggregate costs of providing physical connectivity to Users and make a modest profit, as described below, the Exchange is proposing to charge a fee of $6,000 per month for each physical connection in the Primary Data Center and a fee of $3,000 per month for each physical connection in the Secondary Data Center. There is no requirement that any Member maintain a specific number of physical connections and a Member may choose to maintain as many or as few of such connections as each Member deems appropriate. The Exchange notes, however, that pursuant to Rule 2.4 (Mandatory Participation in Testing of Backup Systems), the Exchange does require a small number of Members to connect and participate in functional and performance testing as announced by the Exchange, which occurs at least once every 12 months. Specifically, Members that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume must participate in mandatory testing of the Exchange's backup systems (*i.e.,* such Members must connect to the Secondary Data Center). The Exchange notes that Members that have been designated are still able to use third-party providers of connectivity to access the Exchange at its Secondary Data Center, and that one such designated Member does use a third-party provider instead of connecting directly to the Secondary Data Center through connectivity provided by the Exchange.[20] Nonetheless, because some Members are required to connect to the Secondary Data Center pursuant to Rule 2.4 and to encourage Exchange Members to connect to the Secondary Data Center generally, the Exchange has proposed to charge one-half of the fee for a physical connection in the Primary Data Center. The Exchange notes that its costs related to operating the Secondary Data Center were not separately calculated for purposes of this proposal, but instead, all costs related to providing physical connections were considered in aggregate. The Exchange believes this is appropriate because had the Exchange calculated such costs separately and then determined the fee per physical connection that would be necessary for the Exchange to cover its costs for operating the Secondary Data Center, the costs would likely be much higher than those proposed for connectivity at the Primary Data Center because Members maintain significantly fewer connections at the Secondary Data Center. The Exchange believes that charging a higher fee for physical connections at the Secondary Data Center would be inconsistent with its objective of encouraging Members to connect at such data center and is inconsistent with the fees charged by other exchanges, which also provide connectivity for disaster recovery purposes at a discounted rate.[21]

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of physical connections a User requests, based upon factors deemed relevant by each User (either a Member, service bureau or extranet). The Exchange believes these factors include the costs to maintain connectivity, business model and choices Members make in how to participate on the Exchange, as further described below.

The proposed fee of $6,000 per month for physical connections at the Primary Data Center is designed to permit the Exchange to cover the costs allocated to providing connectivity services with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange believes it is appropriate to charge fees that represent a reasonable markup over cost given the other factors discussed above and the need for the Exchange to maintain a highly performant and stable platform to allow Members to transact with determinism. The Exchange also reiterates that the Exchange did not charge any fees for connectivity services prior to January 2022, and its allocation of costs to physical connections was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. As such, the proposal only truly constitutes a ''markup'' to the extent the Exchange recovers the initial costs of building the network and infrastructure necessary to offer physical connectivity and operating the Exchange for over a year without connectivity fees.

As noted above, the Exchange proposes a discounted rate of $3,000 per month for physical connections at its Secondary Data Center. The Exchange has proposed this discounted rate for Secondary Data Center connectivity in order to encourage Members to establish and maintain such connections. Also, as noted above, a small number of Members are required pursuant to Rule 2.4 to connect and participate in testing of the Exchange's backup systems, and the Exchange believes it is appropriate to provide a discounted rate for physical connections at the Secondary Data Center given this requirement. The Exchange notes that this rate is well below the cost of providing such services and the Exchange will operate its network and systems at the Secondary Data Center without recouping the full amount of such cost through connectivity services.

The proposed fee for physical connections is effective on filing and will become operative immediately.

Application Session Fees

Similar to other exchanges, MEMX offers its Members application sessions, also known as logical ports, for order entry and receipt of trade execution reports and order messages. Members can also choose to connect to MEMX indirectly through a session maintained by a third-party service bureau. Service bureau sessions may provide access to one or multiple Members on a single session. Users of MEMX connectivity services (both Members and non-Members[22]) seeking to establish one or more application sessions with the Exchange submit a request to the Exchange via the MEMX User Portal or directly to Exchange personnel. Upon receipt of the completed instructions, MEMX assigns the User the number of sessions requested by the User. The number of sessions assigned to each User as of April 29, 2022, ranges from one to more than 100, depending on the scope and scale of the Member's trading activity on the Exchange (either through a direct connection or through a service bureau) as determined by the Member. For example, by using multiple sessions, Members can segregate order flow from different internal desks, business lines, or customers. The Exchange does not impose any minimum or maximum requirements for how many application sessions a Member or service bureau can maintain,

[20] The Exchange also notes that a second designated Member that is required to participate in mandatory testing with the Exchange for the first time this year has not yet connected to the Exchange in the Secondary Data Center and has indicated that it is likely to use a third-party provider.

[21] *See, e.g.,* the BZX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[22] *See supra* note 15.

and it is not proposing to impose any minimum or maximum session requirements for its Members or their service bureaus.

As described above, in order to cover the aggregate costs of providing application sessions to Users and to make a modest profit, as described below, the Exchange is proposing to charge a fee of $450 per month for each Order Entry Port and Drop Copy Port in the Primary Data Center. The Exchange notes that it does not propose to charge for: (1) Order Entry Ports or Drop Copy Ports in the Secondary Data Center, or (2) any Test Facility Ports or MEMOIR Gap Fill Ports. The Exchange has proposed to provide Order Entry Ports and Drop Copy Ports in the Secondary Data Center free of charge in order to encourage Members to connect to the Exchange's backup trading systems. Similarly, because the Exchange wishes to encourage Members to conduct appropriate testing of their use of the Exchange, the Exchange has not proposed to charge for Test Facility Ports. With respect to MEMOIR Gap Fill ports, such ports are exclusively used in order to receive information when a market data recipient has temporarily lost its view of MEMX market data. The Exchange has not proposed charging for such ports because the costs of providing and maintaining such ports is more directly related to producing market data.

The proposed fee of $450 per month for each Order Entry Port and Drop Copy Port in the Primary Data Center is designed to permit the Exchange to cover the costs allocated to providing application sessions with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that the Exchange did not charge any fees for connectivity services prior to January 2022, and its allocation of costs to application sessions was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. As such, the proposal only truly constitutes a ''markup'' to the extent the Exchange recovers the initial costs of building the network and infrastructure necessary to offer application sessions and operating the Exchange for over a year without connectivity fees.

The proposed fee is also designed to encourage Users to be efficient with their application session usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing connectivity services. There is no requirement that any Member maintain a specific number of application sessions and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate. The Exchange has designed its platform such that Order Entry Ports can handle a significant amount of message traffic (*i.e.,* over 50,000 orders per second), and has no application flow control or order throttling. In contrast, other exchanges maintain certain thresholds that limit the amount of message traffic that a single logical port can handle.[23] As such, while several Members maintain a relatively high number of ports because that is consistent with their usage on other exchanges and is preferable for their own reasons, the Exchange believes that it has designed a system capable of allowing such Members to significantly reduce the number of application sessions maintained.

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of application sessions a User requests, based upon factors deemed relevant by each User (either a Member or service bureau on behalf of a Member). The Exchange believes these factors include the costs to maintain connectivity and choices Members make in how to segment or allocate their order flow.[24]

The proposed fee for application sessions is effective on filing and will become operative immediately.

Proposed Fees—Additional Discussion

As discussed above, the proposed fees for connectivity services do not by design apply differently to different types or sizes of Members. As discussed in more detail in the Statutory Basis section, the Exchange believes that the likelihood of higher fees for certain Members subscribing to connectivity services usage than others is not unfairly discriminatory because it is based on objective differences in usage of connectivity services among different Members. The Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services. For these reasons, MEMX believes it is not unfairly discriminatory for the Members with higher message traffic and/or Members with more complicated connections to pay a higher share of the total connectivity services fees. While Members with a business model that results in higher relative inbound message activity or more complicated connections are projected to pay higher fees, the level of such fees is based solely on the number of physical connections and/or application sessions deemed necessary by the Member and not on the Member's business model or type of Member. The Exchange notes that the correlation between message traffic and usage of connectivity services is not completely aligned because Members individually determine how many physical connections and application sessions to request, and Members may make different decisions on the appropriate ways based on facts unique to their individual businesses. Based on the Exchange's architecture, as described above, the Exchange believes that a Member even with high message traffic would be able to conduct business on the Exchange with a relatively small connectivity services footprint.

[23] *See, e.g.,* Cboe US Equities BOE Specification, *available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf* (describing a 5,000 message per second Port Order Rate Threshold on Cboe BOE ports).

[24] The Exchange understands that some Members (or service bureaus) may also request more Order Entry Ports to enable the ability to send a greater number of simultaneous order messages to the Exchange by spreading orders over more Order Entry Ports, thereby increasing throughput (*i.e.,* the potential for more orders to be processed in the same amount of time). The degree to which this usage of Order Entry Ports provides any throughput advantage is based on how a particular Member sends order messages to MEMX, however the Exchange notes that its architecture reduces the impact or necessity of such a strategy. All Order Entry Ports on MEMX provide the same throughput, and as noted above, the throughput is likely adequate even for a Member sending a significant amount of volume at a fast pace, and is not artificially throttled or limited in any way by the Exchange.

Because the Exchange has already adopted fees for connectivity services, the Exchange has initial results of the impact such fees have had on Member and non-Member usage of connectivity services. Since the fees went into effect as set forth in the Initial Proposal, nine (9) customers with physical connectivity to the Exchange have canceled one or more of their physical connections. These cancellations resulted in an approximate 6% drop in the physical connectivity offered by the Exchange prior to the Exchange charging for such connectivity.[25] In each instance, the customer told the Exchange that its reason for cancelling its connectivity was the imposition of fees. Of these customers, two (2) customers canceled services entirely, three (3) maintained at least one physical connection provided directly by the Exchange, and the remaining four (4) customers migrated to alternative sources of connectivity through a third-party provider. As such, some market participants (one market data provider and one extranet) determined that they no longer wanted to connect to the Exchange directly or through a third party as it was not necessary for their business and their initial connection was only worthwhile so long as services were provided free of charge. Other market participants (one market data provider, one extranet and one Member) determined that they still wished to be directly connected to the Exchange but did not need as many connections. Finally, some market participants (one market data provider, one service bureau and two trading participants) determined that there was a more affordable alternative through a third-party provider of connectivity services. As a general matter, the customers that discontinued use of physical connectivity or transitioned to a third-party provider of connectivity services were either connected purely to consume market data for their own purposes or distribution to others, were themselves extranets or service bureaus providing alternatives to the Exchange's connectivity services, or were smaller trading firms that elected not to participate on the Exchange directly and likely connected initially due to the fact that there were no fees to connect.

Additionally, since the Exchange began charging for application sessions, five (5) customers have canceled a total of thirty (30) application sessions (approximately 3.5% of all customer application sessions) due to the fees adopted by the Exchange.[26] As a general matter, these customers determined that the number of application sessions that they maintained was not necessary in order to participate on the Exchange.

Based on its experience since adopting the proposed fees in January, the Exchange believes that there is ample evidence showing that it is subject to competitive forces when setting fees for physical connectivity and application sessions. Indeed, the evidence shows that firms can choose not to purchase those services, reduce consumption, or rely on external third-party providers in response to proposed fees. These competitive forces ensure that the Exchange cannot charge supra-competitive fees for connectivity services. In fact, as a new entrant to the exchange industry, the Exchange is particularly subject to competitive forces and has carefully crafted its current and proposed fees with the goal of growing its business. In this environment, the Exchange has no ability to set fees at levels that would be deemed supra-competitive as doing so would limit the Exchange's ability to compete with its larger, established competitors.

Finally, the fees for connectivity services will help to encourage connectivity services usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[27] Reg SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[28] By encouraging Users to be efficient with their usage of connectivity services, the proposed fee will support the Exchange's Reg SCI obligations in this regard by ensuring that unused application sessions are available to be allocated based on individual User needs and as the Exchange's overall order and trade volumes increase. As noted above, based on early results, the adoption of fees has led to certain firms reducing the number of application sessions maintained now that such sessions are no longer provided free of charge. Additionally, because the Exchange will charge a lower rate for a physical connection to the Secondary Data Center and will not charge any fees for application sessions at the Secondary Data Center or its Test Facility, the proposed fee structure will further support the Exchange's Reg SCI compliance by reducing the potential impact of a disruption should the Exchange be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing with low or no cost imposed by the Exchange.[29]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[30] of the Act in general, and furthers the objectives of Section 6(b)(4)[31] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)[32] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission

[25] The Exchange notes that despite these cancellations, the Exchange has since had existing customers and new customers order physical connectivity that has resulted in the Exchange maintaining nearly the same amount of physical connections for customers as it did prior to the imposition of fees.

[26] The Exchange notes that, as was the case with respect to physical connectivity, the Exchange has since had existing customers and new customers order additional application sessions that has resulted in the Exchange maintaining nearly the same amount of application sessions for customers as it did prior to the imposition of fees.

[27] 17 CFR 242.1000–1007.

[28] 17 CFR 242.1001(a).

[29] While some Members might directly connect to the Secondary Data Center and incur the proposed $3,000 per month fee, there are other ways to connect to the Exchange, such as through a service bureau or extranet, and because the Exchange is not imposing fees for application sessions in the Secondary Data Center, a Member connecting through another method would not incur any fees charged directly by the Exchange. However, the Exchange notes that a third-party service provider providing connectivity to the Exchange likely would charge a fee for providing such connectivity; such fees are not set by or shared in by the Exchange.

[30] 15 U.S.C. 78f.

[31] 15 U.S.C. 78f(b)(4).

[32] 15 U.S.C. 78f(b)(5).

highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [33] One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure designed to permit the Exchange to cover certain fixed costs that it incurs for providing connectivity services, which are discounted when compared to products and services offered by competitors.[34]

Commission staff noted in its Fee Guidance that, as an initial step in assessing the reasonableness of a fee, staff considers whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, staff has said that it considers whether the evidence demonstrates that there are reasonable substitutes for the product or service that is the subject of a proposed fee. There is no regulatory requirement that any market participant connect to the Exchange, that any participant connect in a particular manner, or that any participant maintain a certain number of connections to the Exchange. The Exchange reiterates that a small number of Members are required to connect to the Exchange for participation in mandatory testing of backup systems but such connectivity does not have to be obtained directly from the Exchange but instead can be through a third-party provider that provides connectivity to the Exchange. The Exchange again notes that at least one designated Member does, in fact, connect to the Exchange at the Secondary Data Center through a third-party provider.

The Exchange also acknowledges that certain market participants operate businesses that do, in fact, require them to be connected to all U.S. equity exchanges. For instance, certain Members operate as routing brokers for other market participants. As an equities exchange with approximately 4% volume, these routing brokers likely need to maintain a connection to the Exchange on behalf of their clients. However, it is connectivity services provided by the Exchange that allow such participants to offer their clients a service for which they can be compensated (and allowing their clients not to directly connect but still to access the Exchange), and, as such, the Exchange believes it is reasonable, equitably allocated and not unfairly discriminatory to charge such Members for connectivity services.

As a new entrant to the equities market, the Exchange does not have as Members many market participants that actively trade equities on other exchanges nor are such market participants directly connected to the Exchange. There are also a number of the Exchange's Members that do not connect directly to MEMX. For instance, of the number of Members that maintain application sessions to participate directly on the Exchange, many such Members do not maintain physical connectivity but instead access the Exchange through a service bureau or extranet. In addition, of the Members that are directly connected to MEMX, it is generally the individual needs of the Member that dictate whether they need one or multiple physical connections to the Exchange as well as the number of application sessions that they will maintain. It is all driven by the business needs of the Member, and as described above, the Exchange believes it offers technology that will enable Members to maintain a smaller connectivity services footprint than they do on other markets.

The Exchange's experience as a new entrant to the market over the past year shows that all broker-dealers are not required to connect to all exchanges, including the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member or connect to the Exchange. In addition, many market participants still have not connected despite the Exchange's growth in one year to more than 4% of the overall equities market share. Thus, the Exchange recognizes that the decision of whether to connect to the Exchange is separate and distinct from the decision of whether and how to trade on the Exchange. This is because there are multiple alternatives to directly participating on the Exchange (such as use of a third-party routing broker to access the Exchange) or directly connecting to the Exchange (such as use of an extranet or service bureau). The Exchange acknowledges that many firms may choose to connect to the Exchange, but ultimately not trade on it, based on their particular business needs. The decision of which type of connectivity to purchase, or whether to purchase connectivity at all, is based on the business needs of each individual firm.

There is also competition for connectivity to the Exchange. For instance, the Exchange competes with certain non-Members who provide connectivity and access to the Exchange, namely extranets and service bureaus. These are resellers of MEMX connectivity—they are not arrangements between broker-dealers to share connectivity costs. Those non-Members resell that connectivity to multiple market participants over the same connection. When physical connectivity is re-sold by a third-party, the Exchange will not receive any connectivity revenue from that sale, and without connectivity fees for the past year, such third parties have been able to re-sell something they receive for free. Such arrangements are entirely between the third-party and the purchaser, thus constraining the ability of MEMX to set its connectivity pricing as indirect connectivity is a substitute for direct connectivity.

Indirect connectivity is a viable alternative that is already being used by Members and non-Members of MEMX, constraining the price that the Exchange is able to charge for connectivity to its Exchange. As set forth above, nearly half of the Exchange's Members do not have a physical connection provided by the Exchange and instead must use a third-party provider. Members who have not established any connectivity to the Exchange are still able to trade on the Exchange indirectly through other Members or non-Member extranets or service bureaus that are connected. These Members will not be forced or compelled to purchase physical connectivity services, and they retain all of the other benefits of membership with the Exchange. Accordingly, Members have the choice to purchase physical connectivity and are not compelled to do so. The Exchange notes that without an application session, specifically an Order Entry Port, a Member could not submit orders to the Exchange. As such, while application sessions too can be obtained from a third-party reseller (*i.e.,* a service bureau) the Exchange will receive revenue either from the Member or the third-party service bureau for each application session. However, as noted elsewhere, the Exchange has designed its platform such that Order Entry Ports can handle a significant amount of message traffic (*i.e.,* over 50,000 orders per second), and has no application flow control or order throttling. As such, the Exchange believes that it has designed a system capable of allowing such Members to significantly reduce

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[34] *See infra* notes 40–45 and accompanying text.

the number of application sessions maintained.

As described above, the Exchange has seen certain Members and non-Members discontinue or change their usage of connectivity services provided by the Exchange in response to the fees adopted by the Exchange. Specifically, nine (9) participants reduced or discontinued use of connectivity services provided directly by the Exchange and five (5) participants reduced the number of application sessions used to participate on the Exchange. The Exchange believes that this demonstrates that not all market participants are required to use connectivity services provided by the Exchange but can instead choose to participate on the Exchange through a third-party provider of connectivity services, indirectly through another Member of the Exchange, or not at all. The Exchange also notes that of the participants that reduced or discontinued their use of connectivity services, several were in fact third-party providers of connectivity services, which demonstrates that such providers will connect to the Exchange to the extent they have sufficient clients to whom they can provide connectivity services and make a profit but they will not connect if this is not the case.

The Exchange believes that the proposed fees for connectivity services are reasonable, equitable and not unfairly discriminatory because, as described above, the proposed pricing for connectivity services is directly related to the relative costs to the Exchange to provide those respective services and does not impose a barrier to entry to smaller participants. Accordingly, the Exchange offers direct connectivity alternatives and various indirect connectivity (via third-party) alternatives, as described above.

The Exchange recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services. Accordingly, the Exchange believes the allocation of the proposed fees that increase based on the number of physical connections or application sessions is reasonable based on the resources consumed by the respective type of market participant (*i.e.,* lowest resource consuming Members will pay the least, and highest resource consuming Members will pay the most), particularly since higher resource consumption translates directly to higher costs to the Exchange.

With respect to equities trading, the Exchange had approximately 4.3% market share of the U.S. equities industry in February 2022.[35] The Exchange is not aware of any evidence that a market share of approximately 4% provides the Exchange with supra-competitive pricing power because, as shown above, market participants that choose to connect to the Exchange have various choices in determining how to do so, including third party alternatives. This, in addition to the fact that not all broker-dealers are required to connect to the Exchange, supports the Exchange's conclusion that its pricing is constrained by competition.

Several market participants choose not to be Members of the Exchange and choose not to access the Exchange, and several market participants also access the Exchange indirectly through another market participant. To illustrate, the Exchange currently has 65 Members. However, based on publicly available information regarding a sample of the Exchange's competitors, the New York Stock Exchange LLC (''NYSE'') has 142 members, Cboe BZX Exchange, Inc. (''BZX'') has 140 members, and Investors Exchange LLC (''IEX'') has 133 members.[36] If all market participants were required to be Members of the Exchange and connect directly to the Exchange, the Exchange would have over 130 Members, in line with these other exchanges. But it does not. The Exchange currently has approximately half of the number of members as compared to these other exchanges.

Separately, the Exchange is not aware of any reason why market participants could not simply drop their connections and cease being Members of the Exchange if the Exchange were to establish unreasonable and uncompetitive prices for its connectivity services. Market participants choose to connect to a particular exchange and because it is a choice, MEMX must set reasonable pricing for connectivity services, otherwise prospective Members would not connect and existing Members would disconnect, connect through a third-party reseller of connectivity, or otherwise access the Exchange indirectly. The Exchange reiterates that several Members and non-Members did in fact reduce or discontinue use of connectivity services provided directly by the Exchange in response to the fees adopted by the Exchange. No market participant is required by rule or regulation to be a Member of or connect directly to the Exchange, though again, the Exchange acknowledges that certain types of broker-dealers might be compelled by their business model to connect and also notes that pursuant to Rule 2.4, certain Members with significant volume on the Exchange are required to connect to the Exchange's backup systems for testing on at least an annual basis.

With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the proposal was subject to significant competitive forces in setting the terms of the proposal. In looking at this question, the Commission considers whether the SRO has demonstrated in its filing that: (i) There are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Commission will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. If the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

As described above, the Exchange believes that competitive forces are in effect and that if the proposed fees for connectivity services were unreasonable that the Exchange would lose current or prospective Members and market share. The Exchange reiterates that several market participants have in fact

[35] Market share percentage calculated as of February 28, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[36] *See* NYSE Membership Directory, available at: *https://www.nyse.com/markets/nyse/membership;* BZX Form 1 filed November 19, 2021, available at: *https://www.sec.gov/Archives/edgar/vprr/2100/21009368.pdf;* IEX Current Members list, available at: *https://exchange.iex.io/resources/trading/current-membership/.*

modified the way that they connect to the Exchange in response to the Exchange's pricing proposal. Further, the Exchange has conducted a comprehensive Cost Analysis in order to determine the reasonability of its proposed fees, including that the Exchange will not take supra-competitive profits.

MEMX believes the proposed fees for connectivity services are fair and reasonable as a form of cost recovery for the Exchange's aggregate costs of offering connectivity services to Members and non-Members. The proposed fees are expected to generate monthly revenue of $1,233,750 providing cost recovery to the Exchange for the aggregate costs of offering connectivity services, based on a methodology that narrowly limits the cost drivers that are allocated cost to those closely and directly related to the particular service. In addition, this revenue will allow the Exchange to continue to offer, to enhance, and to continually refresh its infrastructure as necessary to offer a state-of-the-art trading platform. The Exchange believes that, consistent with the Act, it is appropriate to charge fees that represent a reasonable markup over cost given the other factors discussed above. The Exchange also believes the proposed fee is a reasonable means of encouraging Users to be efficient in the connectivity services they reserve for use, with the benefits to overall system efficiency to the extent Members and non-Members consolidate their usage of connectivity services or discontinue subscriptions to unused physical connectivity.

The Exchange further believes that the proposed fees, as they pertain to purchasers of each type of connectivity alternative, constitute an equitable allocation of reasonable fees charged to the Exchange's Members and non-Members and are allocated fairly amongst the types of market participants using the facilities of the Exchange.

As described above, the Exchange believes the proposed fees are equitably allocated because the Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) Consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services.

Commission staff previously noted that the generation of supra-competitive profits is one of several potential factors in considering whether an exchange's proposed fees are consistent with the Act.[37] As described in the Fee Guidance, the term ''supra-competitive profits'' refers to profits that exceed the profits that can be obtained in a competitive market. The proposed fee structure would not result in excessive pricing or supra-competitive profits for the Exchange. The proposed fee structure is merely designed to permit the Exchange to cover the costs allocated to providing connectivity services with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange believes that this is fair, reasonable, and equitable. Accordingly, the Exchange believes that its proposal is consistent with Section 6(b)(4)[38] of the Act because the proposed fees will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit.

The proposed fees for connectivity services will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity services. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by adopting fees for connectivity services. As detailed above, the Exchange has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue. The Exchange's Cost Analysis estimates the costs to provide connectivity services at $1,143,715. Based on current connectivity services usage, the Exchange would generate monthly revenues of approximately $1,233,750.[39] This represents a modest profit when compared to the cost of providing connectivity services. Even if the Exchange earns that amount or incrementally more, the Exchange believes the proposed fees for connectivity services are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total expense of MEMX associated with providing connectivity services versus the total projected revenue of the Exchange associated with network connectivity services. As noted above, when incorporating the projected revenue from connectivity services into the Exchange's overall projected revenue, including projections related to recently adopted market data fees, the Exchange anticipates monthly revenue ranging from $4,296,950 to $4,546,950 from all sources. As such, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues, the Exchange would earn approximately 8.5% to 15% margin on its operations as a whole. The Exchange believes that this amount is reasonable and is again evidence that the Exchange will not earn a supra-competitive profit.

[37] *See* Fee Guidance, *supra* note 14.

[38] 15 U.S.C. 78f(b)(4).

[39] *See supra* note 18.

The Exchange notes that other exchanges offer similar connectivity options to market participants and that the Exchange's fees are a discount as compared to the majority of such fees.[40] With respect to physical connections, each of the Nasdaq Stock Market LLC (''Nasdaq''), NYSE, NYSE Arca, Inc. (''Arca''), BZX and Cboe EDGX Exchange, Inc. (''EDGX'') charges between $7,500–$22,000 per month for physical connectivity at their primary data centers that is comparable to that offered by the Exchange.[41] Nasdaq, NYSE and Arca also charge installation fees, which are not proposed to be charged by the Exchange. With respect to application sessions, each of Nasdaq, NYSE, Arca, BZX and EDGX charges between $500–$575 per month for order entry and drop ports.[42] The Exchange further notes that several of these exchanges each charge for other logical ports that the Exchange will continue to provide for free, such as application sessions for testing and disaster recovery purposes.[43] While the Exchange's proposed connectivity fees are lower than the fees charged by Nasdaq, NYSE, Arca, BZX and EDGX, MEMX believes that it offers significant value to Members over these other exchanges in terms of bandwidth available over such connectivity services, which the Exchanges believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges.[44] Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[45] The Exchange believes that its proposal to offer certain application sessions free of charge is reasonable, equitably allocated and not unfairly discriminatory because such proposal is intended to encourage Member connections and use of backup and testing facilities of the Exchange, and, with respect to MEMOIR Gap Fill ports, such ports are used exclusively in connection with the receipt and processing of market data from the Exchange.

In conclusion, the Exchange submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act[46] for the reasons discussed above in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities, does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest, particularly as the proposal neither targets nor will it have a disparate impact on any particular category of market participant. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that it is subject to significant competitive forces, and that the proposed fee structure is an appropriate effort to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[47] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, while the Exchange did not officially proposed fees until late December of 2021 when it filed the Initial Proposal, Exchange personnel had been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange received no official complaints from Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the proposed fees for connectivity services would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

As expected, the Exchange did, however, have several market participants reduce or discontinue use of connectivity services provided directly by the Exchange in response to the fees adopted by the Exchange. The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange notes that two smaller trading firms cancelled connectivity services and elected not to participate on the Exchange directly due to the imposition of fees but these participants were not actively participating on the Exchange prior to disconnecting and likely connected initially due to the fact that there were no fees to connect. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity

[40] One significant differentiation between the Exchanges is that while it offers different types of physical connections, including 10Gb, 25Gb, 40Gb, and 100Gb connections, the Exchange does not propose to charge different prices for such connections. In contrast, most of the Exchange's competitors provide scaled pricing that increases depending on the size of the physical connection. The Exchange does not believe that its costs increase incrementally based on the size of a physical connection but instead, that individual connections and the number of such separate and disparate connections are the primary drivers of cost for the Exchange.

[41] *See* the Nasdaq equities fee schedule, available at: *http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2;* the NYSE fee schedule, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* the NYSE Arca equities fee schedule, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* the BZX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* the EDGX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.* This range is based on a review of the fees charged for 10–40Gb connections at each of these exchanges and relates solely to the physical port fee or connection charge, excluding co-location fees and other fees assessed by these exchanges. The Exchange notes that it does not offer physical connections with lower bandwidth than 10Gb and that Members and non-Members with lower bandwidth requirements typically access the Exchange through third-party extranets or service bureaus.

[42] *See id.*

[43] *See id.*

[44] As noted above, all physical connections offered by MEMX are at least 10Gb capable and physical connections provided with larger bandwidth capabilities will be provided at the same rate as such connections. In contrast to other exchanges, MEMX has not proposed different types of physical connections with higher pricing for those with greater capacity. *See supra* note 40. The Exchange also reiterates that MEMX application sessions are capable of handling significant amount of message traffic (*i.e.,* over 50,000 orders per second), and have no application flow control or order throttling, in contrast to competitors that have imposed message rate thresholds. *See supra* note 23 and accompanying text.

[45] *See supra* note 41.

[46] 15 U.S.C. 78f(b)(4) and (5).

[47] 15 U.S.C. 78f(b)(8).

services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange does not believes the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to connect to all exchanges, as shown by the number of Members of the Exchange as compared to the much greater number of members at other exchanges, as described above. Not only does MEMX have less than half the number of members as certain other exchanges, but there are also a number of the Exchange's Members that do not connect directly to the Exchange. Additionally, other exchanges have similar connectivity alternatives for their participants, but with higher rates to connect.[48] The Exchange is also unaware of any assertion that the proposed fees for connectivity services would somehow unduly impair its competition with other exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply disconnect.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[49] and Rule 19b–4(f)(2)[50] thereunder.

[48] *See supra* notes 40–45 and accompanying text.

[49] 15 U.S.C. 78s(b)(3)(A)(ii).

[50] 17 CFR 240.19b–4(f)(2).

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–2022–13 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–MEMX–2022–13. 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–MEMX–2022–13 and should be submitted on or before June 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10807 Filed 5–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94918; File No. SR–NASDAQ–2022–034]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Nasdaq Amended and Restated Certificate of Incorporation

May 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2022, The Nasdaq Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 Amended and Restated Certificate of Incorporation (''Certificate'') of its parent corporation, Nasdaq, Inc. (''Nasdaq'' or the ''Company''), to increase Nasdaq's authorized share capital. 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.

[51] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Nasdaq Certificate [3] to increase the total number of authorized shares of Nasdaq common stock, par value $0.01 per share (''Common Stock''). Specifically, the Exchange proposes to amend Article Fourth, Section A such that the total number of shares of Stock (*i.e.,* capital stock) that Nasdaq is authorized to issue would be increased from 330,000,000 to 930,000,000 shares, and the portion of that total constituting Common Stock would be changed from 300,000,000 to 900,000,000 shares. As amended, Article Fourth, Section A of the Certificate would provide:

> The total number of shares of Stock which Nasdaq shall have the authority to issue is Nine Hundred Thirty Million (930,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value $.01 per share (hereinafter referred to as ''Preferred Stock''), and Nine Hundred Million (900,000,000) shares of Common Stock, par value $.01 per share (hereinafter referred to as ''Common Stock'').[4]

As noted above, the proposed amendments to the Certificate were approved by the Nasdaq Board of Directors (''Nasdaq Board'') on March 23, 2022. The proposed amendments to the Certificate would be effective when filed with the Secretary of State of Delaware, which would not occur until approval of the amendments by the stockholders of Nasdaq is obtained at the 2022 Annual Meeting of the Stockholders on June 22, 2022 and until this proposed rule change becomes effective and operative.

The trading price of Nasdaq's Common Stock has risen significantly over the past several years. Since Nasdaq first became a publicly traded company in 2002, the total number of authorized shares of Common Stock has remained constant at 300,000,000 shares. However, over the last five years, the trading price of Nasdaq's Common Stock has increased by approximately 162%.[5] As the trading price of Nasdaq's Common Stock has risen, the Nasdaq Board has carefully evaluated the effect of the trading price of the Common Stock on the liquidity and marketability of the Common Stock. The Nasdaq Board believes that this price appreciation may be affecting the liquidity of the Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the Nasdaq Board approved pursuing a 3-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, two shares of Common Stock for each share of Common Stock held by such holder (the ''Stock Dividend''). The Nasdaq Board's approval of the Stock Dividend was contingent upon this proposed rule change becoming effective and operative, and Nasdaq stockholder approval of the proposed amendments to the Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds Nasdaq's authorized but unissued shares of Common Stock. The proposed rule change would increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend.

The proposed changes would not otherwise alter the Certificate, including the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate that generally provides no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries, and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

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 Section 6(b)(1) of the Act,[7] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase Nasdaq's authorized shares of Common Stock and shares of capital stock sufficient to allow Nasdaq to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth, Section C of the Certificate, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.

The Exchange also believes that the proposal is consistent with Section 6(b)(5) of the Act [8] because it would not impact the Exchange's governance or regulatory structure, which would continue to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would 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, because by increasing Nasdaq's authorized shares of Common Stock and shares of capital stock

[3] Nasdaq owns 100% of the equity interest in the Exchange. The Exchange's affiliates, Boston Stock Exchange Clearing Corporation, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, and Stock Clearing Corporation of Philadelphia will each concurrently submit substantially the same rule filings to propose the changes described herein.

[4] Nasdaq currently has no Preferred Stock outstanding.

[5] The price of one share of Common Stock on March 31, 2017 was $69.45 and the closing market price of one share of Common Stock on April 1, 2022 was $181.92 as reported on the Nasdaq Stock Market.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(5).

sufficient to allow Nasdaq to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of Nasdaq.

The Exchange also notes that the proposed rule change is substantially similar to a prior proposal by Intercontinental Exchange, Inc. (''ICE''), which is the holding company for three national securities exchanges, including the New York Stock Exchange. The ICE proposal amended ICE's Certificate of Incorporation to effectuate a similar stock split as proposed by the Exchange herein.[9] As such, the Exchange does not believe that its proposal raises any new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change relates solely to the number of authorized shares of Common Stock and shares of capital stock of the Company and not to the operations of the Exchange, 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.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–2022–034 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–2022–034. 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–2022–034 and should be submitted on or before June 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10803 Filed 5–19–22; 8:45 am]

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[9] In particular, the ICE proposal increased ICE's total number of authorized shares of ICE common stock in order to effectuate a 5-for-1 stock split by way of a stock dividend. *See* Securities Exchange Act Release No. 78992 (September 29, 2016), 81 FR 69092 (October 5, 2016) (SR–NYSE–2016–57, SR–NYSEArca–2016–119, and SR–NYSEMKT–2016–80) (hereinafter, ''ICE Approval'').

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–644, OMB Control No. 3235–0692]

Submission for OMB Review; Comment Request; Extension: Regulation S–ID

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation S–ID (17 CFR 248), including the information collection requirements thereunder, is designed to better protect investors from the risks of identity theft. Under Regulation S–ID, SEC-regulated entities are required to develop and implement reasonable policies and procedures to identify, detect, and respond to relevant red flags (the ''Identity Theft Red Flags Rules'') and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes. Section 248.201 of Regulation S–ID includes the following information collection requirements for each SEC-regulated entity that qualifies as a ''financial institution'' or ''creditor'' under Regulation S–ID and that offers or maintains covered accounts: (i) Creation and periodic updating of an identity theft prevention program (''Program'') that is approved by the board of directors, an appropriate committee thereof, or a designated senior

management employee; (ii) periodic staff reporting to the board of directors on compliance with the Identity Theft Red Flags Rules and related guidelines; and (iii) training of staff to implement the Program. Section 248.202 of Regulation S–ID includes the following information collection requirements for each SEC-regulated entity that is a credit or debit card issuer: (i) Establishment of policies and procedures that assess the validity of a change of address notification if a request for an additional or replacement card on the account follows soon after the address change; and (ii) notification of a cardholder, before issuance of an additional or replacement card, at the previous address or through some other previously agreed-upon form of communication, or alternatively, assessment of the validity of the address change request through the entity's established policies and procedures.

SEC staff estimates of the hour burdens associated with section 248.201 under Regulation S–ID include the one-time burden of complying with this section for newly-formed SEC-regulated entities, as well as the ongoing costs of compliance for all SEC-regulated entities. All newly-formed financial institutions and creditors would be required to conduct an initial assessment of covered accounts, which SEC staff estimates would entail a one-time burden of 2 hours. Staff estimates that this burden would result in a cost of $910 to each newly-formed financial institution or creditor.[1] To the extent a financial institution or creditor offers or maintains covered accounts, SEC staff estimates that the financial institution or creditor would also incur a one-time burden of 25 hours to develop and obtain board approval of a Program, and a one-time burden of 4 hours to train the financial institution's or creditor's staff, for a total of 29 additional burden hours. Staff estimates that these burdens would result in additional costs of $15,603 for each financial institution or creditor that offers or maintains covered accounts.[2]

SEC staff estimates that approximately 571 SEC-regulated financial institutions and creditors are newly formed each year.[3] Each of these 571 entities will need to conduct an initial assessment of covered accounts, for a total of 1,142 hours at a total cost of $519,610.[4] Of these 571 entities, staff estimates that approximately 90% (or 514) maintain covered accounts.[5] Accordingly, staff estimates that the additional initial burden for SEC-regulated entities that are likely to qualify as financial institutions or creditors and maintain covered accounts is 14,906 hours at an additional cost of $8,019,942.[6] Thus, the total initial estimated burden for all newly-formed SEC-regulated entities is 16,048 hours at a total estimated cost of $8,539,552.[7]

Each financial institution and creditor would be required to conduct periodic assessments to determine if the entity offers or maintains covered accounts, which SEC staff estimates would entail an annual burden of 1 hour per entity. Staff estimates that this burden would result in an annual cost of $455 to each financial institution or creditor.[8] To the extent a financial institution or creditor offers or maintains covered accounts, staff estimates that the financial institution or creditor also would incur an annual burden of 2.5 hours to prepare and present an annual report to the board, and an annual burden of 7 hours to periodically review and update the Program (including review and preservation of contracts with service providers, as well as review and preservation of any documentation received from service providers). Staff estimates that these burdens would result in additional annual costs of $8,638 for each financial institution or creditor that offers or maintains covered accounts.[9]

SEC staff estimates that there are 9,915 SEC-regulated entities that are either financial institutions or creditors, and that all of these will be required to periodically review their accounts to determine if they offer or maintain covered accounts, for a total of 9,915 hours for these entities at a total cost of $4,511,325.[10] Of these 9,915 entities,

[1] This estimate is based on the following calculation: 2 hours × $455 (hourly rate for internal counsel) = $910. *See infra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel).

[2] SEC staff estimates that, of the 29 hours incurred to develop and obtain board approval of a Program and train the financial institution's or creditor's staff, 10 hours will be spent by internal counsel at an hourly rate of $455, 17 hours will be spent by administrative assistants at an hourly rate of $89, and 2 hours will be spent by the board of directors as a whole at an hourly rate of $4,770. Thus, the estimated $15,603 in additional costs is based on the following calculation: (10 hours × $455 = $4,550) + (17 hours × $89 = $1,513) + (2 hours × $4,770 = $9,540) = $15,603.

The cost estimate for internal counsel is derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, entity size, employee benefits, and overhead, and adjusted for inflation. The cost estimate for administrative assistants is derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, entity size, employee benefits, and overhead, and adjusted for inflation. The cost estimate for the board of directors is derived from estimates made by SEC staff regarding typical board size and compensation that is based on information received from fund representatives and publicly-available sources, and adjusted for inflation.

[3] Based on a review of new registrations typically filed with the SEC each year, SEC staff estimates that approximately 1,277 investment advisers, 109 broker dealers, 34 investment companies, and 2 ESCs typically apply for registration with the SEC or otherwise are newly formed each year, for a total of 1,422 entities that could be financial institutions or creditors. Of these, staff estimates that all of the investment companies, ESCs, and broker-dealers are likely to qualify as financial institutions or creditors, and 33% of investment advisers (or 426) are likely to qualify. *See* Identity Theft Red Flags, Investment Company Act Release No. 30456 (Apr. 10, 2013) (''Adopting Release'') at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 571 total financial institutions or creditors will bear the initial one-time burden of assessing covered accounts under Regulation S–ID.

[4] These estimates are based on the following calculations: 571 entities × 2 hours = 1,142 hours; 571 entities × $910 = $519,610.

[5] In the Proposing Release, the SEC requested comment on the estimate that approximately 90% of all financial institutions and creditors maintain covered accounts; the SEC received no comments on this estimate.

[6] These estimates are based on the following calculations: 514 financial institutions and creditors that maintain covered accounts × 29 hours = 14,906 hours; 514 financial institutions and creditors that maintain covered accounts × $15,603 = $8,019,942.

[7] These estimates are based on the following calculations: 1,142 hours + 14,906 hours = 16,048 hours; $519,610 + $8,019,942 = $8,539,552.

[8] This estimate is based on the following calculation: 1 hour × $455 (hourly rate for internal counsel) = $455. *See supra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel).

[9] Staff estimates that, of the 9.5 hours incurred to prepare and present the annual report to the board and periodically review and update the Program, 8.5 hours will be spent by internal counsel at an hourly rate of $455, and 1 hour will be spent by the board of directors as a whole at an hourly rate of $4,770. Thus, the estimated $7,874 in additional annual costs is based on the following calculation: (8.5 hours × $455 = $3,868) + (1 hour × $4,770 = $4,770) = $8,638. *See supra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel and the board of directors).

[10] Based on a review of entities that the SEC regulates, SEC staff estimates that, as of September 30, 2021, there are approximately 14,705 investment advisers, 3,533 broker-dealers, 1,380 active open-end investment companies, and 100 ESCs. Of these, staff estimates that all of the broker-dealers, open-end investment companies and ESCs are likely to qualify as financial institutions or creditors. We also estimate that approximately 33% of investment advisers, or 4,902 investment advisers, are likely to qualify. *See* Adopting Release, *supra* note 3, at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 9,915 financial institutions or creditors will bear the ongoing burden of assessing covered accounts under Regulation S–ID. (The SEC staff estimates that the other types of entities that are covered by the scope of the SEC's rules will not be financial institutions or creditors and therefore will not be subject to the rules' requirements.)

The estimates of 9,915 hours and $3,784,800 are based on the following calculations: 9,915 financial institutions and creditors × 1 hour = 9,915 hours; 9,915 financial institutions and creditors × $455 = $4,511,325.

staff estimates that approximately 90 percent, or 8,924, maintain covered accounts, and thus will need the additional burdens related to complying with the rules.[11] Accordingly, staff estimates that the additional annual burden for SEC-regulated entities that qualify as financial institutions or creditors and maintain covered accounts is 84,778 hours at an additional cost of $77,085,512.[12] Thus, the total estimated ongoing annual burden for all SEC-regulated entities is 94,693 hours at a total estimated annual cost of $81,596,837.[13]

The collections of information required by section 248.202 will apply only to SEC-regulated entities that issue credit or debit cards.[14] SEC staff understands that SEC-regulated entities generally do not issue credit or debit cards, but instead partner with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the SEC, are already subject to substantially similar change of address obligations pursuant to the Agencies' identity theft red flags rules. Therefore, staff does not expect that any SEC-regulated entities will be subject to the information collection requirements of section 248.202, and accordingly, staff estimates that there is no hour or cost burden for SEC-regulated entities related to section 248.202.

In total, SEC staff estimates that the aggregate annual information collection burden of Regulation S–ID is 110,741 hours (16,048 hours + 94,693 hours). This estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms. Compliance with Regulation S–ID, including compliance with the information collection requirements thereunder, is mandatory for each SEC-regulated entity that qualifies as a ''financial institution'' or ''creditor'' under Regulation S–ID (as discussed above, certain collections of information under Regulation S–ID are mandatory only for financial institutions or creditors that offer or maintain covered accounts). Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* 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 send an email to: *PRA_Mailbox@sec.gov.* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication June 21, 2022 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.

Dated: May 16, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10814 Filed 5–19–22; 8:45 am]

BILLING CODE 8011–01–P

[11] *See supra* note 5 and accompanying text. If a financial institution or creditor does not maintain covered accounts, there would be no ongoing annual burden for purposes of the PRA.

[12] These estimates are based on the following calculations: 8,924 financial institutions and creditors that maintain covered accounts × 9.5 hours = 84,778 hours; 8,924 financial institutions and creditors that maintain covered accounts × $8,638 = $77,085,512.

[13] These estimates are based on the following calculations: 9,915 hours + 84,778 hours = 94,693 hours; $4,511,325 + $77,085,512 = $81,596,837.

[14] § 248.202(a).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94916; File No. SR–EMERALD–2022–12]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt Fees for the High Precision Network Time Signal Service

May 16, 2022.

On March 30, 2022, 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 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's fee schedule to adopt fees for the High Precision Network Time Signal Service. The proposed rule change was published for comment in the **Federal Register** on April 18, 2022.[3]

On May 5, 2022, the Exchange withdrew the proposed rule change (SR–EMERALD–2022–12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10801 Filed 5–19–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94697 (April 12, 2022), 87 FR 23000.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, May 25, 2022 at 1:00 p.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 1:00 p.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to propose amendments to the rule under the Investment Company Act that addresses investment company names that are likely to mislead investors about an investment company's investments and risks. The amendments the Commission will consider also include enhanced prospectus disclosure requirements for terminology used in investment company names, as well as public reporting regarding compliance with the new names-related requirements.

2. The Commission also will consider whether to propose amendments to rules and reporting forms for registered investment advisers, certain advisers exempt from registration, registered investment companies, and business development companies to provide standardized environmental, social, and governance (''ESG'') disclosure to investors and the Commission.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: May 18, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–10996 Filed 5–18–22; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94917; File No. SR–NYSEArca–2022–27]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

May 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') by introducing two new pricing tiers, Tier 2 under Adding Tiers and Step Up Tier 3 under Step Up Tiers. The Exchange also proposes to eliminate Step Up Tier 1 under Step Up Tiers and eliminate Tier 4 under Tape C Tiers for Adding. Lastly, the Exchange proposes to amend the criteria to qualify for Tier 3 under Tape C Tiers for Adding. The Exchange proposes to implement the fee changes effective May 2, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule by introducing two new pricing tiers, Tier 2 under Adding Tiers and Step Up Tier 3 under Step Up Tiers. The Exchange also proposes to eliminate Step Up Tier 1 under Step Up Tiers and eliminate Tier 4 under Tape C Tiers for Adding. Lastly, the Exchange proposes to amend the criteria to qualify for Tier 3 under Tape C Tiers for Adding. The Exchange proposes to implement the fee changes effective May 2, 2022.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [3]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [4] Indeed, equity trading is currently dispersed across 16 exchanges,[5] numerous alternative trading systems,[6] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 18% market share.[7] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.[8]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Proposed Rule Change

Adding Tiers—Tier 2

The Exchange proposes to introduce a new pricing tier, Tier 2, in the Adding Tiers table under Section VI. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above). As proposed, an ETP Holder could qualify for a credit of $0.0030 per share for Adding in Tape A securities, $0.0023 per share for Adding in Tape B securities and $0.0031 per share for Adding in Tape C securities if the ETP Holder has Adding ADV that is equal to at least 0.50% of CADV.[9] With the proposed addition of a new pricing tier and the renumbering of existing tiers, the Exchange proposes to amend the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[4] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[5] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[6] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[7] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[8] *See id.*

[9] With the introduction of the new Tier 2 pricing tier, the Exchange proposes to renumber current Tier 2 as Tier 3 and current Tier 3 as Tier 4 without making any changes to the requirement or credits to those tiers. Additionally, the Exchange proposes to replace reference to Tier 3 with Tier 4 in the text attached to the note denoted by * under current Tier 3.

text regarding certain fees that are applicable to ETP Holders that qualify for each of the tiers by adding reference to the newly renumbered Tier 4.

The Exchange believes that the proposed new pricing tier will incentivize ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the tier, which provides higher credits than those currently available under current Tier 2 and current Tier 3. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the fee to the level of orders sent by an ETP Holder that add liquidity, the Exchange's fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that a number of ETP Holders could qualify for the proposed new pricing tier if they choose to direct order flow to the Exchange. However, without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange in order to qualify for the new Tier 2 credits.

Step Up Tiers

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive an enhanced rebate by executing more of their orders on the Exchange. The Exchange currently provides credits to ETP Holders who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange.

In this competitive environment, the Exchange has already established Step Up Tiers 1–3, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	Credit for adding displayed liquidity
Step Up Tier 1	$0.0030 (Tape A), $0.0023 (Tape B), $0.0031 (Tape C).
Step Up Tier 2	$0.0028 (Tape A and C), $0.0022 (Tape B).
Step Up Tier 3	$0.0033 (Tape A and C), $0.0034 (Tape B).

The Exchange proposes the following changes to the Step Up Tiers. First, the Exchange proposes to eliminate current Step Up Tier 1 and remove the pricing tier from the Fee Schedule. The current Step Up Tier 1 pricing tier has been underutilized by ETP Holders. The Exchange has observed that not a single ETP Holder has qualified for the pricing tier proposed for elimination in the last three months. Since the current Step Up Tier 1 pricing tier has not been effective in accomplishing its intended purpose, which is to incent ETP Holders to increase their liquidity adding activity on the Exchange, the Exchange has determined to eliminate the pricing tier from the Fee Schedule. With the proposed elimination of Step Up Tier 1, the Exchange proposes to rename current Step Up Tier 2 as Step Up Tier 1 and current Step Up Tier 3 as Step Up Tier 2.[10]

Second, the Exchange proposes to introduce a new pricing tier, Step Up Tier 3, in the Step Up Tiers table under Section VI. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above). As proposed, an ETP Holder would qualify for the new Step Up Tier 3 if the ETP Holder has Adding ADV that is an increase of at least 0.35% as a percentage of CADV over the ETP Holder's Adding ADV in September 2019. An ETP Holder would alternatively qualify for the new Step Up Tier 3 if the ETP Holder has Removing ADV that is equal to at least 0.50% as a percentage of CADV and has Adding ADV that is an increase of at least 0.25% as a percentage of CADV over the ETP Holder's Adding ADV in September 2019. ETP Holders that meet either of the two criteria would qualify for a credit of $0.0031 per share for orders that provide displayed liquidity in Tape A, Tape B and Tape C securities.

The Exchange believes the proposed new Step Up Tier 3 pricing tier would incentivize order flow providers to send a greater number of liquidity-providing orders to the Exchange to qualify for the pricing tier. While the proposed pricing tier would pay a credit that is lower than that available to ETP Holders under current Step Up Tier 3, the new tier also adopts lower volume thresholds than that required to qualify for current Step Up Tier 3. Additionally, proposed new Step Up Tier 3 provides ETP Holders with two ways to qualify for the credits payable under the pricing tier, and also provides for higher credits than those provided under current Step Up Tier 2 and current Step Up Tier 1, the latter of which the Exchange is proposing to eliminate entirely with this proposed rule change.

Tape C Tiers

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive credits by executing their orders in Tape C securities on the Exchange.

In this competitive environment, the Exchange has already established pricing for trading activity in Tape C securities where the credits increase in the various tiers based on increased levels of volume directed to the Exchange. The current Tape C Tiers are designed to encourage ETP Holders that provide liquidity in Tape C securities to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange.

Currently, the following credits are available to ETP Holders that add

[10] With the proposed addition of a new pricing tier and the renumbering of existing tiers, the Exchange proposes to amend footnote (b) under Section VI. of the Fee Schedule by replacing reference to Step Up Tier 3 with Step Up Tier 2 in the footnote. The applicability of footnote (b) would otherwise remain unchanged.

liquidity in Tape C securities on the Exchange:

- Tape C Tier 4 credit of $0.0029 per share for ETP Holders that have at least 0.15% Adding ADV as a percentage of CADV, or 20 million shares of Adding ADV;
- Tape C Tier 3 credit of $0.0031 per share for ETP Holders that have at least 0.25% Adding ADV as a percentage of CADV;
- Tape C Tier 2 credit of $0.0033 per share for ETP Holders that have at least 0.35% Adding ADV as a percentage of CADV; and
- Tape C Tier 1 credit of $0.0034 per share for ETP Holders that have at least 0.40% Adding ADV as a percentage of CADV and a fee of $0.0029 per share for removing liquidity.

The Exchange proposes the following changes to the Tape C Tiers. First, the Exchange proposes to eliminate current Tape C Tier 4 and remove the pricing tier from the Fee Schedule. The current Tape C Tier 4 tier has been underutilized by ETP Holders. The Exchange has observed that not a single ETP Holder has qualified for the pricing tier proposed for elimination in the last three months. Since the current Tape C Tier 4 pricing tier has not been effective in accomplishing its intended purpose, which is to incent ETP Holders to direct their liquidity adding activity in Tape C securities to the Exchange, the Exchange has determined to eliminate the pricing tier from the Fee Schedule.

Second, the Exchange proposes to modify the requirements to qualify for current Tape C Tier 3 and the credit associated with Tape C Tier 3. As proposed, an ETP Holder would qualify for Tape C Tier 3 if the ETP Holder has Adding ADV of at least 0.20% as a percentage of CADV. ETP Holders that meet the proposed lower volume requirement would qualify to receive a credit of $0.0030 per share for orders in Tape C securities that provide liquidity on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders that provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

Adding Tiers—Tier 2

The Exchange believes that the proposed new Tier 2 pricing tier is reasonable because it is designed to encourage increased trading activity on the Exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold as it offers liquidity providers an opportunity to receive an enhanced rebate. Further, the proposed new pricing tier is reasonable as it would provide ETP Holders an additional opportunity to qualify for a rebate by meeting lower volume threshold than that required to qualify for current Tier 1. The Exchange believes that the proposal represents a reasonable effort to promote price improvement and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities. The Exchange believes the proposed new Tier 2 pricing tier is a reasonable means to encourage ETP Holders to increase their liquidity providing orders in Tape A, Tape B and Tape C securities.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes would incentivize liquidity providers to submit additional liquidity and enhance execution opportunities.

Step Up Tiers

The Exchange believes the proposal to adopt the new Step Up Tier 3 pricing tier is reasonable as it would serve as an incentive to market participants to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the proposed pricing tier is reasonable and equitable because it would allow ETP Holders to receive increased credits from those currently available under current Step Up Tier 2 and current Step Up Tier 1, the latter of which the Exchange proposes to eliminate with this proposed rule change. Moreover, the addition of the new Step Up Tier 3 pricing tier would benefit market participants whose increased order flow would provide meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. Further, the Exchange believes the proposed pricing tier is reasonable as it also provides ETP Holders two methods to qualify for the proposed credit. An ETP Holder can choose to either send only liquidity-providing orders or a combination of orders that Add liquidity and Remove liquidity and as long as the ETP Holder meets the prescribed requirement, the ETP Holder would qualify for the proposed new pricing tier and the corresponding credit.

The Exchange believes that the proposed rule change to eliminate the Step Up Tier 1 pricing tier is reasonable because the pricing tier has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. No ETP Holder has availed itself of the pricing tier in the last three months. The Exchange believes it is reasonable to eliminate requirements and credits, and

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tier that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are available to all ETP Holders on an equal basis. They also provide additional benefits or discounts that are reasonably related to the value of the Exchange's market quality and associated higher levels of market activity. Additionally, the Exchange is one of many venues and off-exchange venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based on members achieving certain volume thresholds.

Tape C Tiers

The Exchange believes the proposed change to lower the volume requirement under the Tape C Tier 3 is reasonable because it would allow ETP Holders to more easily meet the requirement of the pricing tier to receive per share credits payable under the pricing tier, thereby encouraging the submission of additional liquidity to a national securities exchange. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange believes the proposed lower volume requirement is also reasonable as it would provide an additional incentive for ETP Holders to qualify for this established tier and direct their order flow to the Exchange and provide meaningful added levels of displayed liquidity, thereby contributing to the depth and market quality on the Exchange. The Exchange also believes it is reasonable to offer a nominally lower credit to ETP Holders when they qualify for Tape C Tier because ETP Holders would correspondingly be subject to lower volume requirement to qualify for such credit.

The Exchange believes that the proposed rule change to eliminate the Tape C Tier 4 pricing tier is reasonable because the pricing tier has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. No ETP Holder has availed itself of the pricing tier in the last three months. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tier that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants.

Adding Tiers—Tier 2

The Exchange believes the proposed rule change to introduce a new pricing tier for ETP Holders equitably allocates its fees among its market participants. The Exchange believes the proposed new Tier 2 pricing tier is equitable because it is open to all similarly situated ETP Holders on an equal basis and provides a per share credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange believes it is equitable to require ETP Holders to meet the applicable volume thresholds to qualify for the new Tier 2 credits. The Exchange believes the proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The proposed change is designed as an incentive to any and all liquidity providers interested in meeting the tier criteria to submit order flow to the Exchange and each will receive the associated rebate if the tier criteria is met. The Exchange believes that the proposed new Tier 2 could encourage the submission and removal of additional liquidity from the Exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders would be eligible for the fees and credits provided under the proposed new pricing tier.

Step Up Tiers

The Exchange believes the proposed new Step Up Tier 3 pricing tier is equitable because it would allow ETP Holders to receive increased credits above those currently available under current Step Up Tier 2 and current Step Up Tier 1, the latter of which the Exchange proposes to eliminate with this proposed rule change. Moreover, the addition of the new Step Up Tier 3 pricing tier would benefit market participants whose increased order flow would provide meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. Given that Step Up Tier 3 would be a new pricing tier, no ETP Holder currently qualifies for the proposed credit. And without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for this tier. However, the Exchange believes the proposed volume requirements and the multiple ways by which an ETP Holder could qualify for the proposed pricing tier should provide an incentive for ETP Holders to submit orders that both provide liquidity and remove liquidity, which would promote price discovery and increase execution opportunities for all ETP Holders. The Exchange notes that the proposed new Step Up Tier 3 would use the same September 2019 baseline as the current Step Up Tier 3, renamed as Step Up Tier 2. The Exchange believes that utilizing the same baseline would make it easier for ETP Holders to monitor their providing ADV, as opposed to introducing a new baseline. The Exchange believes the proposed change would thereby encourage the submission of additional orders to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which would benefit all market participants on the Exchange.

The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the

Fee Schedule when such incentives become ineffective is equitable because the requirements, and credits, and even entire pricing tiers, would be eliminated in their entirety and would no longer be available to any ETP Holder. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Tape C Tiers

The Exchange believes that the proposed modification of the volume threshold to qualify for Tape C Tier 3 and the corresponding credit payable under the pricing tier represents an equitable allocation of fees. The Exchange believes the proposal would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants. The Exchange believes that lowering the requirement would make it easier for liquidity providers to qualify for the Tape C Tier 3 credit of $0.0030 per share. While the Exchange proposes to nominally lower the credit that would be payable under the pricing tier, the Exchange believes the proposed lower volume requirement would nonetheless encourage the submission of additional liquidity to the Exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for all ETP Holders.

The Exchange believes the proposed lower volume requirement should incentivize ETP Holders to submit liquidity-providing order flow, which would promote price discovery and increase execution opportunities for all ETP Holders. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular ETP Holder qualifying for the modified Tape C Tier 3, the Exchange anticipates a number of ETP Holders would be able to meet, or will reasonably be able to meet, the modified criteria. However, without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder meeting the modified requirement and qualifying for the modified Tape C Tier 3 rebate. As stated, the proposed changes to the requirements to qualify for the Tape C Tier 3 pricing tier and the corresponding credit is designed to continue to incentivize ETP Holders to submit additional liquidity in Tape C securities. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality.

The Exchange believes that the proposal represents an equitable allocation of fees and credits and is not unfairly discriminatory because it would apply uniformly to all ETP Holders, in that all ETP Holders will have the opportunity to meet the tier's criteria and receive the applicable rebate if such criteria is met. The proposed rebate would apply automatically and uniformly to all ETP Holders that achieve the corresponding criteria.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory.

Adding Tiers—Tier 2

The Exchange believes that the proposed rule change to introduce the new Tier 2 pricing tier is not unfairly discriminatory. The Exchange believes that the proposal does not permit unfair discrimination because the proposed new pricing tier would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirements under the proposed new tier. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits under the proposed new tier. The Exchange further believes that the proposed fee change would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are a number of ETP Holders who could qualify for proposed new tier if they chose to direct their order flow to the Exchange.

Step Up Tiers

The Exchange believes that the proposed new Step Up Tier 3 pricing tier is not unfairly discriminatory because it is open to all ETP Holders, on an equal basis, who meet the requirements to qualify for the tier. The proposal does not permit unfair discrimination because the proposed volume requirements to qualify for the new pricing tier would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees. The Exchange believes the proposed new pricing tier would also serve as an incentive to ETP Holders that do not currently meet the requirement of other pricing tiers on the Exchange to increase the level of orders sent directly to NYSE Arca in order to qualify for, and receive the credits associated with the proposed new Step Up Tier 3. The proposed new pricing tier would apply equally to all ETP Holders as each would be required to meet one of two volume requirements to qualify for the proposed credit associated with the proposed new pricing tier, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

The Exchange believes that eliminating requirements and credits associated with Step Up Tier 1 from the Fee Schedule when such incentives become ineffective is not unfairly discriminatory because the requirements and credits associated with the pricing tier would be eliminated in its entirety and would no longer be available to any ETP Holder. All ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Tape C Tiers

The Exchange believes it is not unfairly discriminatory to adopt lower volume requirements for ETP Holders to qualify for the Tape C Tier 3 pricing tier and a corresponding lower credit as the proposed change would apply on an equal basis to all ETP Holders. The proposal does not permit unfair discrimination because the lower threshold and the corresponding credit would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. The Exchange notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other tiers. The Exchange also believes that the proposed change is not unfairly

discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed modified volume requirement and corresponding credit would apply equally to all ETP Holders as each would be required to meet the revised criteria in order to receive the corresponding credit.

The Exchange believes that eliminating requirements and credits associated with Tape C Tier 4 from the Fee Schedule when such incentives become ineffective is not unfairly discriminatory because the requirements and credits associated with the pricing tier would be eliminated in its entirety and would no longer be available to any ETP Holder. All ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

* * * * *

In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied uniformly to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirements. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [15]

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange, in particular with respect to Tape C securities. The Exchange believes that the proposed adoption of new pricing tiers and amending criteria of established tiers would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The Exchange also does not believe the proposed rule change to eliminate underutilized pricing tiers will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[14] 15 U.S.C. 78f(b)(8).

[15] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

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–NYSEArca–2022–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2022–27. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2022–27, and should be submitted on or before June 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10802 Filed 5–19–22; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11744]

In the Matter of the Designation of Gama'a al-Islamiyya (and Other Aliases) as a Foreign Terrorist Organization

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the Gama'a al-Islamiyya (and other aliases) as a Foreign Terrorist Organization have changed in such a manner as to warrant revocation of the designation.

Therefore, I hereby determine that the designation of Gama'a al-Islamiyya (and other aliases) as a Foreign Terrorist Organization, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be revoked.

This determination shall be published in the **Federal Register**.

Authority: 8 U.S.C. 1189.

Dated: May 11, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10859 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 11743]

In the Matter of the Designation of Basque Fatherland and Liberty (and Other Aliases) as a Foreign Terrorist Organization

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the Basque Fatherland and Liberty (and other aliases) as a Foreign Terrorist Organization have changed in such a manner as to warrant revocation of the designation.

Therefore, I hereby determine that the designation of Basque Fatherland and Liberty (and other aliases) as a Foreign Terrorist Organization, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be revoked.

This determination shall be published in the **Federal Register**.

Authority: 8 U.S.C. 1189.

Dated: May 11, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10860 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11745]

In the Matter of the Designation of Kahane Chai (and Other Aliases) as a Foreign Terrorist Organization

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the Kahane Chai (and other aliases) as a Foreign Terrorist Organization have changed in such a manner as to warrant revocation of the designation.

Therefore, I hereby determine that the designation of Kahane Chai (and other aliases) as a Foreign Terrorist Organization, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be revoked.

This determination shall be published in the **Federal Register**.

Authority: 8 U.S.C. 1189.

Dated: May 11, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10828 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 11742]

In the Matter of the Designation of Aum Shinrikyo (and Other Aliases) as a Foreign Terrorist Organization

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the Aum Shinrikyo (and other aliases) as a Foreign Terrorist Organization have changed in such a manner as to warrant revocation of the designation.

Therefore, I hereby determine that the designation of Aum Shinrikyo (and other aliases) as a Foreign Terrorist Organization, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be revoked.

This determination shall be published in the **Federal Register**.

Authority: 8 U.S.C. 1189.

Dated: May 11, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10866 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11746]

In the Matter of the Designation of Mujahidin Shura Council in the Environs of Jerusalem (and Other Aliases) as a Foreign Terrorist Organization

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the Mujahidin Shura Council in the Environs of Jerusalem (and other aliases) as a Foreign Terrorist Organization have changed in such a manner as to warrant revocation of the designation.

Therefore, I hereby determine that the designation of Mujahidin Shura Council in the Environs of Jerusalem (and other aliases) as a Foreign Terrorist Organization, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be revoked.

This determination shall be published in the **Federal Register**.

Authority: 8 U.S.C. 1189.

Dated: May 11, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10826 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11747]

Determination and Certification of Countries Not Cooperating Fully With Antiterrorism Efforts

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and E.O. 13637, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts: Iran, Democratic People's Republic of Korea (DPRK, or North Korea), Syria, Venezuela, and Cuba. This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 11, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10829 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11741]

Review of the Designation as Foreign Terrorist Organizations of al-Qa'ida (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the bases for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: March 18, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10831 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 11740]

30-Day Notice of Proposed Information Collection: Electronic Diversity Visa Entry Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to June 21, 2022.

ADDRESSES:

- Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Tonya Whigham, Department of State, Bureau of Consular Affairs, Office of Visa Service at *PRA_BurdenComments@state.gov* or (202) 485–7586. You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence, as well as current contact information to allow us to respond.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Electronic Diversity Visa Entry Form.
- *OMB Control Number:* 1405–0153.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–5501.
- *Respondents:* Diversity Visa Entrants.
- *Estimated Number of Respondents:* 14,589,023.
- *Estimated Number of Responses:* 14,589,023.
- *Average Time per Response:* 35 minutes.
- *Total Estimated Burden Time:* 8,510,263 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Department of State utilizes the Electronic Diversity Visa (''EDV'') Entry Form to elicit information necessary to establish the eligibility of the applicant for the diversity immigrant visa program. The two primary requirements of the program are: (1) The applicant must be a native of a low admission country and (2) the applicant must have at least a high school education or its equivalent or, within five years of the date of application, two years of experience in an occupation that requires two years of training or experience. Individuals complete the electronic entry forms and then applications are randomly selected for further participation in the program. The Department of State's regulations pertaining to diversity immigrant visas are published in 22 CFR 42.33.

Methodology

The EDV Entry Form is available online at *https://dvprogram.state.gov* and can only be submitted electronically during the annual registration period.

Julie M. Stufft,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2022–10894 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 11731]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: The dates of notification to Congress are as shown on each of the 18 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtcpublic* and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (*22 U.S.C. 2776*) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in a timely manner. The following comprise recent such notifications and are published to give notice to the public.

January 4, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification authorizes the export of defense articles, including technical data, and defense services to India for aircraft engines, field service support, organizational, intermediate and depot level maintenance, and participation in the flight test program for F404–GE–IN20 and F404–GE–F2J3 aircraft engines.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–066.

January 4, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Kosovo of 5.56mm automatic carbine rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–052.

January 4, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Norway to support the assembly of F–35 Horizontal and Vertical Tail Edges onto completed structural boxes and application of Low Observable Coatings to the assembled Horizontal Tails, Vertical Tails, Seals, and Rudders of F–35 aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–060.

January 11, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and the UK to support the Australian C–17 aircraft fleet.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 20–066.

January 12, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia, Saudi Arabia, and the United Arab Emirates to support the preparation, shipment, delivery, inspection, acceptance, testing, and maintenance of Patriot Guidance Enhanced Missiles (GEM–T).

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–076.

January 24, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Thailand to support the training, maintenance, and logistics of AT–6 light attack aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–067.

January 24, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Chile to support the operational and intermediate maintenance support of F110 engines for F–16 aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–029.

January 31, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms parts and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Colombia of M60 machine gun major parts and 5.56mm rifle semi-automatic to automatic conversion kits.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–010.

February 1, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Italy, the UK, Switzerland, and the Czech Republic to support the development, modification, installation, integration, test, operation, and use of mechanical, avionics, environmental, and lighting systems for the C–27J aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–021.

February 2, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UAE, Saudi Arabia, and Australia to support the delivery, fielding, integration, inspection, maintenance, testing, training, refurbishment, and upgrade to Patriot Air Defense System Fire Units, equipment, and spares.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–041.

February 10, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Qatar of M4 5.56mm automatic rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–037.

March 2, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to France, Germany, and Italy to support the procurement and support of Joint Direct Attack Munition (JDAM), Laser Joint Direct Attack Munition (LJDAM), and Joint Direct Attack Munition Extended Range (JDAM–ER) weapons systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–056.

March 22, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Australia and the UK for the purpose of supplying signal exploitation system technologies in support the Maritime Information Warfare Program.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–026.

March 23, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Taiwan for the MK 41 Vertical Launching System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–053.

March 29, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Norway to support the manufacture of the M72 Shoulder Fired System and variants for sale abroad.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–036.

March 29, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Indonesia to support the integration, installation, operation, training, testing, maintenance, and repair of C–130J–30 aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–051.

March 30, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Israel to support the qualification, modification, test, repair, assembly, manufacture, and production of components and parts for integration into the Tamir Interceptor used in the Iron Dome system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–078.

March 30, 2022

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Republic of Korea to support the manufacturing and assembly of F100 engine parts and components.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–081.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2022–10921 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11748]

Revocation of the Designations of Mohad Moalim, Farah Mohamed Shirdon, Musa Abu Dawud, Aliaskhab Kebekov, Ibrahim al-Rubaysh, and Abu al-Wardah as-Syarqi (and Their Respective Aliases) as Specially Designated Global Terrorists

I hereby revoke the designations of the following persons as Specially Designated Global Terrorists, under E.O. 13224: Mohad Moalim, Farah Mohamed Shirdon, Musa Abu Dawud, Aliaskhab Kebekov, Ibrahim al-Rubaysh, and Abu al-Wardah as-Syarqi (and their respective aliases).

This determination shall be published in the **Federal Register**.

Dated: April 1, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–10825 Filed 5–19–22; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 853 (Sub–No. 4X)]

Kansas & Oklahoma Railroad, L.L.C.—Discontinuance of Service Exemption—in Crowley, Pueblo, Otero, and Kiowa Counties, Colo.

On April 21, 2022, Kansas & Oklahoma Railroad, L.L.C. (K&O), filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 121.9-mile railroad line (the Towner Line) between milepost 747.5 at Towner and milepost 869.4 near NA Junction, in Crowley, Pueblo, Otero, and Kiowa Counties, Colo.[1] The Towner Line traverses United States Postal Service Zip Codes 81022, 81025, 81062, 81033, 81063, 81076, 81050, 81021, 81045, 81036, and 81071.

According to K&O, the proposed discontinuance will allow it to end its common carrier rail service obligation over the Towner Line, consistent with the plans of the Towner Line's owner, Colorado Pacific Railroad, LLC (CXR), to commence operations. K&O states that the proposed discontinuance will therefore leave no Towner Line customer without access to railroad common carrier service, as any such customers would have service via CXR.

K&O states that, as a non-owner of the Line, it is unaware whether the Line contains federally granted rights-of-way. K&O also states that it will make any documentation that it may have concerning federally-granted rights-of-way available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 9, 2022.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. *See* 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by May 31, 2022, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

All filings in response to this notice must refer to Docket No. AB 853 (Sub–No. 4X) and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on K&O's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–2832. Replies to the petition are due on or before June 9, 2022.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

Board decisions and notices are available at *www.stb.gov.*

Decided: May 17, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2022–10909 Filed 5–19–22; 8:45 am]

BILLING CODE 4915–01–P

[1] K&O originally submitted its petition for exemption on April 8, 2022, but filed a supplement on April 21, 2022. Accordingly, April 21, 2022, will be considered the official filing date. Although, due to an inadvertent oversight related to the supplement, this notice will be published in the **Federal Register** more than 20 days after the petition was filed (*see* 49 CFR 1152.60(a)), there will be no prejudice to any person wishing to submit an expression of intent to file an offer of financial assistance (OFA), as the due date for such submissions will still be 10 days from publication. *See* 49 CFR 1152.27(c)(1)(i).

[2] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1305X]

North Coast Railroad Authority—Abandonment Exemption—in Mendocino, Trinity, and Humboldt Counties, Cal.

North Coast Railroad Authority (NCRA) [1] filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to abandon 175.84 miles of rail line extending between milepost 139.5, near Willits, and milepost 284.1, near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, milepost 300.5 near Samoa, and milepost 301.8 near Korbel, in Mendocino, Trinity and Humboldt Counties, Cal.[2] The line traverses the following U.S. Postal Service Zip Codes: 95429, 95595, 95454, 95542, 95560, 95559, 95553, 95571, 95569, 95565, 95562, 95540, 95551, 95537, 95564, 95524, 95521, 95519, 95525, 95521, 95524, 95501, 95503, 95526, 95514, 95511, and 95490.

NCRA has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic so none needs to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this abandonment, any employee of NCRA adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[3] the exemption will be effective on June 19, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues [4] must be filed by May 27, 2022; formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 31, 2022.[5] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 9, 2022.

All pleadings, referring to Docket No. AB 1305X, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading filed with the Board must be served on NCRA's representative, Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162nd Street, Seattle, WA 98177.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NCRA has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA issued a Draft Environmental Assessment (EA) on June 8, 2021, but that Draft EA has been rescinded. OEA will issue a Corrected Draft EA by May 25, 2022. The Corrected Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Corrected Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NCRA shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NCRA's filing of a notice of consummation by May 20, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.[6]

Board decisions and notices are available at *www.stb.gov.*

Decided: May 17, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2022–10876 Filed 5–19–22; 8:45 am]

BILLING CODE 4915–01–P

[1] NCRA notes that the State of California has changed NCRA's name to Great Redwood Trail Agency, effective March 1, 2022. (NCRA Letter 6, Jan. 10, 2022.)

[2] NCRA's verified notice describes the line sought to be abandoned as including the Arcata & Mad River subsidiary, between milepost 295.57, near Korblex, and milepost 301.8, near Korbel, a distance of approximately 6.23 miles. (Verified Notice 1 n.1.) The verified notice, however, expresses uncertainty about the Board's jurisdiction over the Arcata & Mad River subsidiary, (*id.* at 1 n.1 & Ex. B), and, by decision served on June 9, 2021, the Board held this proceeding in abeyance to permit consideration of that question. By decision served on May 17, 2022, the Board determined that abandonment of the Arcata & Mad River subsidiary had previously been consummated, removing that segment from the Board's jurisdiction. Therefore, the line that NCRA seeks to abandon is, hereinafter, defined to consist of 169.61 miles extending between milepost 139.5, near Willits and milepost 284.1, near Eureka, including appurtenant branch lines extending to milepost 267.72 near Carlotta, milepost 295.57 near Korblex, and milepost 300.5 near Samoa (the Line).

[3] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[4] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[5] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

[6] In a separate docket, NCRA filed a petition seeking exemptions from certain statutory provisions and waivers of certain regulatory requirements regarding a proposed third-party, or ''adverse,'' application for discontinuance of Northwestern Pacific Railway Company's operating rights over a portion of the Line, and the Board granted, in part, the petition for exemptions and waivers. *See N. Coast R.R.—Adverse Discontinuance of Lease & Operating Auth.—Nw. Pac. R.R.,* AB 1313 (STB served Mar. 4, 2022). NCRA may not consummate this abandonment until all operating authority on the Line has been terminated. *See, e.g., BNSF Ry.—Aban. Exemption—in Flathead Cnty., Mont.,* AB 6 (Sub–No. 495X) (STB served Aug. 14, 2017).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Leveraged Lending

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled ''Leveraged Lending.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by June 21, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0315, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0315'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On February 24, 2022, the OCC published a 60-day notice for this information collection, 87 FR 10428. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- Viewing Comments Electronically: Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0315'' or ''Leveraged Lending.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include Agency recommendations, requests, or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Leveraged Lending.

OMB Control No.: 1557–0315.

Description: On March 22, 2013, the agencies [1] issued guidance to the financial institutions they supervise [2] on how to evaluate and monitor credit risks in leveraged loans, understand the effect of changes in borrowers' enterprise values on credit portfolio quality, and assess the sensitivity of future credit losses to these changes in enterprise values.[3] In regard to the underwriting of such credits, the guidance provides information for financial institutions to consider in assessing whether borrowers have the ability to repay credits when due and whether borrowers have sustainable capital structures, including bank borrowings and other debt, to support their continued operations through economic cycles. The guidance also provides information to financial institutions on the risks and potential impact of stressful events and circumstances on a borrower's financial condition.

The final guidance recommends that financial institutions consider developing: (i) Underwriting policies for leveraged lending, including stress-testing procedures for leveraged credits; (ii) risk management policies, including stress-testing procedures for pipeline exposures; and (iii) policies and procedures for incorporating the results of leveraged credit and pipeline stress tests into the firm's overall stress-testing framework. Although they are not legal requirements, these recommended policies qualify as ''collections of information'' as defined in the PRA.

Respondents are financial institutions with leveraged lending activities, as defined in the guidance, that may develop policies recommended in the guidance.

Title: Guidance on Leveraged Lending.

OMB Control No.: 1557–0315.

Frequency of Response: Annual.

Affected Public: Financial institutions with leveraged lending.

Burden Estimates:

Estimated number of respondents: 1 to build; 29 for ongoing use.

Estimated total annual burden: 1,350.4 hours to build; 49,462 hours for ongoing use.

Total estimated annual burden: 50,812.4 hours.

The burden hours have been adjusted to remove the build burden for all but new institutions.

On February 24, 2022, the OCC published a 60-day notice for this information collection, 87 FR 10428. No comments were received. Comments continue to be requested on:

(a) Whether the information collection is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use

[1] OCC, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation.

[2] For the OCC, the term ''financial institution'' or ''institution'' includes national banks, Federal savings associations, and Federal branches and agencies supervised by the OCC.

[3] 78 FR 17766 (March 22, 2013).

of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–10939 Filed 5–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Recapture of Investment Credit

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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning recapture of investment credit.

DATES: Written comments should be received on or before July 19, 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, or by email to *omb.unit@irs.gov.* Include OMB control number 1545–0166 or Recapture of Investment Credit, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Recapture of Investment Credit.

OMB Number: 1545–0166.

Form Number: 4255.

Abstract: Internal Revenue Code section 50(a) requires that a taxpayer's income tax be increased by the investment credit recapture tax if the taxpayer disposes of investment credit property before the close of the recapture period used in figuring the original investment credit. Form 4255 provides for the computation of the recapture tax.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 1,320.

Estimated Time per Respondent: 9 hours, 49 minutes.

Estimated Total Annual Burden Hours: 12,949 hours.

The following paragraph applies to all 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 if 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: May 17, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–10843 Filed 5–19–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Office of Resolution Management, Diversity and Inclusion (ORMDI).

ACTION: Notice of a new system of records.

SUMMARY: Office of Resolution Management, Diversity and Inclusion (ORMDI) at the Department of Veterans Affairs (VA) is establishing a new System of Records, entitled Diversity and Equal Employment Opportunity (EEO) Program Records (203VA08), to manage and execute the Equal Employment Opportunity (EEO) Program, Harassment Prevention Program (HPP), Reasonable Accommodation/Personal Assistance Services (RA/PAS) Program, Reasonable Accommodation/Religious Observance, Practice or Belief (hereinafter ''Religious Beliefs'') Program, External Civil Rights Discrimination Program (ECP), and VA's Diversity and Inclusion programs, including building a model EEO program integrating Affirmative Employment, Special Emphasis, and Religious Accommodations.

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new System of Records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to the Diversity and Equal Employment Opportunity (EEO) Program Records (203VA08) system of records. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Privacy Officer, Office of Resolution Management, Diversity and Inclusion (ORMDI), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, email: *ormdiprivacy@va.gov.*

SUPPLEMENTARY INFORMATION: ORMDI is responsible for administering the

Harassment Prevention Program (HPP), Reasonable Accommodation/Personal Assistance Services (RA/PAS) Program, and VA's Diversity and Inclusion (D&I) Programs, including religious and other accommodations, Reasonable Accommodation/Religious Observance, Practice or Belief (hereinafter ''Religious Beliefs'') Program and External Civil Rights Discrimination Program (ECP) within VA. ORMDI is establishing the Diversity and Equal Employment Opportunity (EEO) Program Records system of records to manage and execute these programs at separate ORMDI District Offices and facilities located in various geographic areas.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on March 17, 2022 for publication.

Dated: May 17, 2022.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Diversity and Equal Employment Opportunity (EEO) Program Records—203VA08.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at VA field facilities and the Office of Resolution Management, Diversity and Inclusion (ORMDI), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. For addresses of VA field facilities, see Appendix I or *www.va.gov/find-locations*.

SYSTEM MANAGER(S):

Privacy Officer, Office of Resolution Management, Diversity and Inclusion (ORMDI), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, email: *ormdiprivacy@va.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

1. 5 U.S.C. 2301, note, *Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (NoFear), as amended by Elijah E. Cummings Federal Employee Antidiscrimination Act of 2020*.

2. 29 U.S.C. 621 *et seq., Age Discrimination in Employment*.

3. 29 U.S.C. 791 *et seq., Rehabilitation Act of 1973*.

4. 42 U.S.C. 1201 *et seq., Title 1 of the Americans with Disabilities Act (ADA) of 1990 and the ADA Amendments Act of 2008 (ADAA)*.

5. 42 U.S.C. 2000d, *Title VI, Civil Rights Act of 1964*.

6. 42 U.S.C. 2000e *et seq., Title VII, Civil Rights*.

7. 42 U.S.C. 2000e–16, *Employment by Federal Government*.

8. 42 U.S.C. 2000e(k), *Pregnancy Discrimination Act (PDA) of 1978*.

9. 42 U.S.C. 4151 *et seq., Architectural Barriers Act*.

10. 42 U.S.C. 6101 *et seq., Age Discrimination Act of 1964,* as amended.

11. 29 CFR 1604, *Guidelines on Discrimination Because of Sex*.

12. 29 CFR 1605, *Guidelines on Discrimination Because of Religion*.

13. 29 CFR 1611, *Privacy Act Regulations*.

14. 29 CFR 1614, *Federal Sector Equal Employment Opportunity*. 29 CFR 1630, *Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*.

15. 38 CFR part 15, *Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Veterans Affairs*.

16. 38 CFR part 18, *Nondiscrimination in Federally-Assisted Programs of the Department a of Veterans Affairs—Effectuation of Title VI of the Civil Rights Act of 1964*.38 CFR Part 18a, *Delegation of Responsibility in Connection with Title VI, Civil Rights Act of 1964*.

17. 38 CFR Part 18b, *Practice and Procedure under Title VI of the Civil Rights act of 1964 and Part 8 of This Chapter*.

PURPOSE(S) OF THE SYSTEM:

The Diversity and Equal Employment Opportunity (EEO) Program Records system is used by ORMDI and VA facilities located in various geographic areas to administer and manage the following programs: Harassment Prevention Program (HPP); Reasonable Accommodation/Personal Assistance Services (RA/PAS) Program; Religious Observance, Practice or Belief (hereinafter ''Religious Beliefs'') Program; External Civil Rights Discrimination Program (ECP); Diversity and Inclusion Program. This system does not duplicate any existing agency or government-wide system of records, even though some of the documents might also appear in other systems of records maintained for other purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former VA employees, applicants for employment, contractors, interns, volunteers, visitors, and non-departmental individuals (for example, Veterans Volunteers and Visitors) who participate in the RA/PAS process, RA/Religious Beliefs process, or the complaint and appeal processes established by Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, Title 38, Code of Federal Regulations, Chapter 1, Parts 15 and 18 and various Presidential Executive Orders, when the programs are under the jurisdiction of the VA, or request reasonable accommodations based on pregnancy (non-disability) or religion.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Full name, year of birth, race, color, religion/religious beliefs, sex (male, female, sexual orientation, gender identify, including, but not limited to transgender), disability information, national origin, disability, genetic information, educational information, home address and telephone number, work or alternate telephone number, organizational and private email addresses, mailing and contact information for representatives and requested witnesses.

2. Detailed information and evidence about the allegations and requested relief, including complaints; correspondence; notes; forms; supporting material; statements of witnesses; reports of interviews, records of investigations, fact finding reports; recommendations; final decisions; request for reconsideration, reconsideration decisions.

3. HPP records, such as management notification; investigator's and coordinator's findings; determinations as to whether harassment occurred; preventive or corrective action taken; related correspondence; exhibits; and written follow up documents.

4. RA/PAS records, such as the type of accommodation; how the accommodation will assist the applicant or employee in performing the essential functions of the job; whether the request was granted as requested, an alternate accommodation was offered, or the request was denied; if denied, the reason for denial; detailed information and evidence including medical documentation provided by health care providers, such as limitation, diagnosis,

prognosis, type of accommodation, nature of the disability, the need for accommodation; request for reconsideration; reconsideration decisions; correspondence; notes; forms; and supporting material.

5. ECP records, including notification to the facility; investigator findings; preventative or corrective action taken; written follow up documents.

6. D&I Program records, such as type of accommodation; why the accommodation is necessary, whether the request was granted as requested, an alternate accommodation was offered, or the request was denied; if denied, the reason for denial.

Note that if an individual's records in this system are used for a different purpose, those documents will be covered by the system of records governing that program and subject to the routine uses and other provisions of that system.

RECORD SOURCE CATEGORIES:

Current and former VA Federal employees or applicants for VA employment, representatives, Veterans, VA Administrations/Facilities, participants in the RA/PAS, RA Religious Beliefs, or other accommodations processes, participants in the complaint and appeal processes established by Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, Title 38, Code of Federal Regulations, Chapter 1, Parts 15 and 18 and various Presidential Executive Orders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation for VA:* VA may disclose information to appropriate agencies, entities, and persons when:

- VA suspects or has confirmed that there has been a breach of the system of records.
- VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security.
- the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

3. *Data breach response and remediation for another Federal agency:* VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

- Responding to a suspected or confirmed breach, or
- preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law.

5. *DoJ for Litigation or Administrative Proceeding:* VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof

(b) Any VA employee in his or her official capacity

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee, or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components

is a party to such proceedings or has an interest in such proceedings and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *OPM:* VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations or OPM guidelines in particular situations.

8. *EEOC:* VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs or other functions of the Commission as authorized by law.

9. *FLRA:* VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with:

- The investigation and resolution of allegations of unfair labor practices.
- the resolution of exceptions to arbitration awards when a question of material fact is raised.
- matters before the Federal Service Impasses Panel, and
- the investigation of representation petitions and the conduct or supervision of representation elections.

10. *MSPB:* VA may disclose information to the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *NARA:* VA may disclose information to the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. *OMB:* VA may disclose information to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

13. *Former Employee or Contractor, Legal Representatives:* VA may disclose information to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with matters before the EEOC, FLRA, or MSPB, or in litigation.

14. *Witnesses.* VA may disclose information to potential witnesses as appropriate and necessary to perform the agency's functions under 42 U.S.C. 2000d, 29 CFR 1614, 29 CFR 1630, Sections 501, 504, and 505 of the Rehabilitation Act of 1973, 45 CFR Subpart D § 86.31, and 42 U.S.C. 6101–6107.

15. *Sources of Information.* VA may disclose information as necessary to any source from which additional information is requested in the course of processing a complaint or report of harassment.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Diversity and Equal Employment Opportunity (EEO) Program Records are maintained on paper and electronically at VA facilities by supervisors, management officials, local reasonable accommodation coordinators, and other designated VA staff. Electronic records are also maintained in: Equal Employment Opportunity EcoSystem (EEOE), designated as E-Squared (E^2), a comprehensive and secure repository for electronic records management to facilitate identification, retrieval, maintenance, routine destruction, report generation and compliance management; and Light Electronic Action Framework (LEAF), a technology and framework for rapid implementation and deployment of projects that require secure records management, including identification, retrieval, maintenance, routine destruction, report generation, policy compliance, and document routing to create a culture of transparency and accountability.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Names of individuals alleging discrimination, harassment, or reprisal or requesting RA/PAS or other reasonable accommodations. Case/tracking numbers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedule 2.3: Employee Relations Records, but longer retention is authorized for business use.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Technical controls include secure encryption using VA Personal Identity Verification (PIV) credential procedures, role-based authentication, firewalls, and virtual private networks which protect the data in transit and during storage. Physical and electronic access is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Administrative safeguards include mandatory annual information security training for all users on the responsibility each person has for safeguarding and protecting data confidentiality.

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name in this system must submit a written request to the Privacy Officer of the VA facility where the underlying incident or issue occurred.

CONTESTING RECORD PROCEDURES:

(See Records Access Procedures above.)

NOTIFICATION PROCEDURES:

Individuals seeking information concerning the existence and content of a record pertaining to themselves must submit a written request to or apply in person before the Privacy Officer of the VA facility where the underlying incident or issue occurred. Written requests should be signed and contain the individual's full name, mailing address, email address, telephone number, and the case number or case title.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2022–10848 Filed 5–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, ''Administrator's Official Correspondence Records-VA'' (75VA001B). VA is amending the system by updating its name, and revising the routine uses of records maintained in the system, including categories of users and the purposes of such uses. VA is republishing the system notice in its entirety. The aforementioned system of records is hereby retitled ''Case and Correspondence Management (CCM)-VA'' (75VA001B).

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Case and Correspondence Management (CCM)'' (75VA001B). Comments received will be available at *regulations.gov* for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Carrie McVicker, Executive Secretary, Office of the Executive Secretary, Office of the Secretary, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–4861, *carrie.mcvicker@va.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the System of Records

This system of records, now known as ''Case and Correspondence Management (CCM),'' is the Secretary's official correspondence record, and includes the name, address and other identifying information pertaining to the correspondent, as well as background information concerning matters which the correspondent has brought to the Department's attention. The system of records also contains documents generated within VA that may contain the names, addresses and other identifying information of individuals who conduct business with VA, as well as material received, background information compiled and/or response sent.

II. Proposed Routine Use Disclosures of Data in the System

VA is rewriting existing routine uses in the system using plain language. The use of plain language in these routine uses does not, and is not intended to, change the disclosures authorized under these routine uses. VA is amending, deleting, rewriting and reorganizing the order of the routine uses in this system of records, as well as adding new routine uses. Accordingly, the following changes are made to the current routine uses and are incorporated in the amended system of records notice.

Current routine use number 1 is amended for clarity to reflect VA's authorization to disclose individually identifiable information to Members of Congress, or a staff person acting for the Member, when the Member or staff person requests the records on behalf of and at the written request of the individual.

Current routine use number 2 is deleted in its entirety and the information contained therein is clarified with the addition of routine use number 11.

New routine use number 2 addresses disclosure of information by VA to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

Current routine use number 3 is deleted in its entirety and the information contained therein is clarified with the addition of routine use 5.

New routine use number 3 addresses disclosure by VA to another Federal agency or Federal entity, when VA determines that the information is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Current routine use number 4 is deleted in its entirety and the information contained therein is clarified with the addition of routine use number 6.

New routine use number 4 addresses disclosure by VA of information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

Current routine use number 5 is deleted in its entirety and the information contained therein is clarified with the addition of routine use number 4.

New routine use number 5 addresses disclosure by VA to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

Current routine use number 6 is deleted in its entirety.

New routine use number 6 addresses disclosure by VA to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

Current routine use number 7 is deleted in its entirety and the information contained therein is clarified with the addition of routine use number 2 and 3.

New routine use number 7 addresses disclosure by VA to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

New routine use number 8 addresses disclosure of information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

New routine use number 9 addresses disclosure of information to the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices; the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

New routine use number 10 addresses disclosure of information to the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

New routine use number 11 addresses disclosure of information to the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

III. Compatibility of the Proposed Routine Uses

Release of information from these records, pursuant to routine uses, will be made only in accordance with the Privacy Act of 1974. The Privacy Act of 1974 permits agencies to disclose information about individuals, without their consent, for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information was collected. VA has determined that the disclosure of information for the above-stated purposes in the proposed amendment to routine uses is a proper and necessary use of the information collected by the electronic document tracking system and is compatible with the purpose for which VA collected the information.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on April 5, 2022 for publication.

Dated: May 17, 2022.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Case and Correspondence Management (CCM)-VA (75VA001B)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Paper records are maintained in the Office of the Executive Secretary (001B), Office of the Secretary, Department of Veterans Affairs (VA) Central Office (VACO), 810 Vermont Avenue NW, Washington, DC 20420. Records are also maintained in VIEWS. Copies of some documents may be located in other offices throughout VACO and occasionally at field facilities, such as the Veterans Health Administration VA medical centers and Veterans Integrated Service Network offices; Veterans Benefits Administration regional offices and Area Offices; National Cemetery Administration national cemeteries and Memorial Service Network offices. Address locations for VA field facilities are listed in Appendix 1 of the biennial publication of the VA Privacy Act Issuances.

SYSTEM MANAGER(S):

Carrie McVicker, Executive Secretary, Office of the Executive Secretary (001B), Office of the Secretary, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *carrie.mcvicker@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to permit VA to identify and respond to individuals and/or organizations who have submitted correspondence or documents to VA. The system of records also contains documents generated within VA that may contain the names, addresses and other identifying information of individuals who conduct business with VA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who voluntarily provide personal contact information when submitting correspondence or other documents to the Department, including, but not limited to: Members of Congress and their staff, officials and representatives of other Federal agencies, State, local and tribal governments, foreign governments, and veterans service organizations; representatives of private or commercial entities; veterans and other VA beneficiaries; VA employees; and other individuals who correspond with the VA Secretary and Deputy Secretary and other VA officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, postal address, email address, phone and fax numbers of individuals corresponding with the Department, the name of the organization or individual being represented, as well as supporting documents.

RECORD SOURCE CATEGORIES:

Records in this system are derived from processing replies to correspondence, and other inquiries that originate from Members of Congress; other Federal agencies; State, local and tribal governments; foreign governments, veterans service organizations; representatives of private or commercial entities; veterans and their beneficiaries; VA employees; and other individuals who correspond with VA or one of its components. Records maintained include material received, background information compiled and/or response sent.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation, for VA:* To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remediation, for another Federal agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *DoJ for Litigation or Administrative Proceeding:* To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *OPM:* To the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. EEOC: To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *FLRA:* To the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *MSPB:* To the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *NARA:* To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper in the Office of the Executive Secretary (001B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Records are also maintained electronically in VIEWS.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved using name, claim file number, social security number, date of birth, and other unique identifiers belonging to the individual to whom the information pertains.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, Records Schedule Number DAA–0015–2018–0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Hard copy records are maintained in a controlled facility, where physical entry is restricted by the use of locks, guards, and/or administrative procedures. Records are also maintained in VIEWS. Access to records is limited to those employees who require the records to perform their official duties consistent with the purpose for which the information was collected. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

74 FR 30361 (June 25, 2009).

[FR Doc. 2022–10844 Filed 5–19–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–XXXX]

Agency Information Collection Activity: Statement of a Person Claiming Loan Fee Refund Due a Deceased Veteran, Service Member, or Surviving Spouse

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–XXXX.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–XXXX'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3729(c).

Title: Statement of a Person Claiming Loan Fee Refund Due a Deceased Veteran, Service Member, or Surviving Spouse, VA FORM 26–10280 and VA FORM 26–10280a.

OMB Control Number: 2900–XXXX.

Type of Review: New Collection.

Abstract: This information collection will be used by VA to determine whether a refund owed to a Veteran may be remitted to another individual, including the Veteran's spouse, the executor or administrator of the Veteran's estate, or another individual with a relationship to the Veteran. The information collected is necessary for VA to ensure that it is releasing the refund to an appropriate individual who will disburse the refund according to the laws of the state where the Veteran was a legal resident (*e.g.,* estate laws).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at insert citation date: 87 FR 14619 on March 15, 2022, page 14619.

Affected Public: Individuals and households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–10901 Filed 5–19–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 175, 176, 177, et al.

Natural Resources Defense Council, et al.; Denial of Food Additive Petition; Denial Without Prejudice of Food Additive Petition; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175, 176, 177, and 178

[Docket No. FDA–2016–F–1253]

Natural Resources Defense Council, et al.; Denial of Food Additive Petition; Denial Without Prejudice of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; denial of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is denying a food additive petition (FAP 6B4815) submitted by Natural Resources Defense Council, et al., requesting that we amend or revoke specified regulations to no longer provide for the food contact use of 28 *ortho*-phthalates. (We use the terms ''phthalates'' and ''*ortho*-phthalates'' interchangeably in this notification to refer to the subset of phthalates substituted in the ''*ortho*'' position).

DATES: This notification is applicable May 20, 2022, except as to any provisions that may be stayed by the filing of proper objections. Submit either electronic or written objections and requests for a hearing on the document June 21, 2022. See Section V for further information on the filing of objections.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before June 21, 2022. The *https://www.regulations.gov* electronic filing system will accept objections until 11:59 p.m. Eastern Time at the end of June 21, 2022. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov*.

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, 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–2016–F–1253 for ''Natural Resources Defense Council, et al.; Denial of Food Additive Petition; Denial Without Prejudice of Food Additive Petition.'' Received objections, 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jessica Urbelis, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–5187; or Meadow Platt, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** on May 20, 2016 (81 FR 31877), we announced that we filed a food additive petition (FAP 6B4815) (petition) submitted by Breast Cancer Fund (now Breast Cancer Prevention Partners), Center for Environmental Health, Center for Food Safety, Center for Science in the Public Interest, Clean Water Action, Consumer Federation of America, Earthjustice, Environmental Defense Fund, Improving Kids' Environment, Learning Disabilities Association of America, and Natural Resources Defense Council, c/o Mr. Thomas Neltner, 1875 Connecticut Ave. NW, Suite 600, Washington, DC 20009. In the May 2016 notice, FDA requested comments on the petition.

The petitioners initially requested that we amend or revoke specified food additive regulations under 21 CFR parts 175, 176, 177, and 178, to no longer provide for the food contact uses of 30 substances that the petition identified as *ortho*-phthalates. We filed this portion of the submission as a food additive

petition (81 FR 31877 at 31878). In addition, the petitioners requested that FDA amend regulations in 21 CFR part 181 related to prior-sanctioned uses of five *ortho*-phthalates and issue a new regulation in 21 CFR part 189 prohibiting the use of eight specific *ortho*-phthalates in food contact articles. We declined to file these portions of the submission as a food additive petition because those requests were not within the scope of a food additive petition (81 FR 31877 at 31878). Consequently, those portions of the petition are not the subject of this notice.

Following our May 20, 2016, announcement that we had filed the food additive petition, the petitioners provided supplementary information on October 8, 2016, and August 24, 2017 (Supp., October 8, 2016, and Supp., August 24, 2017, respectively). Included in the October 8, 2016, response, the petitioners also requested that FDA remove two substances (diphenylguanidine phthalate (CAS Reg No. 17573–13–6) and di(2-ethylhexyl) hexahydrophthalate (CAS Reg No. 84–71–9)) from the petitioners' original list of 30 substances, stating that they are not *ortho*-phthalates (Supp., October 8, 2016). Consequently, the subject of the petition is limited to food additive regulations for 28 *ortho*-phthalates.

The 28 subject *ortho*-phthalates are regulated as food additives under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act authorizes us to regulate ''food additives'' (see section 409(a) of the FD&C Act (21 U.S.C. 348(a))). The FD&C Act defines ''food additive,'' in relevant part, as any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of food or otherwise affecting the characteristics of any food (see section 201(s) of the FD&C Act (21 U.S.C. 321(s))). Food additives can include both substances added directly to food and indirectly and can also include ''food contact substances.'' ''Food contact substances'' are substances intended for use in materials that come into contact with food, for instance in food packaging or manufacturing, but which are not intended to have any technical effect in the food (see § 170.3(e)(3) (21 CFR 170.3(e)(3))). Food additives are deemed unsafe and prohibited except to the extent that we permit their use (see, *e.g.,* sections 301(a), 301(k), and 409(a) of the FD&C Act (21 U.S.C. 331(a), 331(k), and 348(a))). The FD&C Act provides a process through which persons who wish to use a food additive may submit a petition proposing the issuance of a regulation prescribing the conditions under which the additive may be safely used (see section 409(b)(1) of the FD&C Act). Such a petition is referred to as a ''food additive petition.''

Under section 409(c)(3) of the FD&C Act, we will not establish a regulation for the use of a food additive if a fair evaluation of the data fails to establish that the proposed use of the food additive, under the conditions of use to be specified in the regulation, will be safe. Any food additive regulation that we issue authorizes a specific use of the substance. Our regulations, at § 170.3(i), define safety as a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.

The FD&C Act provides that we must, by regulation, prescribe the procedure by which a food additive regulation may be amended or repealed (see section 409(i) of the FD&C Act). Our regulation specific to the administrative actions for food additives provides that the Commissioner of Food and Drugs, on his own initiative or on the petition of any interested person, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive (see § 171.130(a) (21 CFR 171.130(a))). ''When a food additive petition seeks to amend an existing regulation, the petitioner must include 'full information on each proposed change' '' (*In re Natural Resources Defense Council,* 645 F.3d 400, 403 (D.C. Cir. 2011) (quoting § 171.1 (21 CFR 171.1))). Our regulation, at § 171.130(b), further provides that any such petition must include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal. Under § 171.1(c), a petition must include full reports of investigations made with respect to the safety of the food additive. With respect to the showing that is required, a petition that seeks to amend or repeal existing regulations based on safety must contain sufficient data to establish the existence of safety questions significant enough to support a finding that there is no longer a reasonable certainty of no harm from the currently approved uses (see generally section 409(c) of the FD&C Act) (describing the data requirements) and §§ 171.1 through 171.130 (food additive petition regulations)). Should FDA determine that there is sufficient data to raise safety concerns, FDA ensures that these concerns are addressed or that substances are no longer used as food additives. The FD&C Act makes clear that food additives introduced into commerce must be shown to be safe (see generally sections 402 (21 U.S.C. 342) and 409 of the FD&C Act). If FDA determines that a food additive is no longer safe, FDA will revoke the approval or otherwise ensure that the food additive is no longer in use.

The petitioners requested that FDA amend parts 175, 176, 177, and 178 to no longer provide for the food contact use of 28 specified *ortho*-phthalates. The *ortho*-phthalates and corresponding regulations in parts 175, 176, 177, and 178 are as follows:

21 CFR 175.105 Adhesives

Butyl benzyl phthalate (Chemical Abstract Service (CAS) No. 85–68–7), Butyl decyl phthalate (CAS No. 89–19–0), Butyl octyl phthalate (CAS No. 84–78–6), Butyl phthalyl butyl glycolate (CAS No. 85–70–1), Di(butoxyethyl) phthalate (CAS No. 117–83–9), Dibutyl phthalate (CAS No. 84–74–2), Dicyclohexyl phthalate (CAS No. 84–61–7), Di(2-ethylhexyl) phthalate (CAS No. 117–81–7), Diethyl phthalate (CAS No. 84–66–2), Dihexyl phthalate (CAS No. 84–75–3), Dihydroabietyl phthalate (CAS No. 26760–71–4), Diisobutyl phthalate (CAS No. 84–69–5), Diisodecyl phthalate (CAS No. 26761–40–0), Diisooctyl phthalate (CAS No. 27554–26–3), Dimethyl phthalate (CAS No. 131–11–3), Dioctyl phthalate (CAS No. 117–84–0), Diphenyl phthalate (CAS No. 84–62–8), Ethyl phthalyl ethyl glycolate (CAS No. 84–72–0), Methyl phthalyl ethyl glycolate (CAS No. 85–71–2), Octyl decyl phthalate (CAS No. 119–07–3), and Diallyl phthalate (CAS No. 131–17–9).

21 CFR 175.300 Resinous and Polymeric Coatings

Dibutyl phthalate (CAS No. 84–74–2), Diethyl phthalate (CAS No. 84–66–2), Diisooctyl phthalate (CAS No. 27554–26–3), Di(2-ethylhexyl) phthalate (CAS No. 117–81–7), Diisodecyl phthalate (CAS No. 26761–40–0), Butyl phthalyl butyl glycolate (CAS No. 85–70–1), and Ethyl phthalyl ethyl glycolate (CAS No. 84–72–0).

21 CFR 175.320 Resinous and Polymeric Coatings for Polyolefin Films

Butyl phthalyl butyl glycolate (CAS No. 85–70–1), Diethyl phthalate (CAS No. 84–66–2), and Ethyl phthalyl ethyl glycolate (CAS No. 84–72–0).

21 CFR 176.170 Components of Paper and Paperboard in Contact With Aqueous and Fatty Foods

Butyl benzyl phthalate (CAS No. 85–68–7), Dibutyl phthalate (CAS No. 84–74–2), Dicyclohexyl phthalate (CAS No. 84–61–7), and Diallyl phthalate (CAS No. 131–17–9).

21 CFR 176.180 Components of Paper and Paperboard in Contact With Dry Food

Butyl benzyl phthalate (CAS No. 85–68–7) and Diallyl phthalate (CAS No. 131–17–9).

21 CFR 176.210 Defoaming Agents Used in the Manufacture of Paper and Paperboard

Di(2-ethylhexyl) phthalate (CAS No. 117–81–7).

21 CFR 176.300 Slimicides

Dibutyl phthalate (CAS No. 84–74–2), Didecyl phthalate (CAS No. 84–77–5), and Dodecyl phthalate (CAS No. 21577–80–0).

21 CFR 177.1010 Acrylic and Modified Acrylic Plastics, Semirigid and Rigid

Di(2-ethylhexyl) phthalate (CAS No. 117–81–7) and Dimethyl phthalate (CAS No. 131–11–3).

21 CFR 177.1200 Cellophane

Castor oil phthalate with adipic acid and fumaric acid diethylene glycol polyester (CAS No. 68650–73–7), Castor oil phthalate, hydrogenated (FDA No. 977037–59–4), Dibutyl phthalate (CAS No. 84–74–2), Dicyclohexyl phthalate (CAS No. 84–61–7), Di(2-ethylhexyl) phthalate (CAS No. 117–81–7), Diisobutyl phthalate (CAS No. 84–69–5), and Dimethylcyclohexyl phthalate (CAS No. 1322–94–7).

21 CFR 177.1210 Closures With Sealing Gaskets for Food Containers

Diisodecyl phthalate (CAS No. 26761–40–0).

21 CFR 177.1460 Melamine-Formaldehyde Resins In Molded Articles

Dioctyl phthalate (CAS No. 117–84–0).

21 CFR 177.1590 Polyester Elastomers

Dimethyl phthalate (CAS No. 131–11–3).

21 CFR 177.2420 Polyester Resins, Cross-Linked

Butyl benzyl phthalate (CAS No. 85–68–7), Dibutyl phthalate (CAS No. 84–74–2), and Dimethyl phthalate (CAS No. 131–11–3).

21 CFR 177.2600 Rubber Articles Intended for Repeated Use

Amyl decyl phthalate (CAS No. 7493–81–4), Dibutyl phthalate (CAS No. 84–74–2), Didecyl phthalate (CAS No. 84–77–5), Diisodecyl phthalate (CAS No. 26761–40–0), Dioctyl phthalate (CAS No. 117–84–0), and Octyl decyl phthalate (CAS No. 119–07–3).

21 CFR 178.3740 Plasticizers in Polymeric Substances

Butyl benzyl phthalate (CAS No. 85–68–7), Dicyclohexyl phthalate (CAS No. 84–61–7), Diisononyl phthalate (CAS No. 28553–12–0), Dihexyl phthalate (CAS No. 84–75–3), and Diphenyl phthalate (CAS No. 84–62–8).

21 CFR 178.3910 Surface Lubricants Used in the Manufacture of Metallic Articles

Diisodecyl phthalate (CAS No. 26761–40–0), Di(2-ethylhexyl) phthalate (CAS No. 117–81–7), and Diethyl phthalate (CAS No. 84–66–2).

II. Evaluation of the Information Contained in the Petition

The petition concludes that the authorized food contact uses for the 28 specified *ortho*-phthalates no longer meet the safety standard of ''reasonable certainty of no harm'' and, therefore, the *ortho*-phthalates should no longer be authorized under the existing regulations.

The petition is premised on three distinct assertions (which for ease of reference we refer to as Assertions A, B, and C). Assertion A claims that the 28 subject *ortho*-phthalates are chemically and pharmacologically related and should therefore be treated as a class for purposes of evaluating their safety. Under Assertion B, the petition proposes applying a purported acceptable daily intake (ADI) for di(2-ethylhexyl) phthalate (DEHP) to all 28 *ortho*-phthalates that are the subject of the petition (*i.e.,* the petition proposes applying the proposed ADI to the entire purported class). Assertion C states that the estimated daily intake (EDI) for the asserted class of *ortho*-phthalates significantly exceeds the proposed ADI, thus rendering the purported class unsafe for their use as food contact substances.

We address each assertion in turn.

A. Assertion A: Ortho-Phthalates Are a Class of Chemically and Pharmacologically Related Substances for Purposes of Determining Safety Pursuant to Section 409 of the FD&C Act and § 170.18 (21 CFR 170.18)

The petition asserts that all 28 phthalates have similar chemical structures and similar or related pharmacological effects sufficient to be treated as one class of compounds for the purposes of evaluating the safety of these compounds. The petition states that such an approach would be consistent with section 409(c)(5)(B) of the FD&C Act, which directs FDA to consider, among other factors, the cumulative effect of an additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet, and § 170.18(a), which states that food additives that cause similar or related pharmacological effects will be regarded as a class, and in the absence of evidence to the contrary, as having additive toxic effects and will be considered as related food additives.

1. Information Provided in the Petition To Support the 28 *Ortho*-Phthalates as Chemically Related Substances

The primary document the petition relies on to support the proposed grouping of the 28 *ortho*-phthalates as chemically related substances is the Organization for Economic Co-operation and Development (OECD) guidance on Grouping Chemicals (Ref. 1). The petition states that the OECD guidance lists five underpinning rationales in the category approach and asserts that the 28 *ortho*-phthalates ''meet'' two of the five rationales: (i) The common functional group rationale, and (iv) the likelihood of common precursors and/or breakdown products via physical or biological processes that result in structurally similar chemicals rationale.

While we note that the OECD guidance does not establish criteria for chemical grouping (rather, it provides guidance on how to ensure that any chemical categories selected are sufficiently robust), in the discussion that follows we nevertheless address each of the OECD rationales adopted by the petition.

2. FDA's Evaluation of the Information Provided To Support the 28 *Ortho*-Phthalates as Chemically Related Substances

In support of the assertion that the 28 *ortho*-phthalates ''meet'' rationale (i) of the OECD guidance (*i.e.,* share a common functional group), the petition states that all 28 phthalates share a general 1,2-benzene diester chemical structural framework comprised of a benzene ring with two ester functional groups attached at adjacent carbons (referred to as *ortho* positions). A functional group is a part of an organic molecule that gives the molecule its characteristic physical and chemical

properties. The physical-chemical properties are one of many factors that may determine the toxicity of a substance for one or more given endpoints. Contrary to the petition's assertion that there is a similar structural framework shared by all 28 *ortho*-phthalates, we reviewed the chemical structures of the phthalates provided by the petitioner and determined that four of the 28 phthalates do not contain the framework described by the petition (*i.e.,* do not contain the framework of sharing a general 1,2-benzene diester chemical structural framework comprised of a benzene ring with two ester functional groups attached at adjacent carbons). Specifically, two compounds, dimethylcyclohexyl phthalate and dodecyl phthalate, contain only one ester side chain and are, therefore, considered mono- (not di-) esters of 1,2-benzenedicarboxylic acid and cannot be classified as *ortho*-phthalates. Two other phthalates (castor oil phthalate, hydrogenated and castor oil phthalate with adipic acid and fumaric acid-diethylene glycol) are polymeric in nature and, therefore, have many possible chemical structures (Ref. 3). Thus, the shared structural framework described in the petition is not, in fact, shared by these four *ortho*-phthalates.

In addition, the petition does not address the structural differences in the ester side chains across the 28 phthalates. Structural differences across substances may impact whether they share characteristic physical and chemical properties (*i.e.,* whether they possess a ''common functional group'' for the purposes of risk assessment). It is not appropriate to group substances into a class for the purposes of risk assessment based merely on the assertion that they have a common functional group. Rather, the common functional group rationale should be supported with a discussion of any structural variations within that common functional group definition and an explanation of why the chemical-structural differences between members would not impact the suitability of the category for risk assessment. Notably, OECD guidelines state that when structural variations across a category impact functionality, inclusion of such variances in a category should be limited (Ref. 1). Across the 28 phthalates, the number of carbon atoms in the ester side chains vary from one carbon atom (*e.g.,* dimethyl phthalate (DMP)) to as many as 10 carbon atoms (*e.g.,* diisodecyl phthalate (DIDP)). The ester side chains also differ by consisting of either branched or linear carbon chains, and varying degrees of saturation and oxidation (Ref. 3). Indeed, the chemical-structural differences of the side chains among the *ortho*-phthalates are associated with differences in physical-chemical properties (*e.g.,* volatility). For example, phthalates with ester side chains with more than eight carbon atoms are generally less volatile than phthalates with ester side chains with eight or fewer carbon atoms. Also, phthalates that contain straight ester side chains are generally less volatile than their branched-chain counterparts. The petition does not discuss these structural differences nor does the petition discuss whether structural variances across substances would still allow for those substances to be grouped with a ''common functional group'' for the purposes of a risk assessment. The petition, therefore, does not provide adequate evidence to demonstrate that the asserted shared structural similarity (*i.e.,* a benzene ring attached to two ester functional groups) is sufficient to group the 28 substances into a single class.

The petition also cites FDA's previous evaluation of long-chain perfluorinated compounds (PFCs) in support of utilizing the rationale of a common functional group to constitute the 28 phthalates as a class of chemically related substances. FDA's evaluation of long-chain PFCs was limited to a set of compounds with very specific structural similarities in their designated common functional group. Due to the structural similarity, and in the absence of contrary data, FDA determined that data demonstrating reproductive developmental toxicity for some long-chain PFCs was applicable to the three long-chain PFCs under evaluation (81 FR 5 at 7, January 4, 2016). Across the three compounds at issue in FDA's action on long-chain PFCs, the only variance in the common functional group was the number of carbons in the linear perfluorinated alkyl chain. This contrasts with the 28 *ortho*-phthalates that are the subject of the current petition, where there are significant structural differences, and these differences result in large differences in chemical-structural properties (Refs. 3 and 4). The classification of the subject *ortho*-phthalates as chemically related would not be akin to FDA's previous evaluation of long-chain PFCs.

With respect to the petition's assertion that the *ortho*-phthalates subject to the petition ''meet'' rationale (iv) of the OECD guidance (*i.e.,* share common precursors and/or breakdown products via physical or biological processes that result in structurally similar chemicals), the petition asserts that the *ortho*-phthalates share common metabolites and a common metabolic pathway (petition at 4).

We address the assertion of common metabolites first. The petition provides a list of 10 *ortho*-phthalates and their metabolites to support the claim that there are common metabolites (Supp., August 24, 2017, at 3–4). However, the data provided in the petition only demonstrate one common metabolite shared by only two parent phthalates (Ref. 4). As the petitioners were only able to provide metabolic data pertaining to 10 of the 28 phthalates, and that data does not support that these 10 *ortho*-phthalates share common metabolites, this information does not support common metabolites for the other 18 phthalates or the group of 28 phthalates as a whole.

In addition, the petition discusses a common metabolic pathway as support for the assertion that the subject 28 *ortho*-phthalates ''meet'' rationale (iv) of the OECD guidance. We note that rationale (iv) is not based on identification of shared steps in a metabolic pathway as described in the petition. Rather, the OECD guidance explains that this rationale is based on the applicability of data from a parent chemical to identify the hazards of its metabolites (or vice versa). The data between parent chemical and metabolite may be related because the toxicity induced by treatment with the parent chemical is likely due to the exposure to the metabolite(s). Likewise, under OECD rationale (iv), several different parent chemicals and their metabolite(s) could be considered as one class if a common metabolite is formed from these parent chemicals. Therefore, the assertion of a common metabolic pathway, without supporting information indicating that this pathway results in common metabolites, is not consistent with the approach to grouping in rationale (iv) of the OECD guidance.

Furthermore, FDA does not agree that the petition has demonstrated that the subject *ortho*-phthalates share a common metabolic pathway. While the petition purports to identify three common steps associated with the metabolism of all 28 phthalates, it also acknowledges that not all 28 phthalates follow the purported metabolic pathway (see Supp., August 24, 2017). The petition notes that phthalates that lack longer alkyl side chains either do not or might not follow steps two (oxidation) or three (glucuronidation) of the purported common metabolic pathway (id. at 2). The data cited to support the list of 10 *ortho*-phthalates and their metabolites provided in the petition also

demonstrate that for four phthalates (dimethyl phthalate (DMP), diethyl phthalate (DEP), butyl benzyl phthalate (BBP), and dicyclohexyl phthalate (DCHP)), only primary (hydrolytic) metabolites and no secondary (oxidized) metabolites were identified (see Supp., August 24, 2017, at 3–4). These four phthalates therefore differ from other phthalates in both the metabolic pathway (only undergoing step one of three) and the resulting metabolites from that pathway. Similar trends between chain length and metabolism were also observed in the three biomonitoring articles cited in the petition, which identified excreted metabolites that may result from phthalate exposure. The phthalates with shorter side chain length (*e.g.,* DMP, DEP, and BBP) exhibit hydrolytic monoesters as the major urinary metabolites; however, for phthalates with longer side chain length (*e.g.,* DEHP, di-isononyl phthalate (DINP), and DIDP)), the hydrolytic monoesters are predominantly further metabolized before excretion in urine (Ref. 4). The existence of different metabolic pathways among phthalates is also demonstrated by a 2008 National Academy of Science (NAS) report (Ref. 5). The NAS report notes that monoesters are the main detected metabolites of the low molecular weight phthalates, such as DEP and dibutyl phthalate (DBP). However, phthalate monoesters with five or more carbons in the ester side chain (*i.e.,* not low molecular weight phthalates) are efficiently transformed further to oxidized metabolites arising mainly from oxidation at the terminal or penultimate carbon of the alkyl ester side chain. All of these examples demonstrate how the differences in chemical structure among phthalates studied give rise to differences in metabolism and resulting metabolites.

In addition to side chain length and molecular weight, the other structural differences among the 28 *ortho*-phthalates described earlier in this subsection suggest that it is unlikely common metabolites and/or breakdown products exist for the purported class. Phthalates with ester side chains containing different structural elements (*e.g.,* double bonds, bulky side chain, and extra ester linkage) can be expected to metabolize differently than phthalates with saturated ester side chains. For example, available information suggests steric hindrance of the bulky side chain of dihydroabietyl phthalate may prevent hydrolysis (which is usually the first step in the metabolic pathway for phthalates with straight/branched side chains). The bulky side chain may prevent hydrolysis by blocking the access of the esterases (which are the enzymes that perform this reaction) to the ester linkage, therefore reducing the likelihood of this reaction occurring (Ref. 1). Alternatively, methyl phthalyl ethyl glycolate (MPEG), ethyl phthalyl ethyl glycolate (EPEG), and butyl phthalyl butyl glycolate (BPBG) have extra ester linkages in their side chains that could subject them to an additional hydrolysis step and produce glycolyl phthalate (GP) that is not expected to generate from *ortho*-phthalates without the extra ester bond (*e.g.,* DEHP) (Ref. 4). These examples further demonstrate how the chemical structure differences across these phthalates impact their metabolic pathway, and therefore result in different metabolites and/or breakdown products.

As discussed earlier in this section, the petition does not support the assertion of a common metabolic pathway for the subject *ortho*-phthalates. Furthermore, data cited in the petition as well as other available information contradict the claim of a common metabolite or group of metabolites for all 28 *ortho*-phthalates. The petition therefore does not justify the applicability of rationale (iv) of OECD's guidance for grouping chemicals to all 28 *ortho*-phthalates.

3. Information Provided in the Petition To Support the 28 *Ortho*-Phthalates as Pharmacologically Related Substances

In support of the proposed grouping of the 28 *ortho*-phthalates as pharmacologically related substances, the petition discusses the 2014 report from the Chronic Hazard Advisory Panel on Phthalates and Phthalate Alternatives (the CHAP report) (Ref. 6) and the results of a literature search for toxicological information that yielded information on health effects for 12 of the 28 phthalates. The petition asserts that these data demonstrate that ''[w]hen *ortho*-phthalates have been studied, similar or related pharmacological effects have been identified affecting children's health'' (petition at 5). The petition also states that ''[r]eproductive, developmental, and endocrine toxicity effects were among the health endpoints identified for multiple compounds'' (petition at 5). The petition asserts that ''while the specific effects associated with *ortho*-phthalate exposure may vary among some studies, these effects nonetheless are pharmacologically related because they result from the effects of *ortho*-phthalates on the endocrine system'' (Supp., August 24, 2017, at 6). The petition also asserts that the 12 phthalates with available data have ''at least some evidence of endocrine disruption'' (id.) and that this information supports the conclusion that the 28 phthalates are therefore ''pharmacologically related by endocrine disrupting effects'' (id. at 13).

4. FDA's Evaluation of the Information Provided To Support the 28 *Ortho*-Phthalates as Pharmacologically Related Substances

In asserting that the 28 *ortho*-phthalates constitute a class of pharmacologically related substances for purposes of determining safety, the petition states that ''eleven *ortho*-phthalate have reproductive, developmental and endocrine health effects.'' The petition further points to ''adverse effects on endpoints relevant to children's health,'' as summarized in table 1, that the petition characterizes as showing ''similar toxic effects.'' However, reproductive, developmental, and endocrine effects are broad categorizations that cover a wide range of toxicological effects that are not necessarily similar and can be caused by a variety of different mechanisms. The petition's generalized assertion that all of the cited effects are pharmacologically related because they ''result from the effects of *ortho*-phthalates on the endocrine system'' (Supp., August 24, 2017, at 6) does not acknowledge that the endocrine system is a generic term that encompasses multiple organs and multiple hormonal pathways. A substance that exhibits activity in one hormonal pathway may not have any effect on a different hormonal pathway, and disruption of different hormonal pathways may not result in common health outcomes (Ref. 4).

The petition's assertion that all studied *ortho*-phthalates demonstrate similar effects on the endocrine system is also directly contradicted by data cited in the petition (see Supp., August 24, 2017). One of the most commonly studied pharmacological effects for phthalates is antiandrogenicity; antiandrogens affect the endocrine system by modulating the production of testicular testosterone pertaining to the development of the male reproductive system. The data cited in the petitioners' literature search indicates that, among the 12 phthalates with available toxicological information, 7 phthalates exhibit antiandrogenic effects (*i.e.,* butyl benzyl phthalate (BBP), diisobutyl phthalate (DiBP), DBP, dicyclohexyl phthalate (DCHP), dihexyl phthalate (DHP), DEHP, and diisononyl phthalate (DINP)) (see Supp., August 24, 2017, Appendix B). Importantly, four of

the phthalates (*i.e.,* dimethyl phthalate (DMP), diethyl phthalate (DEP), di-n-octyl phthalate (DnOP), and DiDP) have been shown to not exhibit antiandrogenic effects. As the petitioners provide data for only 12 of the 28 *ortho*-phthalates, and those data do not support the 12 *ortho*-phthalates as having similar pharmacological-effects on the endocrine system, this information does not support that the remaining 16 *ortho*-phthalates also exhibit similar pharmacological effects (see Supp., August 24, 2017). Similarly, the data do not support the notion that the group of 28 *ortho*-phthalates as a whole consists of phthalates with similar pharmacological effects (see Ref. 4).

Furthermore, the petition's approach to class grouping is not consistent with the approach taken by other regulatory and scientific bodies. Other regulatory and scientific bodies have not grouped phthalates based on broad criteria such as non-specific effects on the endocrine system. Instead, other regulatory and scientific bodies have focused on common health outcomes that result from a discrete mechanism of action. Specifically, reports from regulatory or scientific bodies cited in the petition (*i.e.,* the 2014 CHAP report and the NAS report) as well as other reviews conducted by OECD (Ref. 7), the European Food Safety Authority (EFSA) (Ref. 8), and the Government of Canada (Ref. 9), grouped small subsets of *ortho*-phthalates for cumulative risk assessment based on specific related health (*i.e.,* pharmacological) effects. These assessments relied on defined toxicological endpoints with a common mechanism of action to conduct grouping, and also relied on specific and well-defined similarities in chemical structure. For example, the CHAP report concluded that phthalates with three to eight carbon atoms in the backbone of the alkyl side chain have the same endpoint of antiandrogenicity, while phthalates with alkyl side chains having carbon atoms outside of this range are not antiandrogenic and therefore should not be considered in the same class for a safety assessment (Ref. 6). The CHAP report did not group together these different categories of phthalates. Similarly, the NAS report noted that phthalates with ester chains of four to six carbon atoms are most potent in causing effects on the development of the male reproductive system (*i.e.,* antiandrogenicity), but phthalates with shorter or longer chains typically exhibit less severe or no effects (see Ref. 5). While the petition states that the NAS report ''recommends that effects of *ortho*-phthalates should be considered additive'' (petition at 6), the relevant point in the NAS report only pertains to those *ortho*-phthalates that cause common adverse outcomes of antiandrogenicity (Ref. 5). The NAS report similarly did not group together the different categories of phthalates.

Additionally, a 2004 OECD report grouped phthalates for the purpose of assessing human health and ecotoxicity endpoints but only did so with respect to seven high molecular weight phthalates consisting of esters with an alkyl carbon backbone with seven carbon atoms or greater. OECD noted that the seven phthalates in the group produce little (if any) effects of developmental or reproductive toxicity, and only phthalates with alkyl carbon backbones of four to six carbon atoms cause adverse effects in development and reproduction (Ref. 4).

Since the petition was filed, EFSA and the Government of Canada also conducted their own assessments of phthalates. Both regulatory bodies grouped phthalates using defined toxicological endpoints. EFSA considered five *ortho*-phthalates commonly used in food contact materials, but only grouped four based on the common mechanism of fetal testosterone reduction and excluded the fifth (*i.e.,* DIDP) due to not sharing this effect (Ref. 8 at 1). The Government of Canada conducted a ''screening assessment'' of 28 *ortho*-phthalates but only grouped those with ester side-chains of three to seven carbons for the purposes of cumulative risk assessment based on the observation of antiandrogenic effects for this group (Ref. 9 at 7). Thus, the approach proposed in the petition (*i.e.,* grouping a large number of phthalates together despite data showing that those phthalates do not share the same toxic endpoints), is not consistent with the approach taken in the scientific literature, including reports cited in the petition. The petition also cites FDA's previous decision on PFCs as support for grouping the 28 *ortho*-phthalates as pharmacologically related substances. As discussed previously in section II.A.2, our grouping of long-chain PFCs was limited to a strict subset of structurally similar compounds, distinguishable from the wide structural differences in the 28 *ortho*-phthalates that are the subject of the current petition.

The petition also specifically invokes § 170.18 as support for its proposed class grouping approach. In accordance with § 170.18(a), food additives that cause similar or related pharmacological effects will be regarded as a class, and in the absence of evidence to the contrary, as having additive toxic effects and will be considered as related food additives. Our regulation, at § 170.18(b), states that tolerances established for such related food additives may limit the amount of a common component that may be present or may limit the amount of biological activity that may be present, or may limit the total amount of related food additives that may be present. Section 170.18(c) provides that where food additives from two or more chemicals in the same class are present in or on a food, the tolerance for the total of such additives shall be the same as that for the additive having the lowest numerical tolerance in this class, unless there are available methods that permit quantitative determination of the amount of each food additive present or unless it is shown that a higher tolerance is reasonably required for the combined additives to accomplish the physical or technical effect for which such combined additives are intended and that the higher tolerance will be safe (§ 170.18(c)).

The petition asserts that § 170.18 is applicable to the evaluation of the 28 *ortho*-phthalates subject to the petition. Specifically, the petition asserts that the toxicokinetic and toxicodynamic properties of the *ortho*-phthalates ''may be comparable'' and ''similar or related pharmacological effects have been identified affecting children's health.'' The petition further states that ''[r]eproductive, developmental and endocrine toxicity effects were among the health endpoints identified for multiple compounds and at low exposure.'' Based on what the petition describes as ''similar toxicity effects'' from 13 *ortho*-phthalates, the petition states that *ortho*-phthalates are ''pharmacologically related food additives for purposes of 21 CFR 170.18.'' (Note that the August 2017 supplement refers to data only for 12 *ortho*-phthalates). Further, the petition states that ''we found several publications reporting on additive mixtures of four and five *ortho*-phthalates on developmental and reproductive endpoints'' and that the NAS report ''recommends that effects of *ortho*-phthalates should be considered additive'' (petition at 6).

The petition has not demonstrated that § 170.18 is applicable because the petition has not shown that the 28 *ortho*-phthalates cause similar or related pharmacological effects. By its terms, § 170.18 only provides that food additives are to be regarded as a class if it has been shown that the food additives cause similar or related

pharmacological effects. However, as the petitioners concede, they only have submitted data on the effects of 12 of the 28 *ortho*-phthalates that are the subject of the petition and have not submitted data addressing the effects of 16 of the 28 *ortho*-phthalates. Furthermore, as discussed in the previous paragraphs, the data for the 12 phthalates provided by the petition do not demonstrate that all 12 phthalates have similar or related pharmacological effects; therefore, this data also does not support that all 28 *ortho*-phthalates have similar or related pharmacological effects. Thus, the petition has not put forward the threshold evidence that is necessary to apply § 170.18.

In arguing for grouping all 28 phthalates into one class, the petition also points to section 409(c)(5)(B) of the FD&C Act. The FD&C Act provides that a food additive cannot be approved for use unless the data presented to FDA establish that the food additive is safe for that use (section 409(c)(3)(A) of the FD&C Act). To determine whether a food additive is safe, section 409(c)(5) of the FD&C Act requires FDA to consider among other relevant factors the following: (1) Probable consumption of the additive; (2) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (3) safety factors recognized by experts as appropriate for the use of animal experimentation data (section 409(c)(5) of the FD&C Act). As a preliminary matter, the petition has not presented evidence to show that section 409(c)(5)(B) of the FD&C Act is even applicable to the proposed class grouping. With respect to section 409(c)(5)(B) of the FD&C Act, we note as a preliminary matter that the petition has not presented sufficient evidence to show that all 28 *ortho*-phthalates are in fact chemically or pharmacologically related substances (see discussion in the previous paragraphs). As an additional matter, we note that section 409(c)(5)(B) of the FD&C Act does not direct FDA to group food additives in a class in the manner proposed in the petition. If it is established that substances are chemically or pharmacologically related to a food additive under consideration, FDA is directed to ''tak[e] into account'' such substances in considering the cumulative effect of the food additive in the diet of man or animals. Chemically or pharmacologically related substances can be taken into account for this purpose in any number of scientifically valid ways that are distinct from the class grouping approach proposed by the petition (*e.g.,* considering chemically related substances in an exposure analysis or considering toxicity data from one pharmacologically related substance to evaluate possible toxic effects of another pharmacologically related substance, as appropriate). To the extent that the petition interprets section 409(c)(5) of the FD&C Act to compel FDA to adopt the petition's approach to class grouping, the petition is incorrect. The petition proposes grouping a chemically diverse group of substances together, applying a proposed ADI value for one substance to all the substances in the purported class, and comparing the exposure of all the substances against that single proposed ADI. The FD&C Act sets forth no requirement to analyze the safety of a food additive in this manner.

5. Conclusion for Assertion A: *Ortho*-Phthalates Are Not a Class of Chemically and Pharmacologically Related Substances for Purposes of Determining Safety Pursuant to Section 409 of the FD&C Act and § 170.18

After our review of the relevant information, we conclude that the petition's arguments for treating the 28 *ortho*-phthalates as a class are not supported. The petition points to two rationales in the OECD guidance to support its argument but fails to demonstrate that grouping all 28 phthalates is in fact consistent with those rationales. The 28 phthalates do not have a common functional group, do not have similar or related pharmacological effects, do not share a ''common metabolic pathway'' or even a common mechanism of action, and do not have effects on the same or similar target or system (*i.e.,* the reproductive system of male rodents). To the extent the petition suggests that the proposed class grouping is required by section 409(c)(5)(B) of the FD&C Act and/or § 170.18, the petition is incorrect.

B. Assertion B: The ADI for DEHP Should Be Assigned to All 28 Ortho-Phthalates

To establish with reasonable certainty that a food additive is not harmful under its intended conditions of use, FDA considers the projected human dietary exposure to the food additive, the additive's toxicological data, and other available relevant information (such as published literature). To determine safety, one approach FDA may utilize is to compare the EDI of the food additive to an ADI level established by appropriate toxicological data. Following the argument contained in Assertion A that all 28 phthalates should be grouped as a single class, the petition asserts that a single ADI should be established for the class and also asserts that the ADI should be used to set the upper exposure limit for cumulative exposure to all 28 phthalates.

1. Information Provided in the Petition To Support Assertion B

To establish a proposed ADI for all 28 *ortho*-phthalates, the petition cites no observed adverse effect levels (NOAELs) for specific phthalates that are published in a variety of sources. The petition then picks a NOAEL for DEHP as the basis to derive an ADI for the purported class because it is the lowest of the listed NOAEL values. The petition then proposes safety factors to be applied to that NOAEL to derive the proposed ADI. In the discussion that follows, we evaluate the petition's approach for deriving the proposed ADI for DEHP, as well as the applicability of the proposed ADI to all 28 phthalates.

2. FDA's Evaluation of the Information Provided To Support Assignment of the ADI for DEHP to All 28 *Ortho*-Phthalates

An ADI is the amount of a substance that is considered safe to consume each day over the course of a person's lifetime (Ref. 10). The ADI is typically based on an evaluation of toxicological studies to determine the highest appropriate experimental exposure dose level in animal studies that was shown to cause no adverse effect (also known as the no-observed-adverse-effect level, or NOAEL), multiplied by an appropriate safety factor (Ref. 10). Accordingly, the lower the NOAEL for a specific substance, the lower the resulting ADI for the substance. A calculated dietary exposure to the food additive (*i.e.,* the estimated daily intake, or EDI) at or below the ADI is considered consistent with a reasonable certainty of no harm (Ref. 10). Therefore, a lower ADI requires a lower dietary exposure to the food additive to meet the burden of safety than a food additive with a higher ADI.

To establish a proposed ADI for all 28 phthalates, the petition identifies NOAELs for nine phthalates that are included in the 2014 CHAP report. The petition also identifies NOAELS for 15 phthalates that are included in the 1973 paper by Shibko, et al. (the 1973 paper, Ref. 2). Together, this makes for a total of 24 NOAEL values for 17 different phthalates. The petition does not provide NOAEL values for the remaining 11 phthalates that are the subject of the petition. The petition adopts the NOAEL provided for DEHP in the 2014 CHAP report because it was

the lowest of the cited values. To calculate the ADI, the petition applies a total safety factor of 1,000 to the cited NOAEL for DEHP, resulting in a proposed ADI of 3 micrograms per kilogram of body weight per day (µg/kg bw/d) (petition at 11). However, the petition fails to provide any discussion or supplementary information to justify why any of these NOAEL values are appropriate for assessing risk of dietary exposure to *ortho*-phthalates.

Our regulation, at § 171.1(c), requires that a petition provide full reports of investigations made with respect to the safety of a food additive and not omit, without explanation, any reports of investigations that would bias an evaluation of the safety of the food additive. Such information is necessary so that FDA can independently evaluate and verify the relevant evidence. However, the petition merely lists values published in the CHAP report and the 1973 paper and does not evaluate the underlying evidence supporting the NOAEL values listed in those publications. Although the CHAP report is the result of considerable scientific analysis, it was not designed to assess the safety of food additive uses and does not provide a comprehensive discussion of evidence that would be sufficient to permit FDA to independently evaluate the evidence used to determine the NOAELs (Refs. 10 and 11). Similarly, the 1973 paper provides only a truncated summary of literature available at the time of publication. Furthermore, the NOAELs in the 1973 paper were derived from either subacute or chronic animal studies, which only tested phthalates in weanling animals. These studies have limitations to assess antiandrogenicity as an endpoint (Refs. 4 and 6) and therefore are not appropriate to determine NOAELs for those phthalates that are known antiandrogens. Most importantly, the petition does not provide additional information that would allow FDA to fill the gaps.

Typically, to determine appropriate NOAEL values, FDA considers a wide array of information, including the results of a comprehensive literature search, so that we can evaluate the most relevant studies and their methods, determine the most appropriate endpoint(s), and consider the appropriateness of the animal species selected for study (Refs. 10 and 11). However, the petition provides no such wide array of information with respect to the NOAEL. Rather, the petition merely lists the NOAEL value that is included in the CHAP report. The petition does not explain why this NOAEL for DEHP is appropriate for human risk assessment of dietary exposure. FDA is aware of the existence of studies on DEHP in non-human primates that identify NOAELs based on testicular effects that are at least two orders of magnitude higher than the level derived from studies conducted in rats cited by the petitioners (Refs. 12 to 15). Results in primates are generally considered more applicable to human risk assessment than results in rats, and these non-human primate studies were not included in the assessment in the CHAP report. As the petition does not address these studies or others that may impact the appropriateness of the cited NOAEL for human risk assessment of exposure to DEHP itself, the petition has not provided an adequate scientific rationale to justify the selected NOAEL for DEHP. Thus, the information submitted in the petition does not amount to a full report of investigations made with respect to safety, as required by § 171.1(c), and the petition has not provided adequate scientific justification for the proposed NOAEL for DEHP.

In addition to lacking sufficient support for the appropriateness of the selected NOAEL for evaluation of DEHP itself, the petition also lacks scientific support to justify applying the cited NOAEL for DEHP to all 28 *ortho*-phthalates. Although the petition cites the 1973 paper in support of applying a single substance's ADI to a group of phthalates, that paper discussed this approach based on the assumption that the toxicity for an *ortho*-phthalate may be related to the toxicity of the alcohol moiety (which is not antiandrogenic). The paper describes the alcohol moiety as a common metabolite for these substances, when in fact more current scientific information does not support that all 28 phthalates share a common metabolite. Accordingly, the recommendation in the 1973 paper is based on a scientific assumption that has since been contradicted. The 1973 paper therefore does not support the petition's requested action.

Furthermore, the petition's proposed NOAEL for DEHP is based on an antiandrogenic endpoint. Recent scientific data, including information contained in the petition, demonstrate that not all phthalates are antiandrogenic. Recent data also demonstrate that antiandrogenicity may not be the most sensitive endpoint for all 28 *ortho*-phthalates, including some which also demonstrate antiandrogenicity (Ref. 4). NOAELs serve to identify the highest dosages of a particular substance in which toxic effects were not observed, but a NOAEL is not useful for determining safe exposure levels if it is not in fact based on toxic effects that may result from the substance. Also, as discussed in our response to Assertion A, the petition has not provided sufficient information to demonstrate that the pharmacological effects for all 28 *ortho*-phthalates are similar or related. Therefore, it is not appropriate to apply a NOAEL based on the effect of antiandrogenicity to substances that are not antiandrogenic.

In addition, with respect to converting the NOAEL to an ADI, the petition has not sufficiently supported the application of additional safety factors to the proposed NOAEL. In general, the use of a safety factor is intended to provide an adequate margin of safety for consumers by accounting for variability, such as differences between animals and humans (*i.e.,* interspecies variability) and differences in sensitivity among humans (*i.e.,* intraspecies variability) (Ref. 10). In accordance with § 170.22, a safety factor of 100 will be used as a general rule in applying animal test data for the purposes of safety assessment for human consumers.

However, exceptions to a safety factor of 100 are permitted in accordance with the nature and extent of data available and the circumstances of use of the food additive. For reproductive and developmental endpoints, FDA recommends the use of a safety factor of 1,000 if the observed effects are severe or irreversible *(e.g.,* decrease in the number of pups born live) (Ref. 10). Otherwise, FDA recommends a safety factor of 100. Additional adjustments may be appropriate when considered on a case-by-case basis (Refs. 4 and 11). The petition proposes dividing the cited NOAEL for DEHP by a safety factor of 1,000 to derive the proposed ADI. In support of the application of an additional 10x safety factor for the severity of effects, the petition makes a general assertion that ''developmental, reproductive and endocrine toxicity effects observed after prenatal and postnatal exposure also represent severe findings due to their likely irreversibility'' (Supp., August 24, 2017, at 9). Because the petition does not provide critical information about the studies (*e.g.,* study design, animal species, animal numbers, dosing regime, dosing duration, examined endpoints, and statistical methods) to support the selected NOAEL for DEHP, the petition fails to adequately justify an exception to a safety factor of 100. This absence of information means that the proposed ADI for DEHP lacks scientific justification.

3. Conclusion for Assertion B: The ADI Proposed in the Petition Should Not Be Assigned to All 28 *Ortho*-Phthalates

The petition has not provided the requisite information for either the selected NOAEL or the proposed ADI for DEHP. Similarly, the petition has not justified the application of the proposed ADI for DEHP to all 28 phthalates. To the extent that the petition relies on § 170.18 for applying a single ADI to all 28 phthalates, there is no support for such an approach because, as discussed in section II.A, the petition has not demonstrated that the criteria in § 170.18 for treating food additives as a class are met.

C. Assertion C: The EDI for Ortho-Phthalates Exceeds the Proposed ADI and, Therefore, the Intentional Use of Ortho-Phthalates as Food Contact Substances Are Not Safe

The argument in Assertion C is predicated on the underlying premise of the petition (*i.e.,* the establishment of a single class for all 28 phthalates). The petition asserts that certain published dietary exposure estimates for several of the individual subject phthalates, as well as the cumulative exposure to all 28 phthalates, significantly exceeds the ADI proposed in the petition for the purported class. From this comparison between published dietary exposure estimates and the proposed ADI, the petition states that ''the intentional use of *ortho*-phthalates as food contact substances are not safe as defined by FDA's regulations'' (petition at 11).

1. Information Provided in the Petition To Support Assertion C

The petition concedes that it does not provide exposure data for all 28 *ortho*-phthalates, asserting that a cumulative exposure to all 28 phthalates cannot be determined based on the limited information available (see petition at 14). Instead, the petition compares estimated exposures to individual phthalates for specific subpopulations (as reported in various published data sources) to the proposed ADI for the purported class. Specifically, the petition asserts that the following dietary exposures are all greater than the proposed ADI for the purported class: The average women's dietary exposures to DINP and DIDP, as estimated in the CHAP report; the 95th percentile exposure for women to DEHP, as listed in the CHAP report; and the infant exposure to DEHP, as listed in a 2013 publication by Schecter et al. (Ref. 16). Turning to biomonitoring data, the petition also relies on this type of data to assert that the following additional exposures exceed the proposed ADI: The median and 95th percentile exposures for pregnant women and women of reproductive age to DEHP; and the 95th percentile exposures for pregnant women and women of reproductive age to DBP and DINP. This biomonitoring data comes from National Health and Nutrition Examination Survey (NHANES) survey results covering different years.

We have previously discussed in sections II.A and II.B that the petition does not demonstrate that all 28 phthalates should be considered as a single class, and that the petition does not demonstrate that the proposed ADI for DEHP should be applied to the purported class. Therefore, our discussion below is not focused on comparing published exposure estimates for members of a purported *ortho*-phthalate class to a proposed ADI for that purported class. Rather, our discussion below evaluates the relevance of the cited data for estimating U.S. dietary exposure.

2. FDA's Evaluation of the Information Provided To Support Assertion C

Food surveys, total diet studies, and human biomonitoring studies can all be part of an appropriate postmarket approach to determine dietary exposure for a substance that is already authorized for use as a food contact substance. However, many factors should be addressed to determine the suitability of any given dataset for determining dietary exposure. These factors can include suitability of sample preparation and data analysis, relevance of the data to the current market, specific population or geographic region, and whether it is sufficiently robust in both sample breadth (number of different types of foods sampled) and size (number of samples within a given food type) to be representative. In determining sample breadth, it may be appropriate to consider dietary exposure from a number of sources, such as uses that are authorized through the food contact notification process or food additive regulations and uses that are determined to be generally recognized as safe. Rather than analyze the relevance or suitability of the data cited, the petition simply lists any reported value from any dataset that is higher than the proposed ADI for the purported class.

In general, dietary exposure values for a substance can be calculated using the level of the substance in food (taken from food surveys) and the daily food consumption rate (taken from food categorization systems). Food categorization systems divide the daily diet into distinct food types. This allows for surveying consumption of individual foods within those food types to be representative of exposure from overall consumption of those types of foods by the consumer. Food categorization systems provide for a tiered grouping of foods first based on a broad category (*i.e.,* aquatic animals, land animals, plants, and other) all the way down to differences in processing (*e.g.,* pasteurized or not pasteurized). These subdivisions allow for assignment of foods to a specific category for purposes of determining consumption rates of individual foods or larger food categories (*e.g.,* all forms of dairy). Food surveys analyze the foods in the average diet of the whole population in a country (*i.e.,* Total Diet Study (TDS) approach), or by analyzing select foods in the diet of a given population within a limited geographical area (*e.g.,* the data in Schecter et al. (Ref. 16)). When determining whether a particular food survey is relevant and suitable for estimating levels of a substance in the total diet of a specific population, multiple factors should be considered to ensure scientific validity. These include, among others, whether the types of food, number of samples, and location of where food samples were obtained represent the diet of the target population, the appropriateness of the sample preparation and analytical methods, and whether a particular food categorization system is suitable to calculate exposure from the levels in food obtained from the survey.

As previously stated, the petition relies on dietary exposure estimates that are provided in the CHAP report and Schecter et al. study. Although the CHAP report described and supported its dietary exposures estimates, there are still data gaps that raise questions about the petition's reliance on estimated dietary exposure values that are derived from the CHAP report. Specifically, the CHAP report relies on a TDS conducted in the United Kingdom (UK). This survey may not reflect U.S. dietary exposures, as different supply chains in different continents may result in different exposures. In addition, this data was almost 10 years old at the time the petition was submitted to FDA (see Ref. 6). Further, while the data in Schecter et al. is from a segment of the U.S. population (*i.e.,* food sampled in Albany, NY, in 2011), the dataset is less robust than the UK TDS. Schecter et al. analyzed for 9 phthalates in 72 commonly consumed foods, compared with the UK TDS that analyzed for 15 phthalate diesters and 9 phthalate esters, as well as phthalic acid in 261

retail food items in the UK. The studies also differ in the food categorization systems used to calculate exposure. An appropriate way to utilize the Schecter et al. study in the context of the CHAP report would be to examine if the results from these studies reinforce each other while accounting for the different parameters used by each. However, the petition provides no such examination or analysis and instead adopts any exposure to any phthalate from either analysis that is over the proposed ADI for the purported class. As such, the petition does not address the results from the CHAP report and the Schecter et al. study that are contradictory for select reported values. For example, the average exposure to DEHP for women in the CHAP report is 4.8 µg/kg bw/d (over the ADI of 3 µg/kg bw/d proposed in the petition), while the average exposure to DEHP for adults (which should be comparable to women) in Schecter et al. is only 0.67 µg/kg bw/d (lower than the proposed ADI) (Refs. 6 and 16). Further analysis is needed to determine which, if either, of these contradictory values is suitable for the purpose of a safety assessment.

We note that other available dietary survey/TDS data that are only briefly discussed in the petition (Canadian TDS and Australian TDS studies published in 2015 and 2014, respectively) could potentially address several of the data gaps. These data sets are more recent than the CHAP report and Schecter et al. study. They are also more robust than the Schecter et al. study. In addition, the Canadian TDS may be more directly relevant to the U.S. population than the UK TDS used in the CHAP report, in that Canadian and U.S. diet and packaging and processing supply chains may be more similar than UK and U.S. diet and packaging and processing supply chains. Although exposure estimates were not calculated in the Canadian and Australian TDS reports, the data from these studies could be applied to an appropriate food categorization system and used to calculate exposure estimates. The petition provides no such examination or analysis.

With respect to the petition's reliance on biomonitoring data, we note that biomonitoring studies are used in assessing human exposure to a chemical by measuring the level of the biomarker (*e.g.,* the chemical itself, its metabolite(s), or reaction product(s) in a biological matrix such as human blood or urine) from individuals and then analyzing the data collectively. The exposure values calculated from biomonitoring data include contributions not just from the ingestion of food (*i.e.,* diet), but also from inhalation and dermal contact. However, using exposure values from biomonitoring studies without discussion and supporting information to determine the specific contribution from dietary sources is not appropriate in the context of a food additive petition, as the overall exposure value in a biomonitoring study may not be an appropriate proxy for the probable dietary exposure value (see section 409(c)(5)(B) of the FD&C Act (directing that FDA consider the cumulative effect of a food additive ''in the *diet* of man or animals'') (emphasis added); 21 CFR 171.3(i)(2) (providing that in determining a food additive's safety ''the cumulative effect of the substance in the *diet*'' shall be considered) (emphasis added)).

As to the specific biomonitoring data cited in the petition, the NHANES data and resultant exposure values are relevant in that they reflect relatively recent dietary patterns and are generated from the U.S. population. However, the approach of directly comparing biomonitoring-based exposure values to a proposed ADI for the purpose of assessing the safety of a food additive is not scientifically appropriate. As discussed in the previous paragraph, relying on biomonitoring data alone does not differentiate the amount of exposure that results from the diet compared to environmental and other sources. We note that NHANES and other biomonitoring data do not differentiate specific sources or routes of exposure, such as exposure from dietary sources. Because the petition does not account for these limitations by addressing how the biomonitoring data accounts for dietary exposure, the petition's direct comparison of biomonitoring-based exposure values to the purported ADI is scientifically flawed.

3. Conclusion for Assertion C: The EDI Approach in the Petition Is Not Valid

As discussed in sections II.A and II.B, the petition does not support the establishment of a single class for all 28 phthalates, nor does it support the proposed ADI for DEHP or the application of the proposed ADI to the purported class. As Assertion C is predicated on Assertions A and B, the approach in Assertion C of comparing published exposure estimates to the proposed ADI for the purported class is therefore scientifically flawed. In addition, the petition does not adequately support its proposed exposure estimates. The petition does not justify its approach of adopting any reported single phthalate exposure estimate that is over the proposed ADI for the purported class. Specifically, the petition does not account for: (1) The imprecision of relying on exposures estimates derived from biomonitoring studies to assess dietary exposure; (2) the diverse parameters used in the cited dietary exposure analyses to determine which analysis, if any, most accurately reflects true U.S. dietary exposure; and (3) the contradiction in reported dietary exposure values between those analyses.

D. Summary Conclusion of FDA's Review of the Petition

As discussed in section II.A, the petition does not support the establishment of a proposed class for all 28 phthalates. In light of the differences in the chemical structures and toxicity profiles among the 28 phthalates, the petition does not provide adequate scientific support for grouping chemicals for the purpose of assessing safety. Section II.B explains that the petition's approach of applying the proposed ADI to the purported class is also flawed, in that the proposed ADI is not adequately supported, and it is not scientifically appropriate to apply the proposed ADI to the purported class of 28 *ortho*-phthalates. Section II.C explains that, as it is not valid to group all 28 *ortho*-phthalates as a class of chemically or pharmacologically related substances for the purpose of assessing safety, it is also not valid to compare exposures for these *ortho*-phthalates to a proposed ADI for the purported class. In addition, the petition's approach for estimating exposure to *ortho*-phthalates is not adequately supported. For all these reasons, the petition does not contain sufficient data to support a finding that there is no longer a reasonable certainty of no harm from the currently approved uses.

As an additional matter, based on the information currently available to FDA, we do not have a basis to conclude that dietary exposure levels from approved *ortho*-phthalates exceed a safe level. As new information becomes available to us, we will continue to examine such data as appropriate to assess whether there remains a reasonable certainty of no harm.

III. Comments on the Filing Notice

Overall, we received multiple comments in support of the petitioners' request that we amend or revoke the specified regulations to no longer provide for the food contact use of the 28 *ortho*-phthalates. Other comments, such as those from a coalition composed of trade organizations, materials suppliers, compounders, formulators, molders, and fabricators, oppose the

petition. Additionally, some comments addressed matters that are outside the scope of the petition, and some comments were duplicate submissions.

In this section, we discuss the issues raised in the comments. We preface each comment discussion with a numbered ''Comment'' and each response by ''Response'' to make it easier to identify comments and our responses. We have numbered each comment to help distinguish among different topics. The number assigned is for organizational purposes only and does not signify the comment's value, importance, or the order in which it was received.

(Comment 1) Many comments, primarily form letters, stated that phthalates are hormone disrupting chemicals linked to a wide variety of adverse health outcomes such as: Reduced anogenital distance in male infants; reduced sperm quality; infertility; genital birth defects in boys; impaired mental and/or psychomotor development; attention deficit disorder and behavioral symptoms; obesity and insulin resistance; rhinitis; eczema; asthma; endometriosis; and renal, hepatic, thyroid, and hormone-dependent cancers. The comments stated that, given the available research, FDA should take quick action to reduce exposure to these chemicals in our food supply.

(Response 1) FDA is aware of the research that has been conducted with respect to phthalates. While FDA considered the research in its evaluation of the petition, including the research identified in the comments, most of the research considered individual phthalates or mixtures of phthalates. The petition is based on the idea that the 28 subject phthalates should be considered as a class and deemed unsafe as a class. For the reasons described previously, the petition does not provide adequate support for grouping the 28 phthalates as a single class, and therefore, the research pertaining to individual phthalates or specific mixtures of phthalates cannot be applied to all 28 phthalates that are the subject of the petition.

(Comment 2) Many comments cited the CHAP report and pointed to the Consumer Product Safety Commission's (CPSC's) final rule prohibiting children's toys and childcare articles that contain more than 0.1 percent of five specific *ortho*-phthalates (82 FR 49938, October 27, 2017). Other comments also cited the CHAP report's finding that the diet (separate from exposure from children's toys and childcare articles) is a major route of exposure to phthalates as a reason why FDA should also address the use of phthalates. These comments argued that, because maximum use levels of certain phthalates in toys have been used to assess risk to children during early development, FDA should take action against uses of phthalates in food contact applications that contribute to exposure for pregnant women and the developing fetus, as well as for nursing mothers and babies.

(Response 2) The CHAP report included a risk assessment regarding the use of 14 phthalates and 6 phthalate alternatives in children's toys and childcare articles. While the report was a result of significant scientific analysis, the report was conducted primarily for the purpose of evaluating the safety of certain phthalates and phthalate alternatives in children's toys and childcare articles, and the regulatory recommendations in that report apply to those particular uses of phthalates. Notably, the CHAP report was not designed to evaluate the safety of phthalates for food contact uses, which is the subject of this petition. In evaluating the safety of substances for food contact uses, FDA is required by statute to consider the safety of a substance for the particular food contact use (see sections 409(b) and (h)(1) of the FD&C Act (providing that sponsors may submit petitions or notifications with respect to the ''intended use'' of the substance)). In addition, we are directed by statute to consider food-related uses in assessing safety (see section 409(c)(5) of the FD&C Act) (providing that in determining safety, the Secretary shall consider among other relevant factors ''the probable consumption of the additive and of any substance formed in or on food because of the use of the additive'')). Accordingly, safety assessments conducted for purposes other than evaluating the safety of food contact uses cannot directly determine the safety of food contact uses. As appropriate, FDA may consider the underlying evidence reviewed in such assessments. But FDA's statutory responsibility is to evaluate safety in accordance with the FD&C Act and in consideration of the specific intended uses for which we have jurisdiction.

(Comment 3) Some comments discussed actions taken with regard to phthalates by other government entities (such as CPSC's final rule prohibiting phthalates in children's toys and childcare articles if they contain more than 0.1 percent of five *ortho*-phthalates (82 FR 49938) and the European Union's (EU's) plastic regulation (Commission Regulation 10/2011, Plastic Materials and Articles Intended to Come into Contact with Food, 2011 O.J. (L 12)). Some comments referred to the EU regulation as an unequivocal ban on the use of almost all *ortho*-phthalates in food contact materials intended for fatty and infant foods. In addition, the comments pointed to FDA's Center for Drug Evaluation and Research's (CDER's) removal of two phthalates from its inactive ingredients database (77 FR 72869, December 6, 2012), and FDA's Center for Devices and Radiological Health's (CDRH's) draft guidance on medical devices made with polyvinyl chloride (PVC) containing DEHP (67 FR 57026, September 6, 2002). The comments argued that FDA should take similar action by banning the use of all phthalates in contact with food.

(Response 3) Each of the governmental actions described in the comments were taken based on different applicable legal standards, and the safety considerations and assessments that supported those actions were not conducted in accordance with FDA's food additive safety standards under section 409 of the FD&C Act. In this action, FDA is responding to the specific claims made in the petition about the applicability of the safety standard in section 409 of the FD&C Act to a purported class of 28 *ortho*-phthalates, and we have evaluated those claims in accordance with the requirements for food additive petitions and applicable regulations.

We also note that other regulatory actions and government bodies identified in the comments have not limited or banned the use of all 28 *ortho*-phthalates that are the subject of the petition. For example, the actions taken by Congress and CPSC to limit the use of eight phthalates (DEHP, DBP and BBzP, DINP, di-n-pentylphthalate (DPENP), dihexyl phthalate (DHEXP), dicyclohexyl phthalate (DCHP), and diisobutyl phthalate (DIBP)) in children's toys and childcare articles was not a total ban on the use of these substances, but a ban above the specific use level of 0.1 percent in the articles. While Congress also put an interim ban on DINP, DIDP, and DnOP, the CHAP report later recommended to lift the interim ban for DnOP and DIDP as these compounds are not likely to be antiandrogenic. The CHAP report also recommended that no action be taken on dimethyl phthalate (DMP) and diethyl phthalate (DEP).

The EU's plastic regulation (Commission Regulation 10/2011, 2011 O.J. (L 12)) authorizes six phthalates (DBP, BBP, DEHP, DINP, diallyl phthalate (DAP), and DIDP) for use in food contact plastic materials and articles. These phthalates have different

use restrictions, specific migration limits, and specific type(s) of food the articles containing these substances may contact. The EU's regulation authorizes certain phthalates and does not ban the use of all other phthalates for food contact applications.

The removal of DEHP and DBP from CDER's database of inactive ingredients in drug products followed the publication of CDER's guidance document, ''Limiting the Use of Certain Phthalates as Excipients in Center for Drug Evaluation and Research-Regulated Products'' (77 FR 72869). While CDER's guidance was informed by concerns about the safety of DBP and DEHP, the guidance was limited to the use of those substances as excipients in drug and biologic products, and the guidance specifically states that the recommendations in the document do not address the use of DBP or DEHP in other types of FDA-regulated products. As an additional matter, the guidance document—like all FDA guidance documents—is non-binding and sets forth policy and regulatory recommendations only (see 21 CFR 10.115). In addition, the CDRH draft guidance is not a ban on the use of DEHP. Instead, the draft guidance (which was never finalized and has since been withdrawn) would have suggested labeling DEHP content and would have recommended that device manufacturers consider replacing DEHP for a small subset of medical devices where PVC containing DEHP may come in contact with the tissue of a sensitive patient population in a manner and for a period of time that may result in concerns about aggregate exposure to DEHP. The draft guidance did not address exposure to DEHP from any other use of PVC, such as food contact applications.

(Comment 4) Most comments supported banning all 28 *ortho*-phthalates even in the absence of scientific evidence of harm because of concern that banning only some phthalates could lead to substitution with other phthalates or alternatives that may carry unknown risks.

(Response 4) Consistent with section 409 of the FD&C Act, FDA evaluates the safety of all food additives against the same safety standard of reasonable certainty of no harm and does not make safety determinations based on the comparison of one chemical to its potential substitute. The 28 *ortho*-phthalates that are the subject of the petition were approved via the food additive petition process and included an evaluation using the same safety standard as other food contact substances. Any ''substitute'' phthalate used as a food contact substance would also undergo any required premarket safety review and would be required to meet FDA's safety standard.

In response to the comments arguing that FDA should take action even if there is uncertainty about the data, FDA regulates food additives in accordance with the FD&C Act. Under the FD&C Act, food additives may not be used unless it can be demonstrated that there is a reasonable certainty that no harm will result from their use.

(Comment 5) Several comments supported the petitioners' position that all 28 phthalates should be considered and regulated as a single class because, in the commentors' view, the phthalates are chemically and pharmacologically related. The comments also stated that exposure to phthalates should be considered cumulatively based on the antiandrogenic effects seen in rats treated with certain phthalates and that a single ADI should be established for the asserted class. The comments agreed with the petition's argument that adverse effects and the 3 μg/kg bw/day ADI proposed for DEHP should be attributed to the entire asserted class, and that current exposure levels for phthalates exceeds this level.

Conversely, one comment stated that the antiandrogenic effect identified is species-specific and that some studies have reported that, unlike the observations made in studies testing rat fetus tissue, antiandrogenicity is not observed in human fetus tissue when exposed to phthalates in the same way.

(Response 5) FDA has addressed the petitioners' three assertions in sections II (A, B, and C). FDA has also addressed the human relevance to the antiandrogenicity effect reported from rat studies in section II.B and in Ref. 4.

(Comment 6) Some comments stated that FDA should consider purported economic costs of human health impacts (such as healthcare expenses due to illness and lost productivity) associated with exposure to chemicals generally, including phthalates.

(Response 6) FDA does not agree that it is necessary to evaluate the potential economic impact of the regulated uses of the 28 *ortho*-phthalates that are the subject of the petition. The economic costs for which the comment wants FDA to conduct estimates are health related (*i.e.,* costs to the healthcare system that result from asserted health problems caused by phthalates). At the time FDA authorized the 28 *ortho*-phthalates that are the subject of the petition, FDA found them to be safe. The comments did not explain why FDA is under an ongoing obligation to develop cost estimates for substances that FDA has found to be safe. If new data and information accrue such that FDA determines that any approved additives are in fact unsafe, FDA will take appropriate action by revoking the approvals for such additives or otherwise ensuring that the additives are not used.

(Comment 7) Several comments stated that if FDA does not grant the petition, we should require disclosure of the use of phthalates in food packaging directly on the label so consumers who wish to avoid or limit exposure to phthalates are able to make an informed decision.

(Response 7) The petition did not request that FDA establish requirements for the labeling of products manufactured with phthalates. We note that manufacturers may voluntarily label their products as phthalate-free, as long as such labeling is truthful and not misleading.

For FDA to require labeling on food packages regarding the use of phthalates, FDA would consider the standards in: (1) Section 409(c)(1)(A) of the FD&C Act, providing that regulations for food additives prescribe the conditions necessary to provide for the safe use of the ingredient, and (2) the standard under section 201(n) of the FD&C Act that any such declaration constitutes a material fact with respect to the consequences that may result from the use of the food. The comments did not provide evidence to address either of these standards, and based on the current record, we do not find it appropriate to take such action in response to these comments.

(Comment 8) Some comments urged FDA to consider the effects phthalates have on the environment and wildlife. The comments stated that the use of these chemicals could result in the contamination of soil, air, and drinking water.

(Response 8) The comments did not provide any information or relevant data to substantiate the asserted environmental effects of phthalates from their use as food additives. Therefore, these comments are unsupported. To the extent the comments suggested that FDA conduct an environmental assessment or impact statement under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* we note that NEPA does not require Agencies to conduct such assessments or impacts unless there is a major Federal action. Agency decisions that maintain the status quo do not constitute major Federal actions (see, *e.g.,* 40 CFR 1508.1(q); *Fund for Animals, Inc.* v. *Thomas,* 127 F.3d 80 (D.C. Cir. 1997); *Defenders of Wildlife* v. *Andrus,* 627 F.2d 1238, 1243–46 (D.C. Cir. 1980)).

Our denial of this food additive petition maintains the status quo. To the extent that the comments suggested that environmental effects can be a basis for withdrawing a food additive petition, we are unaware of any such authority under the FD&C Act and the comments did not identify any.

(Comment 9) Some comments agreed with the petitioners' exposure estimation that considers cumulative exposure using four datasets from different sources, while others disagreed with the approach used to estimated exposure. One comment stated that one of petitioners' sources for estimating exposure, the 2014 CHAP report, overestimates exposure levels because it used outdated NHANES biomonitoring data that does not reflect a more recent decline in exposure, as evidenced by a reduction in urinary metabolite levels observed in the most recent NHANES data (2009–2010 CDC NHANES data, published September 2012).

(Response 9) As discussed in section II.C, the petition does not adequately support the proposed exposure values. We have addressed the petitioners' use of exposure data in section II.C.

(Comment 10) Many comments agreed with the petitioner regarding the additional safety factor applied to the NOAEL for DEHP to calculate the ADI. The comments stated that a safety factor of 1,000 should be used. Conversely, one comment stated that the available data does not support the use of a safety factor of 1,000 because the effects identified for DEHP in the reference studies are ''mild'' and do not warrant an adjustment for severity.

(Response 10) As discussed in section II.B.2, FDA cannot determine the appropriate safety factor without more information than what was provided in the petition.

IV. Conclusion

FAP 6B4815 requested that the food additive regulations be amended to provide for the removal of 28 authorized phthalates listed for use in contact with food. After reviewing the petition, as well as additional data and information relevant to the petitioners' request, we determine that the petition provides insufficient information to support a finding that there is no longer a reasonable certainty of no harm for the proposed class of *ortho*-phthalates. Therefore, FDA is denying FAP 6B4815 in accordance with § 171.100(a).

V. Objections

Any persons that may be adversely affected by this notice may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

It is only necessary to send one set of documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.* We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

VI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time. In addition, Reference A is also part of the administrative record and is on display at the Dockets Management Staff. This reference is also available electronically at *https://www.regulations.gov.*

*1. 2014 Organization for Economic Co-operation and Development (OECD) Guidance on Grouping of Chemicals.

*2. Shibko, S.I. and H. Blumenthal (1973) ''Toxicology of Phthalic Acid Esters Used in Food Packaging Material,'' *Environmental Health Perspectives,* 3:131–137.

*3. FDA Memorandum from R. Briñas to J. Urbelis, May 11, 2022.

*4. FDA Memorandum from T–F. Cheng to J. Urbelis, May 11, 2022.

*5. Phthalates and Cumulative Risk Assessment: The Tasks Ahead; National Research Council (US) Committee on the Health Risks of Phthalates (NAS Report): Washington (DC): *National Academies Press* (US); 2008.

*6. 2014 Chronic Hazard Advisory Panel (CHAP) on Phthalates and Phthalate Alternatives Final Report.

*7. OECD: Screening Information Dataset (SIDS) Initial Assessment Meeting (SIAM) 19), 19–22 October 2004.

*8. European Food Safety Authority (EFSA) Panel on Food Contact Materials, Enzymes and Processing Aids (2019) ''Update of the Risk Assessment of di-butylphthalate (DBP), butyl-benzyl-phthalate (BBP), bis(2-ethylhexyl)phthalate (DEHP), di-isononylphthalate (DINP) and di-isodecylphthalate (DIDP) for Use in Food Contact Materials,'' *EFSA Journal,* 17(12):5838.

*9. Canada: Screening Assessment—Phthalate Substance Grouping. Environment and Climate Change Canada, Health Canada. December 2020. Cat. No.: En14–393/2019E–PDF; ISBN 978–0–660–32979–6.

*10. FDA, Guidance for Industry, ''Toxicological Principles for the Safety Assessment of Food Ingredients: Redbook 2000,'' July 2007 (available at: *https://www.fda.gov/media/79074/download*).

*11. FDA, Guidance for Industry, ''Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations,'' October 2021 (available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-preparation-food-contact-substance-notifications-toxicology-recommendations.*

*12. FDA, (2001) ''Safety Assessment of Di(2-ethylhexyl) phthalate (DEHP) Released from PVC Medical Devices,'' (available at: *https://www.fda.gov/media/114001/download*).

13. Kurata, Y., F. Kidachi, M. Yokoyama, et al. (1998) ''Subchronic Toxicity of Di(2-ethylhexyl)phthalate in Common Marmosets: Lack of Hepatic Peroxisome Proliferation, Testicular Atrophy, or Pancreatic Acinar Cell Hyperplasia,'' *Toxicological Sciences,* 42:49–56.

*14. Rhodes, C., T.C. Orton, S. Pratt, et al. (1986) ''Comparative Pharmacokinetics and Subacute Toxicity of Di-(2-ethylhexyl) Phthalate (DEHP) in Rats and Marmosets: Extrapolation of Effects in Rodents to Man,'' *Environmental Health Perspectives,* 65, 299–307.

15. Pugh, G. Jr., J.S. Isenberg, L.M. Kamendulis, et al. (2000) ''Effects of Di-isononyl Phthalate, Di-2-ethylhexyl Phthalate, and Clofibrate in Cynomolgus Monkeys,'' *Toxicological Sciences,* 56(1):181–188.

*16. Schecter, A., M. Lorber, Y. Guo, et al. (2013) ''Phthalate Concentrations and Dietary Exposure from Food Purchased in New York State,'' *Environmental Health Perspectives,* 121(4): 473–494.

*A. FDA Supplementary Memorandum for Food Additive Petition (FAP) 6B4815, J. Urbelis, May 11, 2022.

Dated: May 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10530 Filed 5–19–22; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175, 176, 177, and 178

[Docket No. FDA–2018–F–3757]

Indirect Food Additives: Adhesives and Components of Coatings; Paper and Paperboard Components; Polymers; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the food additive regulations to no longer provide for the use of 25 plasticizers in various food contact applications because these uses have been abandoned. We are taking this action in response to a food additive petition submitted by the Flexible Vinyl Alliance (FVA or petitioner).

DATES: This rule is effective May 20, 2022. See section VIII for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing on the final rule by June 21, 2022.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before June 21, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 21, 2022. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, 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–2018–F–3757 for ''Indirect Food Additives: Adhesives and Components of Coatings; Paper and Paperboard Components; Polymers; Adjuvants, Production Aids, and Sanitizers.'' Received objections, 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Stephen DiFranco, Office of Food Additive Safety (HFS–255), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–2710; or Alexandra Jurewitz, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 14, 2018 (83 FR 56750), we announced that we filed a food additive petition (FAP 8B4820), submitted by FVA, c/o Keller and Heckman LLP, 1001 G Street NW, Suite 500 West, Washington, DC 20001. The petition proposed that we amend our food additive regulations in parts 175, 176, 177, and 178 (21 CFR parts 175, 176, 177, and 178) to no longer provide for the use of 26 plasticizers that the petition identifies as *ortho*-phthalates because these food additive uses have been permanently abandoned. In some cases, these substances were approved for food additive uses more than four decades ago.

One of the 26 plasticizers identified in the petition was diallyl phthalate (Chemical Abstract Services number (CAS No.) 131–17–9). The filing notice indicated that this substance may be used as a food additive under §§ 175.105, 176.180, 176.300, and 177.1210 (see 83 FR 56750). However, upon further review, we determined that the use of diallyl phthalate is only authorized for use in these regulations as a monomer to produce polymers and not as a plasticizer. FVA makes no

claims in their petition that the use of polymers produced with diallyl phthalate for food contact applications have been abandoned. Thus, after following up with the petitioner, diallyl phthalate is no longer subject to this petition, and diallyl phthalate will not be discussed further. In sum, there are 25 remaining substances that are the subject of this petition; their corresponding CAS numbers (when available) are listed in table 1.

TABLE 1—ORTHO-PHTHALATES AFFECTED BY THIS FINAL RULE

Food additive	CAS No.
Dimethyl phthalate (dimethyl orthophthalate)	131–11–3
Diphenyl phthalate	84–62–8
Methyl phthalyl ethyl glycolate (1,2-Benzenedicarboxylicacid, 1-(2-ethoxy-2-oxoethyl) 2-methyl ester)	85–71–2
Diethyl phthalate	84–66–2
Diphenylguanidine phthalate [1]	17573–13–6
Ethyl phthalyl ethyl glycolate (Ethyl carbethoxymethyl phthalate)	84–72–0
Diisobutyl phthalate	84–69–5
Butyl benzyl phthalate [2]	85–68–7
Di-n-butyl phthalate [3]	84–74–2
Butyl phthalyl butyl glycolate [4] (Butyl carbobutoxymethyl phthalate)	85–70–1
Dihexyl phthalate (Di-n-hexyl phthalate)	84–75–3
Di(butoxyethyl) phthalate (Bis(2-n-butoxyethyl) phthalate)	117–83–9
Dimethylcyclohexyl phthalate	1322–94–7
Diisooctyl phthalate	27554–26–3
Dioctyl phthalate (Di-n-octyl phthalate)	117–84–0
Butyloctyl phthalate (n-butyl n-octyl phthalate)	84–78–6
Di(2-ethylhexyl) hexahydrophthalate [1]	84–71–9
Amyl decyl phthalate (n-amyl n-decyl phthalate)	7493–81–4
Butyl decyl phthalate [5] (n-butyl n-decyl phthalate)	89–19–0
Decyl octyl phthalate (Octyldecyl phthalate/n-octyl n-decyl phthalate)	119–07–3
Didecyl phthalate (Di-n-decyl phthalate)	84–77–5
Dodecyl phthalate	21577–80–0
Dihydroabietyl phthalate	26760–71–4
Castor oil phthalate, hydrogenated	N/A
Castor oil phthalate with adipic acid and fumaric acid-diethylene glycol [6]	68650–73–7

[1] We note that while these substances are not chemically classified as *ortho*-phthalates, they are included in FAP 8B4820. The FAP describes all of the substances as *ortho*-phthalates, although for these substances that characterization is incorrect.

[2] The petitioner refers to this substance as butyl benzyl phthalate; it is listed in §§ 176.170 and 178.3740 as butylbenzyl phthalate. These terms are synonymous, referring to the same chemical substance.

[3] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in §§ 175.105, 175.300, 175.380, 176.170, 176.180, 176.300, 177.2420, and 177.2600 as dibutyl phthalate and in § 177.1200 as dibutylphthalate. These terms are synonymous, referring to the same chemical substance.

[4] Substance is listed as butyl phthalate butyl glycolate in § 175.105. We believe this is a typographical error, and it should be listed as butyl phthalyl butyl glycolate.

[5] The petitioner refers to this substance as butyl decyl phthalate; it is listed in § 175.105 as butyldecyl phthalate. These terms are synonymous, referring to the same chemical substance.

[6] The petitioner refers to this substance as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol; it is listed in § 177.1200 as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol polyester. These terms are synonymous, referring to the same chemical substance.

None Available.

The petitioner asserts that the currently authorized uses of the plasticizers identified in tables 2 through 19 have been abandoned. In addition to the uses of the 25 plasticizers that are approved for food additive uses as described in tables 2 through 19, certain plasticizers that are the subject of the petition are also authorized for prior sanctioned uses. Any such prior sanctioned use is beyond the scope of a food additive petition, which applies only to substances that meet the definition of ''food additive.'' Accordingly, this final rule has no impact on any prior sanctioned uses.

TABLE 2—ORTHO-PHTHALATES AUTHORIZED BY § 175.105 AFFECTED BY THIS FINAL RULE

[Adhesives]

Food additive	CAS No.
Dimethyl phthalate (dimethyl orthophthalate)	131–11–3
Diphenyl phthalate	84–62–8
Methyl phthalyl ethyl glycolate (1,2-Benzenedicarboxylicacid, 1-(2-ethoxy-2-oxoethyl) 2-methyl ester)	85–71–2
Diethyl phthalate	84–66–2
Ethyl phthalyl ethyl glycolate (Ethyl carbethoxymethyl phthalate)	84–72–0
Diisobutyl phthalate	84–69–5
Butyl benzyl phthalate	85–68–7
Di-n-butyl phthalate [1]	84–74–2
Butyl phthalyl butyl glycolate [2] (Butyl carbobutoxymethyl phthalate)	85–70–1
Dihexyl phthalate (Di-n-hexyl phthalate)	84–75–3
Di(butoxyethyl) phthalate (Bis(2-n-butoxyethyl) phthalate)	117–83–9
Diisooctyl phthalate	27554–26–3

TABLE 2—ORTHO-PHTHALATES AUTHORIZED BY § 175.105 AFFECTED BY THIS FINAL RULE—Continued

[Adhesives]

Food additive	CAS No.
Dioctyl phthalate (Di-n-octyl phthalate)	117–84–0
Butyloctyl phthalate (n-butyl n-octyl phthalate)	84–78–6
Di(2-ethylhexyl) hexahydrophthalate	84–71–9
Butyl decyl phthalate [3] (n-butyl n-decyl phthalate)	89–19–0
Decyl octyl phthalate (Octyldecyl phthalate/n-octyl n-decyl phthalate)	119–07–3
Dihydroabietyl phthalate	26760–71–4

[1] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 175.105 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

[2] The petitioner refers to this substance as butyl phthalyl butyl glycolate; it is listed in § 175.105 as butyl phthalate butyl glycolate. We believe this is a typographical error, and it should be listed as butyl phthalyl butyl glycolate. These terms are synonymous, referring to the same chemical substance.

[3] The petitioner refers to this substance as butyl decyl phthalate; it is listed in § 175.105 as butyldecyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 3—ORTHO-PHTHALATES AUTHORIZED BY § 175.300 AFFECTED BY THIS FINAL RULE

[Resinous and polymeric coatings]

Food additive	CAS No.
Diethyl phthalate	84–66–2
Ethyl phthalyl ethyl glycolate (Ethyl carbethoxymethyl phthalate)	84–72–0
Di-n-butyl phthalate [1]	84–74–2
Butyl phthalyl butyl glycolate (Butyl carbobutoxymethyl phthalate)	85–70–1
Diisooctyl phthalate	27554–26–3

[1] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 175.300 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 4—ORTHO-PHTHALATES AUTHORIZED BY § 175.320 AFFECTED BY THIS FINAL RULE

[Resinous and polymeric coatings for polyolefin films].

Food additive	CAS No.
Diethyl phthalate	84–66–2
Ethyl phthalyl ethyl glycolate (Ethyl carbethoxymethyl phthalate)	84–72–0
Butyl phthalyl butyl glycolate (Butyl carbobutoxymethyl phthalate)	85–70–1

TABLE 5—ORTHO-PHTHALATES AUTHORIZED BY § 175.380 AFFECTED BY THIS FINAL RULE

[Xylene-formaldehyde resins condensed with 4,4′-isopropylidenediphenol-epichlorohydrin epoxy resins]

Food additive	CAS No.
Diethyl phthalate [1]	84–66–2
Ethyl phthalyl ethyl glycolate [1] (Ethyl carbethoxymethyl phthalate)	84–72–0
Di-n-butyl phthalate [1 2]	84–74–2
Butyl phthalyl butyl glycolate [1] (Butyl carbobutoxymethyl phthalate)	85–70–1
Diisooctyl phthalate [1]	27554–26–3

[1] By cross-referencing § 175.300, § 175.380 authorizes use of this plasticizer.

[2] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 175.300 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 6—ORTHO-PHTHALATES AUTHORIZED BY § 175.390 AFFECTED BY THIS FINAL RULE

[Zinc-silicon dioxide matrix coatings]

Food additive	CAS No.
Diethyl phthalate [1]	84–66–2
Ethyl phthalyl ethyl glycolate [1] (Ethyl carbethoxymethyl phthalate)	84–72–0
Di-n-butyl phthalate [1 2]	84–74–2
Butyl phthalyl butyl glycolate [1] (Butyl carbobutoxymethyl phthalate)	85–70–1
Diisooctyl phthalate [1]	27554–26–3

[1] By cross-referencing § 175.300, § 175.390 authorizes use of this plasticizer.

[2] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 175.300 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 7—ORTHO-PHTHALATES AUTHORIZED BY § 176.170 AFFECTED BY THIS FINAL RULE

[Components of paper and paperboard in contact with aqueous and fatty foods]

Food additive	CAS No.
Butyl benzyl phthalate [1]	85–68–7
Di-n-butyl phthalate [2]	84–74–2

[1] The petitioner refers to this substance as butyl benzyl phthalate; it is listed in § 176.170 as butylbenzyl phthalate. These terms are synonymous, referring to the same chemical substance.

[2] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 176.170 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 8—ORTHO-PHTHALATES AUTHORIZED BY § 176.180 AFFECTED BY THIS FINAL RULE

[Components of paper and paperboard in contact with dry food]

Food additive	CAS No.
Butyl benzyl phthalate [1]	85–68–7
Di-n-butyl phthalate [1 2]	84–74–2
Didecyl phthalate [1] (Di-n-decyl phthalate)	84–77–5
Dodecyl phthalate [1]	21577–80–0

[1] By cross-referencing § 176.170, § 176.180 authorizes use of this plasticizer.

[2] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 176.170 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 9—ORTHO-PHTHALATES AUTHORIZED BY § 176.300 AFFECTED BY THIS FINAL RULE

[Slimicides]

Food additive	CAS No.
Butyl benzyl phthalate [1]	85–68–7
Di-n-butyl phthalate [2]	84–74–2
Didecyl phthalate (Di-n-decyl phthalate)	84–77–5
Dodecyl phthalate	21577–80–0

[1] By cross-referencing §§ 176.170 and 176.180, § 176.300 authorizes use of this plasticizer.

[2] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 176.300 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 10—ORTHO-PHTHALATES AUTHORIZED BY § 177.1010 AFFECTED BY THIS FINAL RULE

[Acrylic and modified acrylic plastics, semirigid and rigid]

Food additive	CAS No.
Dimethyl phthalate (dimethyl orthophthalate)	131–11–3

TABLE 11—ORTHO-PHTHALATES AUTHORIZED BY § 177.1200 AFFECTED BY THIS FINAL RULE

[Cellophane]

Food additive	CAS No.
Diisobutyl phthalate	84–69–5
Di-n-butyl phthalate [1]	84–74–2
Dimethylcyclohexyl phthalate	1322–94–7
Castor oil phthalate, hydrogenated	N/A
Castor oil phthalate with adipic acid and fumaric acid-diethylene glycol [2]	68650–73–7

[1] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 177.1200 as dibutylphthalate. These terms are synonymous, referring to the same chemical substance.

[2] The petitioner refers to this substance as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol; it is listed in § 177.1200 as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol polyester. These terms are synonymous, referring to the same chemical substance.

TABLE 12—ORTHO-PHTHALATES AUTHORIZED BY § 177.1210 AFFECTED BY THIS FINAL RULE

[Closures with sealing gaskets for food containers]

Food additive	CAS No.
Diethyl phthalate [1 2]	84–66–2
Ethyl phthalyl ethyl glycolate [1] (Ethyl carbethoxymethyl phthalate)	84–72–0
Di-n-butyl phthalate [1 3 5]	84–74–2
Butyl phthalyl butyl glycolate [1] (Butyl carbobutoxymethyl phthalate)	85–70–1

TABLE 12—ORTHO-PHTHALATES AUTHORIZED BY § 177.1210 AFFECTED BY THIS FINAL RULE—Continued

[Closures with sealing gaskets for food containers]

Food additive	CAS No.
Diisooctyl phthalate [1]	27554–26–3
Dimethyl phthalate [1 4] (dimethyl orthophthalate)	131–11–3
Diphenyl phthalate [1 2]	84–62–8
Methyl phthalyl ethyl glycolate [1] (1,2-Benzenedicarboxylicacid, 1-(2-ethoxy-2-oxoethyl) 2-methyl ester)	85–71–2
Diphenylguanidine phthalate [4]	17573–13–6
Diisobutyl phthalate [1 4]	84–69–5
Butyl benzyl phthalate [1 4]	85–68–7
Dihexyl phthalate (Di-n-hexyl phthalate) [1 2]	84–75–3
Di(butoxyethyl) phthalate [1] (Bis(2-n-butoxyethyl) phthalate)	117–83–9
Dimethylcyclohexyl phthalate [4]	1322–94–7
Dioctyl phthalate [1 4] (Di-n-octyl phthalate)	117–84–0
Butyloctyl phthalate [1] (n-butyl n-octyl phthalate)	84–78–6
Di(2-ethylhexyl) hexahydrophthalate [1]	84–71–9
Amyl decyl phthalate [4] (n-amyl n-decyl phthalate)	7493–81–4
Butyl decyl phthalate [1] (n-butyl n-decyl phthalate)	89–19–0
Decyl octyl phthalate [1 4] (Octyldecyl phthalate/n-octyl n-decyl phthalate)	119–07–3
Didecyl phthalate [3 4] (Di-n-decyl phthalate)	84–77–5
Dodecyl phthalate [3]	21577–80–0
Dihydroabietyl phthalate [1]	26760–71–4
Castor oil phthalate, hydrogenated [4]	N/A
Castor oil phthalate with adipic acid and fumaric acid-diethylene glycol [4 6]	68650–73–7

[1] By cross-referencing part 175, § 177.1210 authorizes use of this plasticizer.
[2] By cross-referencing part 178, § 177.1210 authorizes use of this plasticizer.
[3] By cross-referencing part 176, § 177.1210 authorizes use of this plasticizer
[4] By cross-referencing part 177, § 177.1210 authorizes use of this plasticizer.
[5] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in §§ 175.105, 175.300, 175.380, 176.170, 176.180, 176.300, 177.2420, and 177.2600 as dibutyl phthalate and in § 177.1200 as dibutylphthalate. These terms are synonymous, referring to the same chemical substance.
[6] The petitioner refers to this substance as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol; it is listed in § 177.1200 as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol polyester. These terms are synonymous, referring to the same chemical substance.

TABLE 13—ORTHO-PHTHALATES AUTHORIZED BY § 177.1400 AFFECTED BY THIS FINAL RULE

[Hydroxyethyl cellulose film, water-insoluble]

Food additive	CAS No.
Diisobutyl phthalate [1]	84–69–5
Di-n-butyl phthalate [1 2]	84–74–2
Dimethylcyclohexyl phthalate [1]	1322–94–7
Castor oil phthalate, hydrogenated [1]	N/A
Castor oil phthalate with adipic acid and fumaric acid-diethylene glycol [1 3]	68650–73–7

[1] By cross-referencing § 177.1200, § 177.1400 authorizes use of this plasticizer.
[2] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 177.1200 as dibutylphthalate. These terms are synonymous, referring to the same chemical substance.
[3] The petitioner refers to this substance as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol; it is listed in § 177.1200 as castor oil phthalate with adipic acid and fumaric acid-diethylene glycol polyester. These terms are synonymous, referring to the same chemical substance.

TABLE 14—ORTHO-PHTHALATES AUTHORIZED BY § 177.1460 AFFECTED BY THIS FINAL RULE

[Melamine-formaldehyde resins in molded articles]

Food additive	CAS No.
Dioctyl phthalate (Di-n-octyl phthalate)	117–84–0

TABLE 15—ORTHO-PHTHALATES AUTHORIZED BY § 177.1590 AFFECTED BY THIS FINAL RULE

[Polyester elastomers]

Food additive	CAS No.
Dimethyl phthalate (dimethyl orthophthalate)	131–11–3

TABLE 16—ORTHO-PHTHALATES AUTHORIZED BY § 177.2420 AFFECTED BY THIS FINAL RULE

[Polyester resins, cross-linked]

Food additive	CAS No.
Dimethyl phthalate (dimethyl orthophthalate)	131–11–3
Butyl benzyl phthalate	85–68–7
Di-n-butyl phthalate [1]	84–74–2

[1] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 177.2420 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 17—ORTHO-PHTHALATES AUTHORIZED BY § 177.2600 AFFECTED BY THIS FINAL RULE

[Rubber articles intended for repeated use]

Food additive	CAS No.
Diphenylguanidine phthalate	17573–13–6
Di-n-butyl phthalate [1]	84–74–2
Dioctyl phthalate (Di-n-octyl phthalate)	117–84–0
Amyl decyl phthalate (n-amyl n-decyl phthalate)	7493–81–4
Decyl octyl phthalate (Octyldecyl phthalate/n-octyl n-decyl phthalate)	119–07–3
Didecyl phthalate (Di-n-decyl phthalate)	84–77–5

[1] The petitioner refers to this substance as di-n-butyl phthalate; it is listed in § 177.2600 as dibutyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 18—ORTHO-PHTHALATES AUTHORIZED BY § 178.3740 AFFECTED BY THIS FINAL RULE

[Plasticizers in Polymeric Substances]

Food additive	CAS No.
Diphenyl phthalate	84–62–8
Butyl benzyl phthalate [1]	85–68–7
Dihexyl phthalate (Di-n-hexyl phthalate)	84–75–3

[1] The petitioner refers to this substance as Butyl benzyl phthalate; it is listed in § 178.3740 as butylbenzyl phthalate. These terms are synonymous, referring to the same chemical substance.

TABLE 19—ORTHO-PHTHALATES AUTHORIZED BY § 178.3910 AFFECTED BY THIS FINAL RULE

[Surface lubricants used in the manufacture of metallic articles]

Food additive	CAS No.
Diethyl phthalate	84–66–2

II. Evaluation of Abandonment

Section 409(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(i)) states that we must, by regulation, establish the procedure for amending or repealing a food additive regulation and that this procedure must conform to the procedure provided in section 409 of the FD&C Act for the promulgation of such regulations. Our regulations pertaining to administrative actions for food additives provide that the Commissioner of Food and Drugs, on his own initiative or on the petition of any interested person, under 21 CFR part 10, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive or granting or repealing an exception for such additive (§ 171.130(a) (21 CFR 171.130(a))). The regulations further provide that any such petition must include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or repeal (§ 171.130(b)). New data must be furnished in the form specified in §§ 171.1 and 171.100 (21 CFR 171.1 and 171.100) for submitting petitions (§ 171.130(b)). Under these regulations, a petitioner may propose that we amend a food additive regulation if the petitioner can demonstrate that there are ''old uses abandoned'' for the relevant food additive (§ 171.130(b)). Such abandonment must be complete and permanent for any intended uses in the United States market. While section 409 of the FD&C Act and § 171.130 also provide for amending or revoking a food additive regulation based on safety, an amendment or revocation based on abandonment is not based on safety but is based on the fact that regulatory authorization is no longer necessary because the use of that food additive has been completely and permanently abandoned.

Abandonment may be limited to certain authorized food additive uses for a substance (*e.g.,* if a substance is no longer used in certain product categories), or abandonment may apply to all authorized food additive uses of a substance (*e.g.,* if a substance is no longer being manufactured). If a petition seeks an amendment to a food additive regulation based on the abandonment of certain uses of the food additive, such uses should be adequately defined so that both the scope of the abandonment and any amendment to the food additive regulation are clear.

The petition states that FVA is a coalition that represents the plasticizer and vinyl products industry. Their

membership consists of 11 plasticizer suppliers, 5 compounders, 5 non-profit industry groups, 4 manufacturers, 2 resin suppliers, 1 converter, and 11 other firms (Ref. 1).

As support for the claim that the plasticizers in table 1 are no longer manufactured, imported, or otherwise marketed for the identified food contact applications in the United States market and that the described uses are abandoned, the petition includes the results of a survey conducted on behalf of FVA. According to the petition, the survey was distributed to FVA's membership as well as other industry stakeholders. More specifically, FVA asked the survey recipients to sign letters that verify that they do not:

1. Currently manufacture the *ortho*-phthalates listed in table 1 for use in food contact applications in the United States;
2. Currently import the *ortho*-phthalates listed in table 1 for use in food contact applications in the United States;
3. Intend to manufacture or import the *ortho*-phthalates listed in table 1 for use in food contact applications in the United States in the future;
4. Currently maintain any inventory of the *ortho*-phthalates listed in table 1 for sale or distribution into commerce that is intended to be marketed for use in food contact applications in the United States; and
5. Possess any knowledge that the *ortho*-phthalates listed in table 1 are used in food contact applications in the United States.

There are 18 signed letters that are attached to the petition. These signed letters, some of which are directly from manufacturers of *ortho*-phthalates, assert that the survey recipients do not engage in any of the activities outlined in the five questions in the survey letters. The petition states that the survey letters collected include the substantial majority of phthalate and polyvinyl chloride manufacturers, as well as downstream compounders and users of these materials.

FVA also sought confirmation from the Plastics Industry Association's (PIA) Food, Drug and Cosmetic Packaging Materials Committee (FDCPMC) that no member company has any knowledge of the manufacturing or marketing of the plasticizers in table 1 for food contact applications. The FDCPMC is composed of PIA members with what the petition describes as particular interest and expertise in packaging for food, drugs, cosmetics, and related products. According to the petition, PIA's members represent entities in each sequence of the plastics industry supply chain, including processors, machinery and equipment manufacturers, and raw material suppliers.

The petition states that FVA also verified with other key industry stakeholders that they do not have any knowledge of the manufacturing or marketing of the substances in table 1 for food contact applications. These stakeholders included members of the Adhesives and Sealants Council, whose membership includes entities involved in the supply, manufacture, and distribution of adhesives and sealants in North America; the American Beverage Association, which represents beverage producers, distributors, franchise companies and support industries; the American Forest and Paper Association, which the petition describes as having member companies that produce more than 75 percent of the pulp, paper, paper-based packaging, and wood building materials in the United States; the Grocery Manufacturers Association,[1] which the petition describes as representing more than 250 food, beverage, and consumer product companies globally; and the High Phthalates Panel of the American Chemistry Council (ACC). Specifically, the petition states that no member companies of these organizations have any knowledge of industry reliance on the subject food additive approvals. In followup correspondence with FDA, FVA stated these trade associations either contacted their entire memberships or the relevant portions of their memberships that would have knowledge regarding the use of *ortho*-phthalates (Ref. 2).

Furthermore, FDA identified the major manufacturers of *ortho*-phthalates in the United States (Ref. 3) and notes that these manufacturers are listed as member companies of the ACC (Ref. 4). FDA considers the totality of the parties surveyed to be representative of the entire supply-chain of food contact substances and end-use products which may rely on the authorizations in parts 175, 176, 177, and 178 for the use of plasticizers identified in tables 2 through 19.

In addition, when we publish a notice of filing of a food additive petition, stakeholders have an opportunity to provide information regarding whether any of the subject food additives are still being used. We received no comments that provided evidence of current use.

In light of the evidence submitted in the petition, as well as the absence of any evidence demonstrating lack of abandonment, we are granting the petition. We conclude that the plasticizers in table 1 have been completely and permanently abandoned with respect to the food additive uses listed in tables 2 through 19. Accordingly, FDA is removing the authorizations for the food additive use of these substances in parts 175, 176, 177, and 178, as described in tables 2 through 19.

[1] The Grocery Manufacture's Association (GMA) became the Consumer Brands Association (CBA) in January 2020.

III. Comments on the Filing Notice

We provided 60 days for comment on the filing notice. We received less than 10 comments. No comments provided evidence that any of the 25 plasticizers that are the subject, and within the scope, of FVA's petition are currently being used in food contact applications. Most comments were general in nature and supported granting the petition. These comments expressed support for removing listings for substances that are no longer in use from the food additive regulations.

We summarize and respond to the comments in the following paragraphs. For ease of reading, we preface each comment discussion with a numbered ''Comment,'' and the word ''Response'' appears before FDA's response. The number assigned is for organizational purposes only and does not signify any individual comment's value, importance, or order in which it was received.

(Comment 1) One comment expressed concern regarding the safety of diethyl phthalate.

(Response 1) Diethyl phthalate (CAS No. 84–66–2) is included in table 1 as a substance that has been abandoned as a food additive in food contact uses. As stated in the filing notice (83 FR 56750 at 56758), information on safety is not relevant to abandonment. To the extent that the comment suggests that FDA must make a safety determination as part of the review process for this abandonment petition, we disagree. Each year, we respond to hundreds of submissions under the various petition and notification programs we administer. Therefore, if use of a food additive is no longer authorized in response to an abandonment petition, we may determine that it is neither necessary nor an efficient use of our limited resources to address safety arguments related to an abandoned use.

(Comment 2) One comment encouraged FDA to abide by statutory timelines and suggested that we improperly delayed posting the filing notice in the **Federal Register**.

(Response 2) We acknowledge that there was a delay in the publication of the filing notice. We filed FVA's

petition on July 3, 2018, and published the filing notice in the **Federal Register** on November 14, 2018. However, this delay did not affect the length of the 60-day comment period for the petition or the outcome of FDA's review of the petition.

(Comment 3) One comment sought clarity as to whether certain *ortho*-phthalates that were not the subject of this petition remain authorized for food contact use.

(Response 3) This final rule impacts only the specific *ortho*-phthalates that are the subject of the petition, for the uses identified in the petition. We acknowledge that some *ortho*-phthalates continue to be permitted for use in food contact applications, either as prior sanctioned ingredients or through food additive regulations.

(Comment 4) One comment stated that FDA did not explain how the petition affects installed food handling equipment containing ''abandoned'' *ortho*-phthalates. The comment expressed concern that the survey questions offered in support of the abandonment claim do not clearly capture the use of these substances in repeat use food contact substances such as conveyors, tubing, and other equipment currently installed in food manufacturing facilities. The comment asserted that for these uses to be abandoned, industry must not only cease to manufacture or sell items containing these plasticizers, but any remaining equipment containing the 26 plasticizers must not be used. The comment also requested that, if the petition is granted, we state that continued use of installed equipment containing the abandoned substances/plasticizers that come into contact with food is unlawful and that the food would be adulterated.

(Response 4) We disagree with the assertion that FVA's survey fails to address repeat-use items. Questions 1, 2, and 4 of FVA's survey encompass broad types of intended use. Specifically, these questions ask about current manufacturing, importing, and distribution of the subject *ortho*-phthalates for ''food-contact applications,'' a broad term that arguably includes any food-contact use of the subject *ortho*-phthalates. Question 3 has the same scope but is specific to the survey recipients' future plans. Regarding installed food processing equipment that may contain any of the substances in table 1, the comment did not provide any evidence showing that there is use of the subject substances in repeat-use food contact applications. We note that repeated-use food handling equipment typically has a finite lifetime. The petitioner provided information concerning the typical useful lifetime of some food handling equipment and noted that these lifetimes vary based on the operating conditions but are roughly 300 to 500 days for food handling conveyer belts, flexible tubing, and gaskets. This information is contained in Food Additive Master File No. 954, which was incorporated by reference into FAP 8B4820 by the petitioner. The petitioner characterized the approximate lifetimes provided as conservative estimates of the usable lifetimes of repeat-use articles subject to these regulations (Ref. 2).

In assessing other food additive uses, FDA has compiled representative exposure scenarios of repeat use food handling articles based on data collected through the Food Contact Notification Program (Ref. 5). We note that the estimated standardized lifetimes (*i.e.,* the amount of time an article such as a conveyor belt can function before needing replacement) in these scenarios are 365 days for polymer conveyor belts (Ref. 6), flexible polymer tubing (Ref. 7), and polymer o-rings (Ref. 8). Likewise, estimates of dietary exposure from the use of lubricants, which may contain a plasticizer, used on food handling equipment (*e.g.,* bearings, surfaces) assume that relubrication is required between 600 to 4000 machine operating hours. This is approximately 25 to 167 days, assuming nonstop operation (Ref. 8). Thus, lubricants are replaced on a relatively frequent basis.

As such, any of these types of repeat-use items that may have been in use as of July 2018, at the time this petition was filed, would be expected to be past the end of their usable life. Considering these estimated lifetimes and the evidence suggesting that there would not be replacement products containing the abandoned substances, we do not agree that there is reason to question the evidence supporting abandonment in the context of repeat-use food handling equipment.

With respect to the request that FDA state that continued use of installed equipment containing the abandoned substances/plasticizers that come into contact with food is unlawful and that the food would be adulterated, we decline. It would be premature for FDA to comment on the legal status of substances in response to an unproven concern that certain uses are not, in fact, abandoned.

(Comment 5) One comment stated that it is not clear what parts of industry were omitted from the petitioner's survey and questions whether the survey recipients possessed sufficient knowledge to accurately answer the survey in instances of repeat-use items.

(Response 5) As stated in section II of this final rule, we consider the totality of the parties surveyed in the FVA petition to be comprehensive and sufficient to determine that these uses are abandoned. FDA also considers question 5 of the survey, which asked about the recipients' general knowledge of the use of the substances in food contact applications in the United States, to encompass not only the activities of the survey recipients themselves, but also other firms which supply, purchase from, or otherwise interact with the survey recipients.

In their petition, FVA provided data from committees, panels, and industry associations composed of scientific and regulatory experts in the field of food contact materials, plasticizers, *ortho*-phthalates, and the plastics, paper and paperboard, and food industries in general. Individual companies that responded to the surveys were made aware of FVA's food additive petition based on abandonment and were notified that the scope of this petition included repeat-use items via publication in the **Federal Register** at 83 FR 56750.

(Comment 6) One comment stated that FDA should clarify that for any abandoned uses, all prior and future uses that have been or will be deemed ''generally recognized as safe'' (GRAS) are invalid. The comment asserted that if we decide to revoke food additive regulations in response to this petition, a company may seek to rely on a self-GRAS determination without agency knowledge to conclude that the use of one or more of these substances are GRAS.

(Response 6) With regard to the comment's concern that a manufacturer may conclude that use of one or more of these substances is GRAS without notifying us, we note that, for a substance to be GRAS based on scientific procedures, the scientific data and information about the use of a substance must be generally available and there must be general recognition among qualified experts that those data and information establish that the substance is safe under the conditions of its intended use (21 CFR 170.30). Prior approval as a food additive for one use does not mean that another use of the substance is GRAS (see 81 FR 54960 at 54976, August 17, 2016). FDA encourages firms to seek our evaluation of any conclusion of GRAS status before they introduce the substance into the market. In the future, if a manufacturer wishes to establish safe conditions of

use for one or more of these substances in food contact applications, we expect the manufacturer to submit either a food additive petition or a food contact substance notification prior to market entry because these intended uses were previously authorized under section 409 of the FD&C Act.

IV. Conclusion

FDA reviewed the data and information in the petition and other available relevant material to evaluate whether the food contact uses listed in tables 2 through 19 have been permanently and completely abandoned. Based on the available information, we have determined that these food contact uses have been abandoned. Therefore, we are amending §§ 175.105, 175.300, 175.320, 176.170, 176.180, 176.300, 177.1010, 177.1200, 177.1460, 177.1590, 177.2420, 177.2600, 178.3740, and 178.3910 of the food additive regulations to no longer provide for the food additive uses of the substances listed in tables 2 through 19 because these uses have been abandoned. Although the regulatory text in §§ 175.380, 175.390, 177.1210, and 179.1400 will not be amended, these regulations are also affected because they authorize certain uses of substances listed in table 1 by cross-referencing other regulations.

V. Public Disclosure

In accordance with § 171.1(h), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), we will delete from the documents any materials that are not available for public disclosure.

VI. Environmental Impact

We have determined under 21 CFR 25.32(m) 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.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov.*

IX. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

* 1. FVA 2017 Value Chain Survey Results. *https://www.surveymonkey.com/results/SM-QMSNRGQQ8/* (last accessed December 17, 2021).
* 2. Email correspondence between D. Hill, Keller and Heckman LLP and S. DiFranco, Division of Food Ingredients, Office of Food Additive Safety (OFAS), Center for Food Safety and Applied Nutrition (CFSAN), FDA, October 30, 2019.
3. Malveda, Michael P; Liu, Shirley; Passararat, Suchada; Sesto, Barbara. *Chemical Economics Handbook: Plasticizers.* IHS Chemical, 2015.
* 4. American Chemistry Council Member Companies. *https://www.americanchemistry.com/Membership/MemberCompanies/* (last accessed December 17, 2021.)
* 5. Memorandum from A. Gonzalez-Bonet, Chemistry Review Group I, Division of Food Contact Notifications (DFCN), OFAS, CFSAN, to the file, November 8, 2017.
* 6. Memorandum for FAP 8B4089 from L. Borodinsky, Food and Color Additives Review Section, OFAS, CFSAN, FDA to A. Laumbach, Indirect Additives Branch, OFAS, CFSAN, FDA, November 23, 1988.
* 7. Memorandum for FCN 000109 from K. Arvidson, Chemistry Review Group I, Division of Product Manufacture and Use, Chemistry and Exposure Assessment Team, OFAS, CFSAN, FDA to H. Macon, Division of Product Policy, OFAS, CFSAN, FDA, December 20, 2000.
* 8. Memorandum for FAP 9B4644 from R. Costnatino, Special Project Team, Chemistry Review Team, Division of Manufacture and Use, OFAS, CFSAN, FDA to the file, April 21, 1999.
* 9. Memorandum for FCN 001617 from A. Gonzalez-Bonet, Chemistry Review Group I, DFCN, OFAS, CFSAN, FDA to K. McAdams, DFCN, OFAS, CFSAN, FDA, February 23, 2016.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Parts 176, 177, and 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 175, 176, 177, and 178 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

■ 1. The authority citation for part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 175.105 [Amended]

■ 2. Amend § 175.105 in the table in paragraph (c)(5) by removing the entries for ''Butyl benzyl phthalate'', ''Butyldecyl phthalate'', ''Butyloctyl phthalate'', ''Butyl phthalate butyl glycolate'', ''Di(butoxyethyl) phthalate'' ''Dibutyl phthalate'', ''Di(2-ethylhexyl) hexahydrophthalate'', ''Diethyl phthalate'', ''Dihexyl phthalate'' ''Dihydroabietylphthalate'', ''Diisobutyl phthalate'', ''Diisooctyl phthalate'', ''Dimethyl phthalate'', ''Dioctylphthalate'', ''Diphenyl phthalate'', ''Ethyl phthalyl ethyl glycolate'', ''Methyl phthalyl ethyl glycolate'', and ''Octyldecyl phthalate''.

§ 175.300 [Amended]

■ 3. Amend § 175.300 in paragraph (b)(3)(viii)(*b*) by removing the entry for ''Dibutyl phthalate, for use only in coatings for containers having a capacity of 1,000 gallons or more when such containers are intended for repeated use in contact with alcoholic beverages containing up to 8 percent of alcohol by volume.'' and in paragraph (b)(3)(xxiv) by removing the entries for ''Butyl phthalyl butyl glycolate.'', ''Diethyl phthalate.'', ''Diisooctyl phthalate.'', and ''Ethyl phthalyl ethyl glycolate.''.

§ 175.320 [Amended]

■ 4. Amend § 175.320 in paragraph (b)(3)(ii) by removing the entries for ''Butyl phthalyl butyl glycolate'', ''Diethyl phthalate'', and ''Ethyl phthalyl ethyl glycolate''.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

■ 5. The authority citation for part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

§ 176.170 [Amended]

■ 6. Amend § 176.170 in the table in paragraph (b)(2) by removing the entries for ''Butylbenzyl phthalate'' and ''Dibutyl phthalate''.

§ 176.180 [Amended]

■ 7. Amend § 176.180 in the table in paragraph (b)(2) by removing in paragraph (b)(2) the entry for ''Butyl benzyl phthalate''.

§ 176.300 [Amended]

■ 8. Amend § 176.300 in paragraph (d) by removing the entries for ''Dibutyl phthalate.'', ''Didecyl phthalate.'', and ''Dodecyl phthalate.''.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

■ 9. The authority citation for part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.1010 [Amended]

■ 10. Amend § 177.1010 in paragraph (a)(8) by removing the entry for ''Dimethyl phthalate.''.

§ 177.1200 [Amended]

■ 11. Amend § 177.1200 in paragraph (c) by removing the entries for ''Castor oil phthalate with adipic acid and fumaric acid-diethylene glycol polyester'', ''Castor oil phthalate, hydrogenated'', ''Dibutylphthalate'', ''Diisobutyl phthalate'', and ''Dimethylcyclohexyl phthalate''.

§ 177.1460 [Amended]

■ 12. Amend § 177.1460 in paragraph (b) by removing the entry for ''Dioctyl phthalate''.

§ 177.1590 [Amended]

■ 13. Amend § 177.1590 in paragraph (a) by removing the entry for ''Dimethyl orthophthalate,''.

§ 177.2420 [Amended]

■ 14. Amend § 177.2420 in paragraph (b) by removing the entries for ''Butyl benzyl phthalate (containing not more than 1.0 percent by weight of dibenzyl phthalate)'', ''dibutyl phthalate'', and ''Dimethyl phthalate''.

§ 177.2600 [Amended]

■ 15. Amend § 177.2600 in paragraph (c)(4)(ii)(*b*) by removing the entry for ''Diphenylguanidine phthalate.'' and I n paragraph (c)(4)(iv) by removing the entries for ''*n*-Amyl *n*-decyl phthalate.'', ''Dibutyl phthalate.'', ''Didecyl phthalate.'', ''Dioctyl phthalate.'', and ''*n*-Octyl *n*-decyl phthalate.''

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

■ 16. The authority citation for part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 178.3740 [Amended]

■ 17. Amend § 178.3740 in paragraph (b) by removing the entries for ''Butylbenzyl phthalate'', ''Dihexyl phthalate'', and ''Diphenyl phthalate''.

§ 178.3910 [Amended]

■ 18. Amend § 178.3910 in paragraph (a)(2) by removing the entry for ''Diethyl phthalate''.

Dated: May 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10531 Filed 5–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0571]

Ortho-phthlates for Food Contact Use; Request for Information

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA or we) is opening a docket to obtain data and information on the use of *ortho*-phthalates (or ''phthalates'') for food contact applications. Specifically, FDA is seeking scientific data and information on current uses, use levels, dietary exposure, and safety data of certain *ortho*-phthalates. The purpose of this request is to provide FDA with all sources of relevant information to support our review of the current use levels and safe use of these *ortho*-phthalates in food contact applications.

DATES: Submit either electronic or written comments and scientific data and information by July 19, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 19, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 19, 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.

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–2022–N–0571 for ''*Ortho*-phthalates for Food Contact Use; Request for Information.'' 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.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jessica Urbelis, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–5187; or Meadow Platt, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Ortho-phthalates may be used as plasticizers for polymers, most commonly poly (vinyl chloride), to make the polymers less brittle or to soften them. These polymers are then used in a wide range of products, such as toys, vinyl flooring and wall covering, detergents, lubricating oils, food packaging, pharmaceuticals, blood bags and tubing, and personal care products. Our food additive regulations at parts 175, 176, 177, 178, and 181 (21 CFR parts 175, 176, 177, 178, and 181) provide for the safe use of certain *ortho*-phthalates as plasticizers for packaging used to contact food and for other food contact applications, such as components of adhesives, resins, lubricants, and sealants.

B. Recent Petitions

In the **Federal Register** of May 20, 2016 (81 FR 31877), we announced that we had filed a food additive petition (FAP 6B4815) in accordance with 21 CFR 171.130. The food additive petition (FAP 6B4815) proposed that we amend or revoke certain food additive regulations under parts 175, 176, 177, and 178 to no longer provide for the food contact use of specified *ortho*-phthalates. The petitioners based their petition on the claim that new evidence demonstrates the use of these *ortho*-phthalates in food contact applications is unsafe. Elsewhere in this issue of the **Federal Register**, we have published a

final rule in response to FAP 6B4815 denying that petition.

On April 20, 2016, we received a citizen petition (Docket No. FDA–2016–P–1171) requesting that we initiate rulemaking to remove the prior sanctions in part 181 for the following five *ortho*-phthalates: di(2-ethylhexyl) phthalate (CAS No. 117–81–7), diethyl phthalate (CAS No. 84–66–2), ethyl phthalyl ethyl glycolate (CAS No. 84–72–0), butyl phthalyl butyl glycolate (CAS No. 85–70–1), and diisooctyl phthalate (CAS No. 27554–26–3). FDA defined the term ''prior sanction'' in § 170.3(*l*) (21 CFR 170.3(*l*)) as an explicit approval granted with respect to use of a substance in food prior to September 6, 1958, by FDA or the United States Department of Agriculture (USDA), pursuant to the FD&C Act, the Poultry Products Inspection Act, or the Meat Inspection Act. The term ''prior sanction'' derives from section 201(s)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(s)(4)), which excepts from the definition of a food additive any substance used in accordance with a sanction or approval granted before September 6, 1958, the date of enactment of the Food Additives Amendment to the FD&C Act. Before that date, we had approved specific uses of various food-contact materials or food ingredients by issuing letters and other statements that, in FDA's view, these substances were ''not considered unsafe,'' that they did ''not present a hazard,'' or that we ''did not object to their use.'' The existence of a prior sanction exempts sanctioned uses from the food additive provisions of the FD&C Act but not from the other adulteration or the misbranding provisions of the FD&C Act (§ 181.5(b)). The prior sanction exists only for a specific use of a substance in food and delineates level(s), condition(s), and product(s) set forth by explicit approval by FDA or USDA before September 6, 1958 (§ 181.5(a)). Some prior sanctioned substances are codified in part 181. The citizen petition also requested that we add a new section to 21 CFR part 189 prohibiting the use of the following eight *ortho*-phthalates: diisobutyl phthalate (CAS No. 84–69–5), di-n-butyl phthalate (CAS No. 84–74–2), butyl benzyl phthalate (CAS No. 85–68–7), dicyclohexyl phthalate (CAS No. 84–61–7), di-n-hexyl phthalate (CAS No. 84–75–3), diisooctyl phthalate (CAS No. 27554–26–3), di(2-ethylhexyl) phthalate (CAS No. 117–81–7), and diisononyl phthalate (CAS No. 28553–12–0). We are denying this citizen petition.

In the **Federal Register** of November 14, 2018 (83 FR 56750), we announced that we had filed a food additive petition (FAP 8B4820) submitted in accordance with § 171.130. That FAP (8B4820) proposed to amend parts 175, 176, 177, and 178 to no longer provide for certain uses of *ortho*-phthalates on the basis that the use of those *ortho*-phthalates in food contact applications has been abandoned. Elsewhere in this issue of the **Federal Register**, we have published a final rule in response to FAP 8B4820 granting that petition and amending parts 175, 176, 177, and 178 to no longer authorize the uses of the subject *ortho*-phthalates in food contact applications because those uses have been permanently and completely abandoned.

FAP 8B4820 includes the *ortho*-phthalates that are addressed in FAP 6B4815 except for the following: Diisononyl phthalate (DINP) (CAS No. 28553–12–0), diisodecyl phthalate (DIDP) (CAS No. 26761–40–0), di(2-ethylhexyl) phthalate (DEHP) (CAS No. 117–81–7), and dicyclohexyl phthalate (DCHP) (CAS No. 84–61–7). These four phthalates are not included in the final rule for FAP 8B4820 because the petition does not claim that their uses have been abandoned. In addition, FAP 8B4820 does not include diallyl phthalate (CAS No.) 131–17–9. Diallyl phthalate is only authorized for use in these regulations as a monomer in the manufacture of polymers and not as a plasticizer.

C. Current Status of Information

The original safety assessments that resulted in the authorized uses of *ortho*-phthalates in food contact applications were based on exposure and toxicological information and data provided during the period of 1961 through 1985. As the food supply and packaging market has changed since that time, the use of *ortho*-phthalates in food contact materials has also evolved. Furthermore, the body of available toxicological information on phthalates has expanded since the food contact uses of *ortho*-phthalates were authorized. While FDA is generally aware of updated toxicological and use information on phthalates that is publicly available, we are also aware that stakeholders do not always make such information public. As such, we request all updated information regarding the food contact uses, use levels, and dietary exposure and safety data for the *ortho*-phthalates listed below that are currently in use in food contact applications. We may use this information to update the dietary exposure estimates and safety assessments for the permitted food contact uses of *ortho*-phthalates. While we are responding to the food additive petitions and citizen petition based on the information provided in those petitions and other relevant and available data, the information we are requesting may add to our knowledge of *ortho*-phthalates that remain authorized for use.

II. Request for Information

FDA is requesting information on the current food contact uses, use levels, dietary exposure and safety data on *ortho*-phthalates currently used in food contact applications. FDA is not requesting this information for uses that have been abandoned. Specifically, FDA requests the following:

1. Information on any current specific food-contact uses and use levels for the following *ortho*-phthalates found in FDA's regulations (as food additives and/or prior sanctioned substances): Diisononyl phthalate (DINP, CAS No. 28553–12–0), diisodecyl phthalate (DIDP, CAS No. 26761–40–0), di(2-ethylhexyl) phthalate (DEHP, CAS No. 117–81–7), dicyclohexyl phthalate (DCHP, CAS No. 84–61–7), butylphthalyl butyl glycolate (BPBG, CAS No. 85–70–1), diethyl phthalate (DEP, CAS No. 84–66–2), ethylphthalyl ethyl glycolate (EPEG, CAS No. 84–72–0) and diisooctyl phthalate (DIOP, CAS No. 27554–26–3);

2. Data, analyses, and any other information related to dietary exposure from the use of *ortho*-phthalates listed in item 1 currently in food contact applications;

3. Safety data for all *ortho*-phthalates listed in item 1 currently used in food contact applications; and/or

4. Information regarding any prior sanctioned uses of *ortho*-phthalates not listed in FDA's regulations. This includes documentation to support the prior sanction and the information requested in items 1 through 3 above on the current use(s), use levels, exposure, and safety information for any such prior-sanctioned *ortho*-phthalates currently in use.

Dated: May 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10532 Filed 5–19–22; 8:45 am]

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