AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 88 Wednesday,
No. 40 March 1, 2023

Pages 12803–13014

OFFICE OF THE FEDERAL REGISTER

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

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 88, No. 40

Wednesday, March 1, 2023

Agriculture Department
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See National Agricultural Statistics Service
See National Institute of Food and Agriculture
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Export Certification: Accreditation of Nongovernment Facilities, 12909–12910

Coast Guard
RULES
Safety Zone:
Annual Events in the Captain of the Port Buffalo Zone, 12831
Aransas Bay, Corpus Christi, TX, 12829–12831
NOTICES
Port Access Route Study:
Approaches to Galveston Bay and Sabine Pass, TX and Calcasieu Pass, LA, 12966–12969

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China (DFARS Case 2022–D010), 12861–12862
Prompt Payment of Contractors (DFARS Case 2021–D008), 12862–12864
Quick-Closeout Procedures Threshold (DFARS Case 2021–D001), 12864–12865

Defense Department
See Defense Acquisition Regulations System
NOTICES
Meetings:
Defense Advisory Committee for the Prevention of Sexual Misconduct, 12924
Defense Business Board, 12922–12923
Defense Policy Board, 12923

Drug Enforcement Administration
PROPOSED RULES
Expansion of Induction of Buprenorphine via Telemedicine Encounter, 12890–12906
Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation, 12875–12890

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Loan Rehabilitation: Reasonable and Affordable Payments, 12924–12925

Employment and Training Administration
NOTICES
Meetings:
Advisory Committee on Apprenticeship, 12996

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air Plan Approval:
Florida; Update to Materials Incorporated by Reference, 12835–12842
Kentucky; Revision to Federally Enforceable District Origin Operating Permits, 12831–12833
Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards, 12833–12835
NOTICES
Guidance:
Pesticide Registrants on the Lists of Pests of Significant Public Health Importance, 12929–12930
Meetings:
White House Environmental Justice Advisory Council, 12928–12929
Proposed Consent Decree:
Clean Water Act and Administrative Procedure Act Claims, 12930–12931

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 12931

Federal Aviation Administration
RULES
Airworthiness Directives:
DG Flugzeugbau GmbH and Schempp-Hirth Flugzeugbau GmbH Gliders, 12820–12822
Schempp-Hirth Flugzeugbau GmbH Gliders, 12817–12819
PROPOSED RULES
Airspace Designations and Reporting Points:
Quantico, VA, 12870–12872
Vicinity of Natchez, MS, 12872–12875
NOTICES
Airport Property:
Syracuse Hancock International Airport, Syracuse, NY, 13006

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12932–12933

Federal Contract Compliance Programs Office
RULES
Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption Rule, 12842–12861

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Public Assistance Customer Satisfaction Surveys, 12973–12974
Request for Federal Assistance Form—How To Process Mission Assignments in Federal Disaster Operations, 12975–12976
Flood Hazard Determinations, 12972–12979

Federal Energy Regulatory Commission
NOTICES
Application:
Central Nebraska Public Power and Irrigation District, 12925–12926
One Drop Hydro, LLC, 12927
Combined Filings, 12926–12928
Withdrawal:
Sunfish Solar, LLC v. PJM Interconnection, LLC, 12928

Federal Motor Carrier Safety Administration
NOTICES
Exemption Application:
Qualification of Drivers; Epilepsy and Seizure Disorders, 13009–13010
Qualification of Drivers; Hearing, 13007–13009

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12933–12937

Fish and Wildlife Service
NOTICES
Endangered Wildlife; Recovery Permit Applications, 12980–12981

Food and Drug Administration
PROPOSED RULES
Food Standards:
General Principles and Food Standards Modernization; Withdrawal of Proposed Rule, 12870
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice, 12939–12941
Determination of Regulatory Review Period for Purposes of Patent Extension:
Verzenio, 12938–12939
Vyzulta, 12950–12951
Guidance:
Q13 Continuous Manufacturing of Drug Substances and Drug Products; International Council for Harmonisation, 12941–12942
Request for Information:
Discussion Paper: Artificial Intelligence in Drug Manufacturing, 12943–12944
Requests for Nominations:
Individuals and Consumer Organizations for Advisory Committees, 12945–12950
Patient Engagement Advisory Committee, 12945
Withdrawal of Approval of Drug Application:
Mylan Pharmaceuticals Inc., et al., 12942–12943

Food Safety and Inspection Service
PROPOSED RULES
Food Standards:
General Principles and Food Standards Modernization; Withdrawal of Proposed Rule, 12870

Foreign-Trade Zones Board
NOTICES
Application for Production Authority:
Foreign Trade Zone 38, Teijin Carbon Fibers, Inc., (Polyacrylonitrile-Based Carbon Fiber), 12912
Proposed Production Activity:
Foreign-Trade Zone 38, BMW Manufacturing Co., LLC; (Passenger Motor Vehicles); Spartanburg, SC, 12911

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Office of Global Affairs: Stakeholder Listening Session, 12955–12956
Statement of Organization, 12954–12955

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Biographical Sketch Form for Use With Applications to the Maternal and Child Health Bureau Research Grants, 12953–12954
Maternal, Infant, and Early Childhood Home Visiting Program Home Visiting Program Budget Assistance Tool, 12951–12953

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Housing and Urban Development Department
RULES
Adjustable Rate Mortgages:
Transitioning From the London Interbank Offered Rate to Alternate Indices, 12822–12829
PROPOSED RULES
Changes in Branch Office Registration Requirements, 12906–12908

Indian Affairs Bureau
NOTICES
Land Acquisition:
Oneida Indian Nation, Madison and Oneida Counties, NY, 12982–12987

Indian Health Service
NOTICES
Preventing Alcohol-Related Deaths Through Social Detoxification, 12956–12964

Industry and Security Bureau
NOTICES
Denial of Export Privileges:
Ilya Balakaev, Radiotester OOO a/k/a Radiotester, LLC, Volgograd Prospect, House 2, 12912–12915

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13012–13013
Application:
Taxpayer Advocacy Panel, 13011–13012

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Advance Notification of Sunset Review, 12916–12917
Certain Welded Carbon Steel Standard Pipes and Tubes From India, 12917–12918
Initiation of Five-Year (Sunset) Reviews, 12915–12916

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Aluminum Foil From China, 12990–12992
Certain Polyester Staple Fiber From China, 12987–12990
Honey From China, 12992–12995

Justice Department
See Drug Enforcement Administration
NOTICES
Proposed Consent Decree:
CERCLA, 12995

Labor Department
See Employment and Training Administration
See Federal Contract Compliance Programs Office

Maritime Administration
NOTICES
Request for Information:
Administration of the Cargo Preference Act, 13010–13011

National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 12910

National Credit Union Administration
RULES
Cyber Incident Notification Requirements for Federally Insured Credit Unions, 12811–12817

National Institute of Food and Agriculture
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12910–12911

National Institute of Standards and Technology
NOTICES
Research Consortium:
Metal Additive Manufacturing Powder Consortium, 12918–12919

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 12964
National Institute of General Medical Sciences, 12964–12965
National Institute of Neurological Disorders and Stroke, 12965

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska, 12868–12869
Fisheries Off West Coast States:
Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 30; 2023–24 Biennial Specifications and Management Measures; Correcting Amendment, 12865–12868
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Socioeconomics of Coral Reef Conservation, the Commonwealth of the Northern Mariana Islands 2024 Survey, 12921
Teacher at Sea Program, 12921–12922
Meetings:
Fisheries of the South Atlantic; Southeast Data, Assessment, and Review, 12919–12920
Pacific Fishery Management Council, 12920–12921

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Authorization for Payment by Credit Card, 12996–12998

Presidential Documents
PROCLAMATIONS
Special Observances:
National Eating Disorders Awareness Week (Proc. 10521), 12803–12804

Rural Utilities Service
RULES
Electric Program Coverage Ratios Clarification and Modifications, 12806–12810

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12998–12999
Application:
Tidal Trust II, et al., 13003–13004
Self-Regulatory Organizations; Proposed Rule Changes:
Nasdaq BX, Inc., 12999–13003
The Nasdaq Stock Market, LLC, 13003

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13004–13005

State Department
NOTICES
Delegation of Authority:
Deputy Secretary of State as Final Appeal Authority for Payment Decisions Under the HAVANA Act, 13005

Substance Abuse and Mental Health Services Administration
NOTICES
List of Certified Laboratories and Instrumented Initial Testing Facilities That Meet Minimum Standards To Engage in Urine Drug Testing, 12965–12966

Surface Transportation Board
NOTICES
Exemption:
Acquisition; Massachusetts Bay Transportation Authority; CSX Transportation, Inc., 13005–13006
Release of Waybill Data, 13005

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
RULES
Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 12805–12806

Treasury Department
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Record of Abandonment of Lawful Permanent Residence Status, 12979–12980

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Free Trade Agreements, 12969–12970
NAFTA Regulations and Certificate of Origin, 12970–12971
Petroleum Refineries in Foreign Trade Sub-Zones, 12971–12972

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Personalized Career Planning and Guidance, 13013–13014
Preauthorization and Request for Payment of Bowel and Bladder Services, 13013

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

2 CFR
1201 12805

3 CFR
Proclamations:
10521 12803

7 CFR
1710 12806

9 CFR
Proposed Rules:
410 12870

12 CFR
748 12811

14 CFR
39 (2 documents) 12817, 12820

Proposed Rules:
71 (2 documents) 12870, 12872

21 CFR
Proposed Rules:
130 12870
1300 (2 documents) 12875, 12890
1304 (2 documents) 12875, 12890
1306 (2 documents) 12875, 12890

24 CFR
203 12822
206 12822

Proposed Rules:
202 12906

33 CFR
165 (2 documents) 12829, 12831

40 CFR
52 (3 documents) 12831, 12833, 12835

41 CFR
60–1 12842

48 CFR
212 (2 documents) 12861, 12862
225 12861
232 12862
242 12864
252 (2 documents) 12861, 12862

50 CFR
660 12865
679 12868

Federal Register
Vol. 88, No. 40
Wednesday, March 1, 2023

Presidential Documents

Title 3—

The President

Proclamation 10521 of February 24, 2023

National Eating Disorders Awareness Week, 2023

By the President of the United States of America

A Proclamation

Nearly 1 in 10 Americans are expected to develop an eating disorder in their lifetime. When left untreated, eating disorders can have devastating effects on a person's health. Each of us has the power to help people who are struggling to receive the support and treatment they need and to promote a culture that treats everyone with dignity and respect. During National Eating Disorders Awareness Week, we call attention to this serious health condition and reaffirm that, with early access to treatment and support, a full recovery is possible.

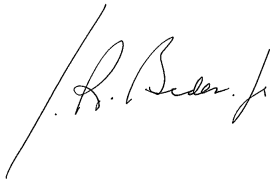
My Administration is taking action to address eating disorders. Through the National Institute of Mental Health, we are working to develop better therapies and interventions. Through the Substance Abuse and Mental Health Services Administration (SAMHSA) and funding for the National Center of Excellence for Eating Disorders, we are also helping health care providers, families, caregivers, and community members access new tools and trainings to help detect and treat eating disorders.

I made tackling the mental health crisis a key pillar of my Administration's Unity Agenda, and since coming into office, I have invested billions of dollars to improve access to mental health services. For example, we are expanding Certified Community Behavioral Health Clinics, which deliver 24/7 mental health care to millions of Americans, regardless of their ability to pay. We are also shaping brighter futures for the next generation by helping schools hire more counselors, social workers, and nurses; expanding training for health care professionals; integrating mental health into primary care; strengthening enforcement of mental health parity laws; and addressing the harms of bullying and social media platforms that fuel eating disorders, depression, and self-harm.

This week, let us acknowledge the families of those struggling with eating disorders as they care for their loved ones. Let us recommit to celebrating and supporting our fellow Americans who are on their road to recovery. And let us spread the word that help is just a phone call away: The SAMHSA National Helpline at 1–800–662–4357 is a confidential, free, 24-hours-a-day, 365-days-a-year information and referral service. For anyone experiencing a crisis, immediate and confidential help is also available by calling or texting 988, the National Suicide and Crisis Lifeline.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 26 through March 4, 2023, as National Eating Disorders Awareness Week. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of what Americans can do to prevent eating disorders and that will improve access to care and other support services for those currently living with an eating disorder.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of February, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2023–04326
Filed 2–28–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 88, No. 40
Wednesday, March 1, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

2 CFR Part 1201

[Docket No. DOT–OST–2023–0032]

RIN 2105–AF06

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Transportation is updating the DOT regulation that adopts the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This amendment responds to the 2020 changes to the Office of Management and Budget Guidance for Grants and Agreements, which amended OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, by revising section cross-references.

DATES: Effective March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tevin Frederick, Office of the General Counsel (C–10), 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–5189, *tevin.frederick@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule updates the DOT regulation that outlines the requirements for Federal Awards adopted in OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). The purpose of this rule is to revise section cross-references to conform with the 2020 changes to the OMB Guidance for Grants and Agreements (85 FR 49506; Aug. 13, 2020).

This rule updates cross-references in three sections of part 1201. This rule revises the cross-references in 2 CFR 1201.80 that refer to the definitions of program income and period of performance to reflect the OMB changes to 2 CFR 200 that moved all definitions to 2 CFR 200.1. Second, this rule changes the cross-reference in 2 CFR 1201.206 to reflect revisions in the OMB Guidance for Grants and Agreements that moved ''Standard application requirements'' to section 2 CFR 200.207. Lastly, this rule changes the cross-reference in 2 CFR 1201.327 to reflect revisions in the OMB Guidance for Grants and Agreements that moved ''Financial reporting'' from 2 CFR 200.327 to 2 CFR 200.328.

This final rule does not impose substantive requirements on the public. It is ministerial and relates only to technical corrections. As these changes will not have a substantive impact on the public, the Department does not expect to receive substantive comments on the rule. Therefore, the Department has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). Similarly, under 5 U.S.C. 553(d)(3), the Department finds good cause for this rule to be effective less than 30 days after its publication in the **Federal Register**.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The Department has determined that this final rule is not a significant regulatory action under Executive Order 12866 and DOT Regulatory Policies and Procedures (44 FR 11034). It was not reviewed by the Office of Management and Budget. There are no costs associated with this rule.

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the consultation requirements of Executive Order 13132 do not apply.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial or direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We also do not believe this rule will impose any costs on small entities because it is merely organizational in nature. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) does not require a written statement for this final rule because the rule does not include a Federal mandate that may result in the expenditure in any one year of $100,000,000 or more (adjusted annually for inflation) by State, local, and tribal governments, or the private sector.

National Environmental Policy Act

DOT has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical

exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, ''[p]romulgation of rules, regulations, and directives.'' 23 CFR 771.117(c)(20). The purpose of this rulemaking is to update the regulation that outlines the requirements for Federal Awards and to revise section cross-references to conform with the 2020 changes to the OMB Guidance for Grants and Agreements. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 2 CFR Part 1201

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grants administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians-education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

For the reasons stated in the preamble, the Department of Transportation amends 2 CFR part 1201 as set forth below:

PART 1201—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 49 U.S.C. 322(a); 2 CFR 200.106.

§ 1201.80 [Amended]

■ 2. In § 1201.80, remove ''2 CFR 200.80'' and add in its place ''2 CFR 200.1'' and remove ''See 2 CFR 200.77 Period of performance.'' and add in its place ''See 2 CFR 200.1 Definitions.''

§ 1201.206 [Redesigated as § 1201.207 and Amended]

■ 3. Redesignate § 1201.206 as § 1201.207 and amend the newly redesignated section by removing ''2 CFR 200.206'' and adding in its place ''2 CFR 200.207''.

§ 1201.327 [Redesigated as § 1201.328 and Amended]

■ 4. Redesignate § 1201.327 as § 1201.328 and amend the newly redesignated section by removing ''2 CFR 200.327'' and adding in its place ''2 CFR 200.328''.

Signed under authority provided by 49 U.S.C. 322(a), 2 CFR 200.106, and 49 CFR 1.27 in Washington, DC on February 21, 2023.

John E. Putnam,

General Counsel, U.S. Department of Transportation.

[FR Doc. 2023–03891 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

[Docket No. RUS–22–ELECTRIC–0057]

RIN # 0572–AC60

Electric Program Coverage Ratios Clarification and Modifications

AGENCY: Rural Utilities Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule; request for comment.

SUMMARY: The Rural Utilities Service (RUS), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing a final rule with comment. The intent of this rule is to modify its coverage ratio requirements, add an additional set of ratios, and update and add definitions. The effect of this action is to reduce the regulatory impact on RUS Electric Program borrowers, ensure that loan funds will be repaid in the time agreed upon, facilitate the lending for construction of rural electric infrastructure, and allow RUS to focus on feasibility and security issues while increasing customer efficiency, customer satisfaction and service.

DATES: This final rule is effective May 30, 2023.

Comments must be submitted on or before May 1, 2023.

ADDRESSES: You may submit comments, identified by Docket Number (RUS–22–ELECTRIC–0057) or the RIN #(0572–AC60).

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for sending comments. In the ''Search Documents'' box, enter the Docket Number (RUS–22–ELECTRIC–0057) or the RIN # (0572–AC60), and click the ''Search'' button. To submit a comment, choose the ''Comment Now!'' button. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's FAQ page.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mark Bartholomew, Rural Utilities Service Electric Program, Rural Development, United States Department of Agriculture, 1400 Independence

Avenue SW, STOP 1560, Washington, DC 20250; 704–544–4612 *mark.bartholomew@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development (RD) is a mission area within the U.S. Department of Agriculture (USDA) comprising the Rural Utilities Service (RUS), Rural Housing Service, and Rural Business-Cooperative Service. RD's mission is to increase economic opportunity and improve the quality of life for all rural Americans. RD meets its mission by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving housing, business, and infrastructure throughout rural America. RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, and cultural and historic preservation. The RUS Electric Program provides funding to maintain, expand, upgrade, and modernize America's rural electric infrastructure. The loans and loan guarantees finance the construction or improvement of electric distribution, transmission, and generation facilities in rural areas.

This rulemaking is part of the RUS Electric Program's continuing effort to improve customer service for its borrowers and to create a more efficient work process for its staff. This rulemaking will continue to streamline RUS Electric Program procedures and revise regulations, including removing unnecessary and outdated regulations and simplifying other policies and procedures that impose burdensome requirements on borrowers and applicants.

The intent of these proposed changes is to provide an additional method for complying with RUS's coverage ratio requirements. The goal is to (1) reduce the regulatory impact on RUS Electric Program borrowers, (2) ensure that loan funds will be repaid in the time agreed upon, and (3) that the RUS loans remain adequately secured. RUS expects that these actions will enhance RUS and customer efficiency, thereby increasing customer satisfaction and service. RUS uses these ratios as part of its loan application review and/or its annual review of the Financial and Operating Report data to monitor the financial stability of the borrowers to ensure loan security.

There are no alternatives except to maintain the current RUS Electric Program ratio coverage regulations. The proposed changes will improve customer experience and customer service, and allow RUS to better focus on feasibility and security issues while lessening the burdens on the RUS Electric Program borrowers. These changes provide added flexibility to borrowers to be in complaince with mortgage requirements without increasing rates to meet their operating coverage ratios when the borrower has cash reserves to cover debt service payments. This action should not impose additional costs on applicants or on electric borrowers as the additional ratios are already calculated as part of a Borrower's Statistical Profile which is currently calculated utilizing the data provided on the borrower's RUS Financial and Operating Reports. These changes will positively affect the RUS Electric borrower experience and enhance RUS customer service by removing unnecessary and burdensome requirements for electric borrowers and applicants, minimizing the regulatory impact of applying for loans made or guaranteed by RUS, and facilitating lending for construction of rural electric infrastructure.

II. Summary of Changes to Rule

7 CFR 1710.2 Definitions and Rules of Construction

The definitions MTIER (Modified Times Interest Earned Ratio) and MDSC (Modified Debt Service Coverage) are not currently in the regulation and are added to assist applicants in better understanding the program's requirements.

The definitions of TIER (Times Interest Earned Ratio Debt Service Coverage), OTIER (Operating Times Interest Earned Ratio), DSC (Debt Service Coverage) and ODSC (Operating Debt Service Coverage) are updated to remove outdated sections and references and by reorganizing remaining sections accordingly and improving logical flow.

7 CFR 1710.114 TIER, DSC, OTIER and ODSC Requirements

Paragraphs (a) and (b) will be modified to remove outdated language and to reflect RUS' current Financial and Operating Reports.

Paragraph (b)1 will be modified to allow Modified Times Interest Earned Ratio (MTIER) and Modified Debt Service Coverage (MDSC) to be considered if a borrower does not meet the coverage requirements for Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC). This allows more flexibility to borrowers regarding the coverage requirements.

III. Executive Orders and Acts

Executive Order 12866—Classification

This rule has been determined to be non-significant for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act

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

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Number assigned to the Rural Electrification Loans and Loan Guarantees Program is 10.850. The Assistance Listings are available on the internet at *https://sam.gov/.*

Executive Order 12372, Intergovernmental Review of Federal Programs

This rule is excluded from the scope of E.O. 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from E.O. 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by E.O. 12372.

Paperwork Reduction Act

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). RUS has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore,

RUS has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. The Administrative Procedure Act exempts from notice and comment requirements rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(a)(2)). This final rule is not subject to the APA under 5 U.S.C. 553(a)(2) and 5 U.S.C. 553(b)(3)(A) nor any other statute.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and on the private sector. Under Section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

It has been determined, under E.O. 13132, Federalism, that the policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RUS in the development of regulatory policies that have Tribal implications or preempt Tribal laws. RUS has determined that the rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this rule is not subject to the requirements of Executive Order 13175. If Tribal leaders are interested in consulting with RUS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

E-Government Act Compliance

Rural Development is committed to the E-Government Act of 2002, Public Law 107–347, which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and 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.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–004, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian Tribes, or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

a. *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

b. *Fax:* (833) 256–1665 or (202) 690–7442; or

c. *Email: program.intake@usda.gov.*

List of Subjects in 7 CFR Part 1710

Electric power, Grant programs-energy, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For the reason set forth in the preamble, RUS amends 7 CFR part 1710 as follows:

PART 1710—GENERAL AND PRE–LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* and 6941 *et seq.*

Subpart A—General

■ 2. Amend § 1710.2 in paragraph (a) by:

■ a. Revising the definition of ''DSC'';

■ b. Adding definitions in alphabetical order for ''MDSC'' and ''MTIER''; and

■ c. Revising the definitions of ''DSC'', ''ODSC'', ''OTIER'', and ''TIER''.

The revisions and additions read as follows

§ 1710.2 Definitions and rules of construction.

(a) * * *

DSC means Debt Service Coverage of the borrower calculated as:

$$DSC = \frac{A + B + C}{D}$$

Where:

A = Depreciation and Amortization Expense of the borrower, which equals Part A, Line 13b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Section A, Line 22b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers;

B = Interest expense on total long-term debt of the borrower, which equals Part A, Line 16b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 24b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers, except that interest expense shall be increased by ⅓ of the amount, if any, by which restricted rentals of the borrower (Part L, Total Column c) of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part H, Section K, Total Column c of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets] or RUS Financial and Operating Report Electric Power Supply for power supply borrowers, Part A, Section B, Line 39 [Total Margins & Equities] less Part A, Section B, Line 29 [Regulatory Assets]);

C = Patronage Capital or Margins of the borrower, which equals Part A, Line 29b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 38b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers; and

D = Debt Service Billed (RUS + other), which equals the sum of all payments of principal and interest required to be made on account of total long-term debt of the borrower during the calendar year from Total of Column D of Part N of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Total of Column D of Part H, Section H of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers, plus ⅓ of the amount, if any, by which restricted rentals of the borrower (Part L, Line 3c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part H, Section K, Line 4c of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets] or RUS Financial and Operating Report Electric Power Supply for power supply borrowers, Part A, Section B, Line 39 [Total Margins & Equities] less Part A, Section B, Line 29 [Regulatory Assets]);

* * * * *

MDSC means Modified Debt Service Coverage of the electric system calculated as:

$$MDSC = \frac{A + B + C - D - E}{F}$$

Where:

A = Depreciation and Amortization Expense of the borrower, which equals Part A, Line 13b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 22b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers;

B = Interest expense on total long-term debt of the borrower, which equals Part A, Line 16b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 24b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers, except that interest expense shall be increased by ⅓ of the amount, if any, by which restricted rentals of the borrower (Part L, Line 3c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part H, Section K, Line 4c of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets] or RUS Financial and Operating Report Electric Power Supply for power supply borrowers, Part A, Section B, Line 39 [Total Margins & Equities] less Part A, Section B, Line 29 [Regulatory Assets]);

C = Patronage Capital or Margins of the borrower, which equals Part A, Line 29b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 38b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers; and

D = Generation and Transmission Capital Credits of the borrower, which equals Part A, Line 26b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 35b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers;

E = Other Capital Credits and Patronage Dividends of the borrower, which equals Part A, Line 27b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 36b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers; and

F = Total Long-Term Debt Service Billed (RUS + other), which equals the sum of all payments of principal and interest required to be made on account of total long-term debt of the electric system during the calendar year from Part N, Line 12d of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part H, Section H, Line 12d of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers.

* * * * *

MTIER means Modified Times Interest Earned Ratio of the electric system calculated as:

$$MTIER = \frac{A + B - C - D}{B}$$

Where:

A = Patronage Capital or Margins of the borrower, which equals Part A, Line 29b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers;

B = Interest expense on total long-term debt of the borrower, which equals Part A, Line 16b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers, except that interest expense shall be increased by ⅓ of the amount, if any, by which restricted

rentals of the borrower (Part L, Line 3c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets];

C = Generation and Transmission Capital Credits of the borrower, which equals Part A, Line 26b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers; and

D = Other Capital Credits and Patronage Dividends of the borrower, which equals Part A, Line 27b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers.

* * * * *

ODSC means Operating Debt Service Coverage of the electric system calculated as:

$$ODSC = \frac{A + B + C}{D}$$

Where:

A = Depreciation and Amortization Expense of the borrower, which equals Part A, Line 13b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers;

B = Interest expense on total long-term debt of the borrower, which equals Part A, Line 16b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers, except that interest expense shall be increased by ⅓ of the amount, if any, by which restricted rentals of the borrower (Part L, Line 3c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets];

C = Patronage Capital & Operating Margins of the electric system, which equals Part A, Line 21b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers, plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System from Part I, Line 2c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers; and

D = Debt Service Billed (RUS + other), which equals the sum of all payments of principal and interest required to be made on account of total long-term debt of the electric system during the calendar year from Part N, Line 12d of the RUS Financial and Operating Report Electric Distribution for distribution borrowers, plus ⅓ of the amount, if any, by which restricted rentals of the Electric System (Part L, Line 3c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets]).

* * * * *

OTIER means Operating Times Interest Earned Ratio of the electric system calculated as:

$$OTIER = \frac{A + B}{A}$$

Where:

A = Interest expense on total long-term debt of the borrower, which equals Part A, Line 16b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers, except that interest expense shall be increased by ⅓ of the amount, if any, by which restricted rentals of the borrower (Part L, Line 3c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets]); and

B = Patronage Capital & Operating Margins of the electric system, which equals Part A, Line 21b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers, plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System from Part I, Line 2c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers.

* * * * *

TIER means Times Interest Earned Ratio of the borrower calculated as:

$$TIER = \frac{A + B}{A}$$

Where:

A = Interest expense on total long-term debt of the borrower, which equals Part A, Line 16b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 24b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers, except that interest expense shall be increased by ⅓ of the amount, if any, by which restricted rentals of the borrower (Part L, Line 3c of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part H, Section K, Line 4c of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers) exceed 2 percent of the borrower's equity (RUS Financial and Operating Report Electric Distribution for distribution borrowers, Part C, Line 36 [Total Margins & Equities] less Part C, Line 27 [Regulatory Assets] or RUS Financial and Operating Report Electric Power Supply for power supply borrowers, Part A, Section B, Line 39 [Total Margins & Equities] less Part A, Section B, Line 29 [Regulatory Assets]); and

B = Patronage Capital or Margins of the borrower, which equals Part A, Line 29b of the RUS Financial and Operating Report Electric Distribution for distribution borrowers or Part A, Section A, Line 38b of the RUS Financial and Operating Report Electric Power Supply for power supply borrowers.

* * * * *

■ 3. Amend § 1710.114 by revising paragraphs (a), (b)(1), and (e)(2) to read as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

(a) *General.* Requirements for coverage ratios are set forth in the borrower's mortgage, loan contract, or other contractual agreements with RUS. Nothing in this section, however, shall limit the Administrator's ability to contractually agree to a different ratio provided in this section when doing so would advance or protect the interests of the government.

* * * * *

(b) * * *

(1) The minimum coverage ratios required of distribution borrowers whether applied on an annual or average basis of the 2 best years out of the 3 most recent calendar years, are a TIER of 1.25, DSC of 1.25. Further, the minimum coverage ratios required of distribution borrowers whether applied on an annual or average basis of the 2 best years out of the 3 most recent calendar years are an OTIER and ODSC of 1.1 or an MTIER and MDSC of 1.1.

* * * * *

(e) * * *

(2) With respect to any outstanding loan approved by RUS if, based on actual or projected financial performance of the borrower, RUS determines that the borrower may not achieve its required coverage ratios in the current or future years, RUS may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to RUS.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2023–04016 Filed 2–28–23; 8:45 am]

BILLING CODE 3410–15–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133–AF47

Cyber Incident Notification Requirements for Federally Insured Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA or agency) is amending Part 748 of its regulations to require a federally insured credit union (FICU) that experiences a reportable cyber incident to report the incident to the NCUA as soon as possible and no later than 72 hours after the FICU reasonably believes that it has experienced a reportable cyber incident. This notification requirement provides an early alert to the NCUA and does not require a FICU to provide a detailed incident assessment to the NCUA within the 72-hour time frame.

DATES: The effective date of this final rule is September 1, 2023.

FOR FURTHER INFORMATION CONTACT: *Policy:* Christina Saari, Information Systems Officer, Office of Examination and Insurance, at (703) 283–0121; *Legal:* Gira Bose, Senior Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Overview of the Final Rule
III. Legal Authority
IV. Discussion of Public Comments Received on the Proposed Rule
V. Regulatory Procedures

I. Introduction

A. Background

The NCUA's requirement that FICUs develop written security programs and report certain activity to the NCUA is codified in 12 CFR part 748. In July 2022, the NCUA Board (Board) approved a notice of proposed rulemaking (proposal or proposed rule) that would require a FICU to notify the NCUA of any cyber incident that rises to the level of a reportable cyber incident.[1] The proposed rule would require such notification as soon as possible but no later than 72 hours after a FICU reasonably believes that a reportable cyber incident has occurred.

As stated in the proposed rule, given the growing frequency and severity of cyber incidents within the financial services industry, it is important that the NCUA receive timely notice of cyber incidents that disrupt a FICU's operations, lead to unauthorized access to sensitive data, or disrupt members' access to accounts or services.

B. Summary of Proposed Rule

The proposed rule added a provision to 12 CFR 748.1 for the NCUA to require notification of any *cyber incident* that rises to the level of a *reportable cyber incident* as soon as possible but no later than 72 hours after a FICU reasonably believes that a *reportable cyber incident* has occurred. As first stated in the proposed rule and finalized here, in accordance with § 704.1(a) of the NCUA's regulations, this rule also applies to federally chartered corporate credit unions and federally insured, state-chartered corporate credit unions.

The proposed rule defined a *cyber incident* as an occurrence that actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information on an information system or actually or imminently jeopardizes, without lawful authority, an information system.[2]

The proposed rule defined a *reportable cyber incident* as any substantial cyber incident that leads to one or more of the following: a substantial loss of confidentiality,[3] integrity,[4] or availability of a network or member information system[5] that results from the unauthorized access to or exposure of sensitive data,[6] disrupts[7] vital member services,[8] or has a serious impact on the safety and resiliency of operational systems and processes; a disruption of business operations, vital member services, or a member information system resulting from a cyberattack[9] or exploitation of vulnerabilities; and/or a disruption of business operations or unauthorized access to sensitive data facilitated through, or caused by, a compromise[10] of a credit union service organization, cloud service provider, managed service provider, or other third-party data hosting provider or by a supply chain compromise.

The proposed rule definition excluded any event where the cyber incident was performed in good faith by an entity in response to a specific request by the owner or operator of the information system.

The Board is adopting this final rule largely as proposed to give the NCUA early notice of substantial cyber incidents that have consequences for FICUs as stated in the rule.

Shortly before the Board issued its proposed rule, Congress enacted the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (Cyber Incident Reporting Act) requiring covered entities to report covered cyber incidents to the Cybersecurity and Infrastructure Security Agency (CISA) not later than 72 hours after the entity reasonably believes that a covered cyber incident has occurred.[11] CISA has until 2025 to publish a final rule implementing the Cyber Incident Reporting Act's requirements, including defining the terms used therein. Nevertheless, as stated in the proposed rule, the Board believes that it would be imprudent in light of the increasing frequency and severity of cyber

[1] 87 FR 45029 (July 27, 2022).

[2] 6 U.S.C. 659(a)(5).

[3] *Confidentiality* means preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information. *See https://csrc.nist.gov/glossary/term/confidentiality.* The agency is using definitions from the National Institute of Standards and Technology (NIST), as appropriate. NIST is a familiar and trusted source in the cybersecurity arena and is routinely cited by the Federal Financial Institutions Examination Council and individual federal agencies.

[4] *Integrity* means guarding against improper information modification or destruction and includes ensuring information non-repudiation and authenticity. *See https://csrc.nist.gov/glossary/term/integrity.*

[5] *Member information system* means any method used to access, collect, store, use, transmit, protect, or dispose of member information. 12 CFR part 748, appendix A, section I.B.2.e.

[6] *Sensitive data* is defined as any information which by itself, or in combination with other information, could be used to cause harm to a credit union or credit union member and any information concerning a person or the person's account which is not public information, including any non-public personally identifiable information.

[7] A *disruption* is an unplanned event that causes an information system to be inoperable for a length of time. *https://csrc.nist.gov/glossary/term/disruption.*

[8] *Vital member services* means informational account inquiries, share withdrawals and deposits, and loan payments and disbursements. 12 CFR 749.1.

[9] *Cyberattack* is an attack, via cyberspace, targeting an enterprise's use of cyberspace for the purpose of disrupting, disabling, destroying, or maliciously controlling a computing environment/infrastructure; or destroying the integrity of the data or stealing controlled information. *See https://csrc.nist.gov/glossary/term/Cyber_Attack#:~:text=An%20attack%2C%20via%20cyberspace%2C%20targeting%20an%20enterprise%E2%80%99s%20use,SP%201800-10B%20from%20NIST%20SP%20800-30%20Rev.%201.*

[10] A *compromise* is the unauthorized disclosure, modification, substitution, or use of sensitive data or the unauthorized modification of a security-related system, device, or process in order to gain unauthorized access. *See https://csrc.nist.gov/glossary/term/compromise#:~:text=Definition(s)%3A,an%20object%20may%20have%20occurred.*

[11] The Cyber Incident Reporting for Critical Infrastructure Act of 2022, part of the Consolidated Appropriations Act of 2022, Division Y, Public Law 117–103 (Mar. 15, 2022), is available at *https://www.congress.gov/bill/117th-congress/house-bill/2471/text.*

incidents to postpone a notification requirement until after CISA promulgates a final rule. To the extent possible, and as appropriate for the credit union system, this final rule uses terminology and a reporting framework that Congress outlined in the Cyber Incident Reporting Act. The Board believes it is in the best interest of the credit union system to align the NCUA's rule with the Cyber Incident Reporting Act to provide uniform and timely cyber incident reporting. It is the intention of the Board for the NCUA to coordinate with CISA on any future credit union cyber incident reporting to avoid duplicate reporting to both the NCUA and CISA.

II. Overview of the Final Rule

After carefully considering the comments received, the NCUA is issuing this final rule largely as proposed, as discussed in this section of the preamble.

Definitions

The proposed rule defined a *reportable cyber incident* as, among other things, any substantial cyber incident that leads to a *substantial* loss of confidentiality, integrity, or availability of a network or member information system that results from the unauthorized access to or exposure of sensitive data, disrupts vital member services, or has a serious impact on the safety and resiliency of operational systems and processes. Some commenters felt that the duplicate use of the term *substantial* was redundant. That was the not the intent of the definition. While the word used is the same, *substantial* applies in two different contexts and thus is retained in both places to ensure that the agency receives notification of cyber incidents that are substantial. This terminology also aligns with the language used in the Cyber Incident Reporting Act. In the event such a cyber incident is one that leads to a *substantial* loss of confidentiality, integrity, or availability of a network or member information system, as opposed to a minimal loss, then such incident would be reportable to the agency.

The first prong of the *reportable cyber incident* definition will require a FICU to notify the NCUA of a cyber incident that leads to a substantial loss of confidentiality, integrity, or availability of a member information system as a result of the exposure of sensitive data, disruption of vital member services, or that has a serious impact on the safety and resiliency of operational systems and processes. For example, if a FICU becomes aware that a substantial level of sensitive data is unlawfully accessed, modified, or destroyed, or if the integrity of a network or member information system is compromised, the cyber incident is reportable. If the credit union becomes aware that a member information system has been unlawfully modified and/or sensitive data has been left exposed to an unauthorized person, process, or device, that cyber incident is also reportable, irrespective of intent.

There are many technological reasons why services may not be available at any given time as, for example, computer servers are offline, or systems are being updated. Such events are routine and thus would not be reportable to the NCUA. However, a failed system upgrade or change that results in unplanned widespread user outages for FICU members and employees would be reportable.

The second prong of the *reportable cyber incident* definition will require reporting to the NCUA in the event of a cyberattack that leads to a disruption of business operations, vital member services, or a member information system. Cyberattacks that cause disruption to a FICU's business operations, vital member services, or a member information system must be reported to the NCUA within 72 hours of a FICU's reasonable belief that it has experienced a cyberattack. For example, a distributed denial of service (DDoS) attack that disrupts member account access will be reportable under this prong.

Blocked phishing attempts, failed attempts to gain access to systems, or unsuccessful malware attacks do not have to be reported.

The third prong of the *reportable cyber incident* definition will require a FICU to notify the agency within 72 hours after a third-party has informed a FICU that the FICU's sensitive data or business operations have been compromised or disrupted as a result of a cyber incident experienced by the third-party or upon the FICU forming a reasonable belief this has occurred, whichever occurs sooner. A cyber incident, under the third prong would also only be reportable in the event that the third-party has a relationship with the FICU. The rule does not impose a notification requirement on a FICU for an incident occurring at any third-party that, unbeknownst and unrelated to the FICU, holds information about individuals who happen to be FICU members or employees.

A FICU will not be required to report an incident performed in good faith by an entity in response to a request by the owner or operator of the information system. An example of an incident excluded from reporting would be the contracting of a third-party to conduct a penetration test.[12]

III. Legal Authority

The Board issues this final rule pursuant to its authority under the Federal Credit Union Act (FCUA). Section 209 of the FCUA is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[13] Section 206 of the FCUA requires the agency to impose corrective measures whenever, in the opinion of the Board, any FICU is engaged in or has engaged in unsafe or unsound practices in conducting its business.[14] Accordingly, the FCUA grants the Board broad rulemaking authority to ensure that the credit union industry and the National Credit Union Share Insurance Fund (Share Insurance Fund) remain safe and sound.

IV. Discussion of Public Comments Received on the Proposed Rule

The proposed rule provided for a 60-day public comment period, which closed on September 26, 2022. The NCUA received 17 comments in response to the proposed rule. These comments came from credit unions, credit union trade associations and leagues, service providers, and individual members of the public.

Twelve commenters expressed support for the proposal. One commenter felt it was premature for the Board to issue a rule at this time because promulgating a rule now could lead to conflicts with standards yet to be determined by CISA, which Congress has tasked with issuing cybersecurity notification rules across many sectors, including financial services.

Four credit union commenters disagreed with the premise that knowing about and responding to cyber incidents is important to the NCUA's mission. These commenters stated that the preamble articulated no benefits to members and that members are already protected by a FICU's data security program, which the NCUA has the

[12] A penetration test is a test methodology in which assessors, typically working under specific constraints, attempt to circumvent or defeat the security features of a system. See Assessing Security and Privacy Controls in Information Systems and Organizations, NIST Special Publication 800–53A Revision 5 at 697. Available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53Ar5.pdf.*

[13] 12 U.S.C. 1789(a)(11).

[14] 12 U.S.C. 1786(b)(1). There are a number of references to ''safety and soundness'' in the FCUA. See 12 U.S.C. 1757(5)(A)(vi)(I), 1759(d & f), 1781(c)(2), 1782(a)(6)(B), 1786(b), 1786(e), 1786(f), 1786(g), 1786(k)(2), 1786(r), 1786(s), and 1790d(h).

opportunity to evaluate during the examination cycle. These four commenters stated that the NCUA should show deference to a FICU's decision regarding whether or not to report an incident because the FICU will be in the best position to know whether it has met the elements of a reportable cyber incident.

The Board has considered these comments and has determined to proceed to a final rule at this time. As discussed in the preamble to the proposed rule, the financial services sector is one of the main critical infrastructure sectors targeted by cyberattacks. The agency has a statutory obligation to ensure the safety and soundness of the credit union system and the Share Insurance Fund. Thus, the NCUA must be made aware of cyber incidents that could significantly impact FICUs and their members. Commenters are correct in that this rule does not change the NCUA's ability to review data security programs during the examination cycle. This rule merely requires early notification to the agency of substantial cyber incidents. Early awareness can help the NCUA react to emerging threats to FICUs and the broader financial system before they become systemic. As stated in the proposed rule, this notification requirement is intended to serve as an early alert to the agency and is not intended to include a lengthy assessment of the incident. The NCUA will be providing additional reporting guidance prior to the final rule going into effect. However, anytime a FICU is unsure as to whether a cyber incident is reportable, the Board encourages the FICU to contact the agency.

Commenters focused on the following specific issues:

Reporting Timeframe

The proposed rule put forward a 72-hour reporting window for FICUs to notify the NCUA of a *cyber incident* that rises to the level of a *reportable cyber incident*. The proposal asked commenters to discuss whether 72 hours is appropriate or if another time frame is warranted, such as 36 hours as the Federal banking agencies require. Fourteen commenters expressed support for the 72-hour reporting window. Three of these commenters asked the agency to be aware that, while 72 hours is generally reasonable, even this may be burdensome for smaller institutions. One commenter stated that the proposed timeframe will correspond with additional administrative burden for credit unions. One commenter preferred the 36-hour time frame since this would be consistent with the Federal banking agencies' rule and should not be burdensome in light of the limited information being sought.

Three commenters recommended that the 72-hour reporting period begin only once a FICU has actually discovered a *reportable cyber incident,* as the Federal banking agencies require, rather than requiring FICUs to come to a reasonable belief that a *reportable cyber incident* has occurred. Another commenter stated that the Board should not require reporting until the FICU is aware of helpful details.

This final rule maintains the reporting period set forth in the proposed rule requiring a FICU to notify the NCUA as soon as possible but no later than 72 hours after the FICU reasonably believes that a *reportable cyber incident* has occurred. This is the same reporting requirement CISA must implement under the Cyber Incident Reporting Act. By maintaining the expectation that a FICU does not have a reporting obligation until it has a reasonable belief that a reportable cyber incident has occurred, the Board is providing flexibility based on specific circumstances that may occur. Only once the FICU has formed a reasonable belief that it has experienced a *reportable cyber incident* would the requirement to report within 72 hours be triggered. The Board does not believe this minimal notification requirement would be burdensome to even the smallest institutions. The burden is likely to result from the cyber incident itself. Early notification to the agency could be beneficial in a number of ways, including helping the FICU protect its members and obtaining the agency's guidance with the response.

Reporting Process

With regard to where and how FICUs should report cyber incidents, two commenters stated that they would prefer a single point of contact in the NCUA's central office and multiple methods of reporting—secure online portal, email, and telephone. One commenter expressed a preference for reporting to the regional office but recognized that the NCUA may prefer all FICUs to report to the central office. This commenter suggested that if reporting is done via portal, then FICUs should be permitted to go back and edit their reporting. Two commenters asked the NCUA to develop a form or checklist that lists the information the agency is looking for. One commenter stated that the NCUA should provide a clear reporting mechanism via secure email or web form. Finally, one commenter expressed support for multiple methods of reporting but suggested that the NCUA permit FICUs to report to their regional office contacts so as to ensure that the NCUA staff evaluating the incident are familiar with the affected FICU's operations.

The proposed rule states that cyber incidents may be reported via email, telephone, or other similar methods that the NCUA may prescribe. The Board believes that this approach addresses the need for flexibility, including if one or more communication channels are impacted by the cyber incident. The NCUA will be providing more detailed reporting guidance before the effective date of the final rule.

One commenter asked for clarity on what follow up communications the agency expects after a FICU provides the initial notification of a reportable cyber incident. The proposed rule stated, ''the NCUA anticipates that further follow-up communications between the FICU and the agency will occur through the supervisory process, as necessary,'' but did not explain what such communications would entail or what the expected frequency or level of detail would be.

The NCUA will determine the necessity and frequency of follow-up communications on a case-by-case basis. Factors in making this determination may include the severity of impact, the ability to recover and restore services, and the potential risk to the financial system. These factors may evolve over time. The NCUA is aware that during a reportable cyber incident, FICUs will be focused on recovery and, thus, the agency will generally limit contact during such incidents to minimize burden on FICUs.

Confidentiality

Five commenters expressed concern for the security of the information reported to the NCUA and the potential negative consequences to FICUs in the event sensitive information were to leak. These commenters stated that it is vital for the NCUA to have a secure infrastructure with confidentiality controls and limits on the number of agency personnel with access to the reported information. One commenter asked the NCUA to clarify that cyber incident reports are not only subject to part 792 of the NCUA's rules but are also exempt from Freedom of Information Act (FOIA) requests.

The NCUA receives confidential financial information from FICUs on a routine basis as a function of its role as a financial regulator and insurer. Like all federal agencies, the NCUA must comply with mandatory security standards for federal information and

information systems.[15] The NCUA meets these requirements by employing a defense-in-depth [16] approach to information and system security, including robust technical and administrative controls and comprehensive procedures for preventing and addressing potential compromises to information in the NCUA's custody and control.[17]

Reporting under this rule will be subject to part 792 of the NCUA's rules and exempt from FOIA requests under FOIA exemptions 4 and 8, and potentially exemptions 6 and 7(c).[18]

Definition of Reportable Cyber Incident

Eight commenters suggested the NCUA provide more clarity around what the agency considers to be a *substantial* cyber incident. Of these, five commenters stated that the NCUA should focus on the materiality of the incident and include a materiality standard to avoid overreporting and to provide a sufficient threshold to ensure reporting only of major disruptions and not minor ones. One of these commenters stated that the definition of reportable cyber incident itself is acceptable and leaves room to enable ongoing alignment with other frameworks such as future CISA guidance. However, the commenter stated that the definition of *substantial* should include a materiality standard.

One commenter suggested that *substantial* could be defined based on the percentage of members impacted, duration of impact, or other similar metrics which scale with the size of the FICU. Another commenter suggested that any factors used to define *substantial* should be principles-based rather than enumerate different types of data, systems, or other static elements, which can quickly change as best practices and mitigation strategies evolve over time. This commenter noted that, however defined, the agency should grant appropriate deference to the reasonable judgment of the FICU. Another commenter expressed support for the definition of *reportable cyber incident* but stated that rather than just providing a definition of *substantial,* it would be more helpful if the NCUA were to provide examples of reportable incidents.

The Board agrees that a definition that relies on specific data points, systems, or other static elements may be unnecessarily complicated and may quickly become obsolete. By using the term *substantial,* the Board seeks to convey an expectation that the agency will be notified of cyber incidents that are extensive or significant to the FICU or its members (or both), rather than minor or inconsequential. The dictionary definition of *substantial* is ''something that is important, essential, considerable in quantity, or significantly great.'' [19] In lieu of a more complicated definition, the agency intends to add to the examples of reportable cyber incidents provided in the proposed rule. Commenters who requested that a materiality standard be added to the term *substantial* did not offer any definitions or suggest how a *material* cyber incident would be something other than a *substantial* cyber incident. If a FICU is unsure as to whether a cyber incident is reportable, the Board encourages the FICU to contact the agency. However, once the rule is implemented the agency will continue to assess whether further clarity or guidance is needed over time.

Examples of Reportable Cyber Incidents

Three commenters stated that the list of reportable incidents in the proposed rule is helpful and should be kept current. One commenter stated that the NCUA should provide more examples of nonreportable incidents.

The NCUA will be providing additional reporting guidance and examples of reportable incidents and non-reportable incidents prior to the effective date of this final rule. In addition, the NCUA is retaining the examples provided in the proposed rule with some minor edits, as discussed below.

The agency is clarifying the following example which was cited in the proposed rule: ''A systems compromise resulting from card skimming,'' is being changed to ''Member information compromised as a result of card skimming at a credit union's ATM.'' [20]

Third-Party Compromise

Two commenters noted that contracts with third-party service providers may not perfectly align with the reporting proposed in this rule. One commenter sought clarification that the NCUA is not intending to impact existing contractual relationships. Another commenter stated that FICU reporting of third-party breaches should only be required once the third-party notifies the FICU that its information has been materially compromised. Without receiving information from the third-party, the FICU has no way to know if it has experienced a cyber incident.

One commenter noted that third-parties only provide notification once their investigations are almost complete. Another commenter expressed concerns about the ability of FICUs to make decisions about third-party breaches when third-parties may be reluctant to offer information until they have done their own investigations. Thus, the commenter stated that the NCUA should defer to a FICU's judgment about whether a reportable cyber incident has occurred. Another commenter stated that the NCUA must focus on when the FICU formed a reasonable belief and not when a third-party made that determination. Finally, one commenter stated that the NCUA should not, as suggested by one example in the preamble to the proposed rule, impose a reporting requirement when a FICU employee's personally identifiable information (PII) is implicated in a data breach at another organization that has no affiliation with the FICU.

This rule does not impact existing contractual relationships. While the proposed rule asked FICUs to share how third-parties provide notice to FICUs in the event of a cyber incident, there is no requirement in the proposed or final rules that FICUs amend existing contracts to comply with this rule. The rule requires only that the agency receive notice of a reportable cyber incident that impacts a FICU either within 72 hours of being notified by a third-party or within 72 hours of a FICU forming a reasonable belief that it has experienced a reportable cyber incident. For example, a FICU reasonably may not be aware that a third-party has experienced a *breach* absent a notification from the third-party. However, if a FICU experiences a *disruption* by losing access to its member accounts, it reasonably should be aware that its core service provider has been compromised. The rule does not permit FICUs to provide notice only after the FICU or the third-party have completed all their investigations because the core purpose of the rule is for the agency to receive an early notification that an incident has occurred. The Board recognizes that a FICU's understanding of an incident is

[15] Federal Information Security Modernization Act of 2014 (FISMA), 44 U.S.C. Chapter 35; FIPS Publication 199, Standards for Security Categorization of Federal Information and Information Systems; FIPS Publication 200, Minimum Security Requirements for Federal Information and Information Systems.

[16] *Defense-in Depth* is the application of multiple countermeasures in a layered or stepwise manner to achieve security objectives. *See https://csrc.nist.gov/glossary/term/defense_in_depth.*

[17] NIST Special Publication 800–53 (Rev. 5), Security and Privacy Controls for Federal Information Systems and Organizations.

[18] 12 CFR part 792; 5 U.S.C. 552(b)(4), (6), (7)(c), and (8).

[19] Merriam Webster Dictionary, available at *https://www.merriam-webster.com/dictionary/substantial.*

[20] See example 7 at 87 FR 45029, 45032 (July 27, 2022).

likely to evolve, and initial reporting can be incomplete or even inaccurate due to limited information. However, early notification, even if substantively limited, is preferable when compared to delayed notification which may have the effect of impeding the agency's situational awareness.

Finally, regarding the example referenced by one commenter, a substantial cyber incident that leads to the breach of a FICU employee's PII would only be reportable in the event that the third-party has an affiliation or relationship with the FICU by, for example, providing payroll services to the FICU. The example is not intended to impose a notification requirement on a FICU for an incident occurring at any third-party that, unbeknownst and unrelated to the FICU, holds information about individuals who happen to be FICU members or employees.

Clarification of Other Sections of Part 748

With regard to catastrophic act reporting under § 748.1(b), two commenters stated that there is insufficient clarity to differentiate this new proposed reporting requirement from the existing catastrophic act reporting requirement and, thus, the latter should be updated to state that it does not include cyber incident reporting. Another commenter stated that, in the event of any overlap between the two reporting requirements, the agency should permit such reporting to receive the longer five-day catastrophic act reporting timeframe.

The Board does not intend to amend the catastrophic act reporting requirement at this time. The Board believes that the two reporting requirements are sufficiently distinct. As stated in the proposed rule, while natural disasters were the leading concern in the aftermath of hurricanes Katrina and Rita, the use of the phrasing ''any disaster, natural or otherwise'' in the definition of catastrophic act was meant to illustrate other events, such as a power grid failure or physical attack, for example, could have a similar impact on access to member services and vital records. While some cyber-events may fall within the § 748.1(b) definition of catastrophic act, the Board believes they are sufficiently distinguishable and distinct to warrant separate consideration. The Board further believes that the longstanding requirement that FICUs be given five business days to report catastrophic acts, as defined in § 748.1(b), is still appropriate. However, the agency will continue to monitor the issue after this rule goes into effect, in the event clarification is needed.

With regard to Appendix B guidance, one commenter stated that Appendix B should be amended to state that it does not supersede this rule. Another commenter stated that the NCUA should remove the Appendix B language that refers to reporting to a FICU's regional director because most reportable incidents covered by Appendix B will be covered by this rule.

The Board does not intend to amend Appendix B at this time. However, Appendix B provides guidance on FICUs' obligations under § 748.0 and applicable statutes and, thus, does not supersede this rule.[21] If a FICU experiences a *reportable cyber incident,* that incident shall be reported under the requirements of this rule.

Finally, another commenter stated that while there is some overlap with existing Part 748 reporting requirements, the overlap is minimal, and the proposed rule sufficiently clarifies the requirements of each.

With regard to the definition of vital member services, one commenter stated that the definition needs to be updated to reflect changes in how vital services are delivered to members. Another commenter stated that the NCUA should not require reporting for non-malicious system outages; for example, incidents that involve a substantial loss of availability of a network that disrupts vital member services when a FICU undertakes a technology transition or system upgrade. In these situations, the commenter stated that reporting to the FICU's board of directors should be sufficient.

The NCUA recognizes that FICUs will have planned updates and planned outages that will not require notification. However, a failed system upgrade that causes widespread unplanned outages for members would be reportable under this final rule.

Coordination With the States and Other Agencies

Five commenters stated that it is important to coordinate with other regulatory agencies to minimize redundancy and inconsistency. One of these commenters specifically noted the importance of coordinating with state regulators. One commenter encouraged the NCUA to engage with the Financial Services Information Sharing and Analysis Center. Another commenter noted the importance of coordinating with CISA and the U.S. Treasury to ensure harmonization with the Cyber Incident Reporting Act.

The final rule does not prevent existing supervisory information sharing frameworks. The Board agrees that voluntary information sharing is important and encourages FICUs to continue sharing information through established channels. The agency intends to coordinate with CISA, state and federal regulators, and the U.S. Treasury as much as possible.

Policy Expectations

Two commenters noted that it is important for the NCUA to define what its policy expectations are, to issue supervisory guidance for institutions to review in developing their policies and procedures, and to show how examiners will assess reported incidents during the annual exam. One commenter stated that it is unclear what follow up action the NCUA is expecting and, thus, this represents an unaccounted impact on FICUs. This commenter also suggested the NCUA create a safe harbor for FICUs that make good faith efforts to perform a reasonable assessment of a cyber incident.

The NCUA will be providing further supervisory guidance prior to the effective date of the final rule. However, cyber incidents may still be reviewed during an annual examination or as part of a supervision contact. This rule does not change the examination and supervision process.

Ransomware

Five commenters mentioned ransomware. Two commenters stated that ransomware reporting should be the same as for other cyber incidents. One commenter supported a shorter window for ransomware reporting. One commenter stated that the NCUA should follow CISA, and one commenter said more specifically that the agency should wait until we know how CISA will handle ransomware reporting.

Notification to the agency of ransomware incidents should be the same as the reporting required under this rule for other cyber incidents. While the Cyber Incident Reporting Act does require entities to report ransomware *payments* within 24-hours, CISA has not yet promulgated regulations to that effect and this rule does not create a separate reporting framework for ransomware payments. However, the Board encourages FICUs to contact law enforcement and CISA, as appropriate, in the event of a cyber incident that may be criminal in nature.

Application to federally chartered corporate credit unions and federally

[21] The Board's final rule on the role of supervisory guidance provides further discussion on the role and use of guidance in the supervisory process. 86 FR 7949 (Feb. 3, 2021).

insured, state-chartered corporate credit unions.

The proposed rule applied to federally chartered and federally insured, state-chartered corporate credit unions. Only one commenter mentioned this point and stated that they support such application. The final rule does not amend this aspect of the proposed rule. Thus, the final rule applies to all FICUs including all federally insured corporate credit unions.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[22] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[23] The final rule requires a FICU to notify the NCUA upon experiencing a substantial cyber incident. This notification requirement is not expected to increase cost burdens on FICUs as it requires only that FICUs provide an early notification to the agency without requiring any detailed assessments or evaluations. Also, while the final rule could lead to cost savings for FICUs if the NCUA or other government agencies can help to mitigate the impact of a cyber incident, the Board does not expect the final rule to accord a significant economic benefit to a substantial number of FICUs. Accordingly, the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. In accordance with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133–0033, Security Program, 12 CFR 748.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Although the final rule applies to federally insured, state-chartered credit unions (FISCUs), it imposes only a minimal reporting requirement and does not affect the ability of state regulatory agencies to regulate, supervise, or examine FISCUs on this subject. Therefore, the NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the Executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[24]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[25] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA will submit this final rule to OMB for it to determine whether the final rule is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major rule.'' If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.[26]

List of Subjects in 12 CFR Part 748

Computer technology, Confidential business information, Credit unions, internet, Personally identifiable information, Privacy, Reporting and recordkeeping requirements, Security measures.

By the NCUA Board on February 16, 2023.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board amends 12 CFR part 748, as follows:

PART 748—SECURITY PROGRAM, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS, CYBER INCIDENTS, AND BANK SECRECY ACT COMPLIANCE

■ 1. The authority citation for part 748 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(b)(1), 1786(q), 1789(a)(11); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

■ 2. Revise the heading for part 748 to read as set forth above.

■ 3. Amend § 748.1 as follows:

■ a. Redesignate paragraph (c) as paragraph (d); and

■ b. Add a new paragraph (c).

The addition reads as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Cyber incident report.* Each federally insured credit union must notify the appropriate NCUA-designated point of contact of the occurrence of a *reportable cyber incident* via email, telephone, or other similar methods that the NCUA may prescribe. The NCUA must receive this notification as soon as possible but no later than 72 hours after a federally insured credit union reasonably believes that it has experienced a reportable cyber incident or, if reporting pursuant to paragraph

[22] 5 U.S.C. 603(a).

[23] 80 FR 57512 (Sept. 24, 2015).

[24] Public Law 105–277, 112 Stat. 2681 (1998).

[25] 5 U.S.C. 551.

[26] 5 U.S.C. 804(2).

(c)(1)(i)(C) of this section, within 72 hours of being notified by a third-party, whichever is sooner.

(1) *Reportable cyber incident.* (i) A reportable cyber incident is any substantial cyber incident that leads to one or more of the following:

(A) A substantial loss of confidentiality, integrity, or availability of a network or member information system as defined in appendix A, section I.B.2. e., of this part that results from the unauthorized access to or exposure of sensitive data, disrupts vital member services as defined in § 749.1 of this chapter, or has a serious impact on the safety and resiliency of operational systems and processes.

(B) A disruption of business operations, vital member services, or a member information system resulting from a cyberattack or exploitation of vulnerabilities.

(C) A disruption of business operations or unauthorized access to sensitive data facilitated through, or caused by, a compromise of a credit union service organization, cloud service provider, or other third-party data hosting provider or by a supply chain compromise.

(ii) A *reportable cyber incident* does not include any event where the cyber incident is performed in good faith by an entity in response to a specific request by the owner or operators of the system.

(2) *Definitions.* For purposes of this part:

Compromise means the unauthorized disclosure, modification, substitution, or use of sensitive data or the unauthorized modification of a security-related system, device, or process in order to gain unauthorized access.

Confidentiality means preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.

Cyber incident means an occurrence that actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information on an information system, or actually or imminently jeopardizes, without lawful authority, an information system.

Cyberattack means an attack, via cyberspace, targeting an enterprise's use of cyberspace for the purpose of disrupting, disabling, destroying, or maliciously controlling a computing environment/infrastructure; or destroying the integrity of the data or stealing controlled information.

Disruption means an unplanned event that causes an information system to be inoperable for a length of time.

Integrity means guarding against improper information modification or destruction and includes ensuring information non-repudiation and authenticity.

Sensitive data means any information which by itself, or in combination with other information, could be used to cause harm to a credit union or credit union member and any information concerning a person or their account which is not public information, including any non-public personally identifiable information.

* * * * *

■ 4. Amend appendix B to part 748 as follows:

■ a. Redesignate footnotes 29 through 42 as footnotes 1 through 14;

■ b. In the introductory text of section I:

■ i. Revise the first sentence; and

■ ii. Remove ''Part 748'' and add ''this part'' in its place; and

■ c. Revise newly redesignated footnotes 1 and 11.

The revisions read as follows:

Appendix B to Part 748—Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice

I. * * *

This appendix provides guidance on NCUA's Security Program, Suspicious Transactions, Catastrophic Acts, Cyber Incidents, and Bank Secrecy Act Compliance regulation,[1] interprets section 501(b) of the Gramm-Leach-Bliley Act (''GLBA''), and describes response programs, including member notification procedures, that a federally insured credit union should develop and implement to address unauthorized access to or use of member information that could result in substantial harm or inconvenience to a member. * * *

* * * * *

[1]This part.

* * * * *

[11] A credit union's obligation to file a SAR is set forth in § 748.1(d).

* * * * *

[FR Doc. 2023–03682 Filed 2–28–23; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1484; Project Identifier MCAI–2022–00897–G; Amendment 39–22339; AD 2023–03–14]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Schempp-Hirth Flugzeugbau GmbH Model Duo Discus and Duo Discus T gliders. 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 the airbrake becoming blocked or jammed in an extended position during high airspeed due to an incorrect adjustment on the airbrake system. This AD requires repetitively inspecting the airbrake system and taking corrective action as necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 5, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 5, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1484; 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.

Material Incorporated by Reference:

• For service information identified in this final rule, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Kirchheim unter Teck, Germany; phone: +49 7021 7298–0; email: *info@schempp-hirth.com*; website: *schempp-hirth.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 *regulations.gov* under Docket No. FAA–2022–1484.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Schempp-Hirth Flugzeugbau GmbH Model Duo Discus and Duo Discus T gliders. The NPRM published in the **Federal Register** on November 22, 2022 (87 FR 71264). The NPRM was prompted by AD 2022–0138, dated July 7, 2022 (referred to after this as ''the MCAI''), issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. The MCAI states that an instance of the airbrake becoming blocked or jammed in an extended position during high airspeed on a Duo Discus glider occurred due to an incorrect adjustment on the airbrake system. A review of the manufacturer's maintenance manual revealed more maintenance information is needed to maintain the airbrake system in a serviceable condition. Accordingly, the MCAI requires repetitive inspections of the airbrake system and, depending on findings, accomplishing corrective actions in accordance with existing Schempp-Hirth Flugzeugbau GmbH maintenance instructions or instructions received by contacting Schempp-Hirth Flugzeugbau GmbH.

This condition, if not detected and corrected, could lead to blockage or jamming of the airbrake and result in reduced control of the glider.

In the NPRM, the FAA proposed to require accomplishing the actions specified in the MCAI, except as discussed under ''Differences Between this Proposed AD and the MCAI.'' The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1484.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Schempp-Hirth Flugzeugbau GmbH Maintenance Information SHK–M–01–22 for the Duo Discus and Duo Discus T airbrake system, dated January 26, 2022, which specifies procedures for inspecting and adjusting the airbrake system.

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**.

Differences Between This AD and the MCAI

The MCAI applies to Schempp-Hirth Flugzeugbau GmbH Model Duo Discus C gliders, and this AD does not because this model does not have an FAA type certificate.

The MCAI requires accomplishing applicable corrective action in accordance with approved Schempp-Hirth Flugzeugbau GmbH maintenance instructions or contacting Schempp-Hirth Flugzeugbau GmbH for approved instructions and accomplishing those instructions accordingly. This AD requires adjusting the airbrake system in accordance with a method approved by the FAA; EASA; or Schempp-Hirth Flugzeugbau GmbH's Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

The MCAI references incorporating maintenance tasks into the Schempp-Hirth Aircraft Maintenance Program (AMP) to ensure accomplishment of the tasks required in the MCAI. Because the AMP is not required by FAA regulations for U.S. operators of the affected gliders, this AD does not reference the AMP and the actions are contained within this AD.

Costs of Compliance

The FAA estimates that this AD affects 32 gliders 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
Inspect airbrake system	2 work-hours × $85 per hour = $170.	Not applicable	$170 per inspection cycle	$5,440 per inspection cycle.

The FAA estimates the following costs to do any necessary actions that would be required based on the results of the inspection. The agency has no data to determine the number of gliders that might need this action:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Adjust airbrake system	4 work-hours × $85 per hour = $340	$200	$540

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–03–14 Schempp-Hirth Flugzeugbau GmbH: Amendment 39–22339; Docket No. FAA–2022–1484; Project Identifier MCAI–2022–00897–G.

(a) Effective Date

This airworthiness directive (AD) is effective April 5, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Schempp-Hirth Flugzeugbau GmbH (Schempp-Hirth) Model Duo Discus and Duo Discus T gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2760, Drag Control 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 identifies the unsafe condition as blocking or jamming of the airbrake. The FAA is issuing this AD to detect and correct such blockage or jamming of the airbrake system. The unsafe condition, if not addressed, could result in reduced control of the glider.

(f) Compliance

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

(g) Required Actions

(1) Within 12 months after the effective date of this AD and thereafter at intervals not to exceed 12 months, inspect the airbrake system for smooth operation, for sufficient airbrake panel overlap, and for proper cockpit control adjustment in accordance with Section I, and either II or III, depending on your glider configuration, of Schempp-Hirth Flugzeugbau GmbH Maintenance Information SHK–M–01–22 for the Duo Discus and Duo Discus T airbrake system, dated January 26, 2022.

Note 1 to paragraph (g)(1): Schempp-Hirth Flugzeugbau GmbH Technical Note 396–21, dated January 26, 2022; and Schempp-Hirth Flugzeugbau GmbH Technical Note 890–17, dated January 26, 2022, contain information related to this subject.

(2) If, during any inspection as required by paragraph (g)(1) of this AD, any part of the airbrake system is not properly adjusted, before further flight, adjust the airbrake system in accordance with a method approved by the FAA; the European Union Aviation Safety Agency (EASA); or Schempp-Hirth's Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov*. If mailing information, also submit information by email.

(i) Additional Information

(1) Refer to EASA AD 2022–0138, dated July 7, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1484.

(2) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (j)(3) and (4) of this AD.

(j) Material Incorporated by Reference

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

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

(i) Schempp-Hirth Flugzeugbau GmbH Maintenance Information SHK–M–01–22 for the Duo Discus and Duo Discus T airbrake system, dated January 26, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Kirchheim unter Teck, Germany; phone: +49 7021 7298–0; email: *info@schempp-hirth.com*; website: *schempp-hirth.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: *www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued on February 9, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–04049 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1406; Project Identifier MCAI–2022–00590–G; Amendment 39–22347; AD 2023–03–22]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH and Schempp-Hirth Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2015–09–04 R1, which applied to DG Flugzeugbau GmbH Model DG–1000T gliders equipped with a Solo Kleinmotoren GmbH (currently Solo Vertriebs-und Entwicklungs-GmbH) (Solo) Model 2350 C engine. AD 2015–09–04 R1 prohibited operation of the engine and required performing a magnetic particle or dye penetrant inspection of the propeller shaft and reporting the results of the inspection to Solo. This AD is 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 occurrences of rupture of the eccentric axle on Solo Model 2350 C engines (installed on DG Flugzeugbau GmbH Model DG–1000T gliders in the United States) and an occurrence on a Solo Model 2350 D engine (installed on Schempp-Hirth Flugzeugbau GmbH (Schempp-Hirth) Model Duo Discus T gliders in the United States). This AD requires repetitive replacement of the eccentric axle, adds the Schempp-Hirth Model Duo Discus T gliders to the applicability, and retains from AD 2015–09–04 R1 the option of operating the glider with the engine non-operative instead of replacing the eccentric axle. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 5, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 5, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1406; 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.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Solo Kleinmotoren GmbH, Postfach 600152, D71050 Sindelfingen, Germany; phone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com*; website: *aircraft.solo.global/gb/*.
- 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 *regulations.gov* under Docket No. FAA–2022–1406.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2015–09–04 R1, Amendment 39–18492 (81 FR 26124, May 2, 2016) (AD 2015–09–04 R1). AD 2015–09–04 R1 applied to DG Flugzeugbau GmbH Model DG–1000T gliders equipped with a Solo Model 2350 C engine. AD 2015–09–04 R1 prohibited operation of the engine and required performing a magnetic particle or dye penetrant inspection of the propeller shaft and reporting the results of the inspection to Solo. The FAA issued AD 2015–09–04 R1 to address failure of the engine shaft with consequent propeller detachment. The unsafe condition, if not addressed, could result in damage to the glider or injury of persons on the ground.

The NPRM published in the **Federal Register** on December 13, 2022 (87 FR 76166). The NPRM was prompted by AD 2022–0044R1, dated April 29, 2022 (referred to after this as ''the MCAI''), issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. The MCAI states an occurrence of rupture of the eccentric axle on a Solo Model 2350 D engine (installed on Schempp-Hirth Model Duo Discus T gliders in the United States). The MCAI requires replacing the eccentric axle with a new part and establishing a life limit for this part.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1406.

In the NPRM, the FAA proposed to retain a certain action from AD 2015–09–04 R1 in that the NPRM proposed to continue to allow the operating limitation for the DG Flugzeugbau GmbH Model DG–1000T gliders equipped with a Solo Model 2350 C instead of replacing the eccentric axle. The NPRM also proposed to add the Schempp-Hirth Model Duo Discus T gliders equipped with a Solo Model 2350 D engine to the applicability, and require repetitive replacement of the eccentric axle. The NPRM also proposed to require incorporation of the final rule into the Limitations section of the existing aircraft flight manual for your glider if the operator chooses to operate the glider with the engine inoperative. The owner/operator (pilot) holding at least a private pilot certificate may perform the proposed incorporation of the operating limitation into the flight manual of the glider and removal of the operating limitation, and the actions must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. The proposed incorporation of the operating limitation into the existing flight manual of your glider and removal of the operating limitation are not considered maintenance actions and may be done equally by a pilot or a mechanic. This is an exception to the FAA's standard maintenance regulations.

The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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 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 and determined that air safety

requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4603–19, datum (English translation: dated) January 31, 2022, which specifies procedures for replacing the eccentric axle with eccentric axle part number (P/N) 2031211V2 for Solo Model 2350 D engines, which are installed on Schempp-Hirth Model Duo Discus T gliders in the United States.

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 **ADDRESSES**.

Differences Between This AD and the MCAI

The MCAI, for the DG Flugzeugbau GmbH Model DG–1000T gliders equipped with a Solo Model 2350 C engine, has a compliance time for the initial eccentric axle replacement based on the effective date of superseded EASA AD 2015–0052–E, dated March 27, 2015. This AD has a compliance time for these gliders based on the effective date of the final rule because there was not a requirement in AD 2015–09–04 R1 to replace the eccentric axle.

Costs of Compliance

The FAA estimates that this AD affects 8 gliders of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the eccentric axle	2 work-hours × $85.00 per hour = $170.	$100	$270 per replacement cycle ..	$2,160 per replacement cycle.

If any operator chooses to not replace the eccentric axle and instead operates the glider with the engine inoperative, the operating limitation incorporation will take .5 work-hour at $85 per hour for a total of $42.50 per glider. If at any time after, the operator chooses to remove the operating limitation, this action would also take .5 work-hour at $85 per hour for a total of $42.50 per glider.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA 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 2015–09–04 R1, Amendment 39–18492 (81 FR 26124, May 2, 2016); and

■ b. Adding the following new airworthiness directive:

2023–03–22 DG Flugzeugbau GmbH and Schempp-Hirth Flugzeugbau GmbH: Amendment 39–22347; Docket No. FAA–2022–1406; Project Identifier MCAI–2022–00590–G.

(a) Effective Date

This airworthiness directive (AD) is effective April 5, 2023.

(b) Affected ADs

This AD replaces AD 2015–09–04 R1, Amendment 39–18492 (81 FR 26124, May 2, 2016).

(c) Applicability

This AD applies to DG Flugzeugbau GmbH Model DG–1000T gliders and Schempp-Hirth Flugzeugbau GmbH (Schempp-Hirth) Model Duo Discus T gliders, all serial numbers, certificated in any category, with a Solo Vertriebs-und Entwicklungs-GmbH (previously Solo Kleinmotoren GmbH) (Solo) Model 2350 C or Model 2350 D engine installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(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 identifies the unsafe condition as occurrences of rupture of the eccentric axle on Solo Model 2350 C engines (installed on DG Flugzeugbau GmbH Model DG–1000T gliders in the United States) and an occurrence on a Solo Model 2350 D engine (installed on Schempp-Hirth Model Duo Discus T gliders in the United States). The FAA is issuing this AD to prevent failure of the engine shaft with consequent propeller detachment. The unsafe condition, if not addressed, could result in damage to the glider or injury of persons on the ground.

(f) Compliance

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

(g) Required Actions

(1) For DG Flugzeugbau GmbH Model DG–1000T gliders equipped with a Solo Model 2350 C engine, before further flight after the effective date of this AD, replace each eccentric axle that is not part number (P/N) 2031211V2 with an eccentric axle that is P/N 2031211V2 that has zero hours time-in-service (TIS).

Note 1 to paragraph (g)(1): DG Flugzeugbau Technical Note 1000/26, dated September 23, 2015, contains information related to replacing the eccentric axle specific for the DG Flugzeugbau GmbH Model DG–1000T gliders. Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4603–17, datum (English translation: dated) July 15, 2015, contains information related to replacing the eccentric axle for the Solo Model 2350 C engine, but is not specific to the DG Flugzeugbau GmbH Model DG–1000T gliders.

(2) For Schempp-Hirth Model Duo Discus T gliders equipped with a Solo Model 2350 D engine, within 30 hours TIS of engine operation after the effective date of this AD, replace each eccentric axle that is not P/N 2031211V2 with an eccentric axle that is P/N 2031211V2 that has zero hours TIS in accordance with Action 1, Note 2, and Pictures 1 through 6 of Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4603–19, dautm (English translation: dated) January 31, 2022.

Note 2 to paragraph (g)(2): This service information contains German to English translation. The European Union Aviation Safety Agency (EASA) used the English translation in referencing the document. For enforceability purposes, the FAA will refer to the Solo Kleinmotoren service information in English as it appears on the document.

(3) For all gliders, after the initial replacement required by paragraph (g)(1) or (2) of this AD, as applicable, or if an eccentric axle P/N 2031211V2 was installed as of the effective date of this AD, within intervals not to exceed 50 hours TIS of engine operation, replace each eccentric axle P/N 2031211V2 with an eccentric axle P/N 2031211V2 that has zero hours TIS as specified in paragraph (g)(1) or (2) of this AD, as applicable.

(4) It is allowed to operate a glider having a Solo Model 2350 C or Model 2350 D engine installed with the engine inoperative instead of replacing the eccentric axle. To operate with the engine inoperative, place a copy of this AD into the Limitations section of the existing aircraft flight manual for your glider and do not operate the engine.

(i) Remove this operating limitation after replacing the eccentric axle as required by paragraphs (g)(1) or (2) and (3) of this AD.

(ii) The owner/operator (pilot) holding at least a private pilot certificate may perform both the incorporation and removal of the operating limitation and the actions must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 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, mail it to the address identified in paragraph (i)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov*. If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Additional Information

(1) Refer to EASA AD 2022–0044R1, dated April 29, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1406.

(2) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov*.

(3) Solo service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (j)(3) and (4) of this AD.

(j) Material Incorporated by Reference

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

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

(i) Solo Kleinmotoren GmbH Technische Mitteilung (English translation: Service Bulletin), Nr. 4603–19, datum (English translation: dated) January 31, 2022.

Note 3 to paragraph (j)(2)(i): This service information contains German to English translation. The EASA used the English translation in referencing the document. For enforceability purposes, the FAA will refer to the Solo Kleinmotoren service information in English as it appears on the document.

(ii) [Reserved]

(3) For Solo service information identified in this AD, contact Solo Kleinmotoren GmbH, Postfach 600152, D71050 Sindelfingen, Germany; phone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com*; website: *aircraft.solo.global/gb/*.

(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: *www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued on February 10, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–03997 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 206

[Docket No. FR–6151–F–03]

RIN 2502–AJ51

Adjustable Rate Mortgages: Transitioning From LIBOR to Alternate Indices

AGENCY: Office of Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: HUD is removing the London Interbank Offered Rate (LIBOR) as an approved index for adjustable interest rate mortgages (ARMs), and replacing LIBOR with the Secured Overnight Financing Rate (SOFR) as a Secretary-approved index for newly originated forward ARMs. HUD is also codifying its removal of LIBOR and approval of SOFR as an index for newly-originated Home Equity Conversion Mortgage (HECM or reverse mortgage) ARMs. In addition, HUD is establishing a spread-adjusted SOFR index as the Secretary-approved replacement index to transition existing forward and HECM ARMs off LIBOR. HUD is also making clarifying changes to its HECM Monthly ARM regulation and establishing a lifetime adjustment cap for monthly adjustable rate HECMs. This final rule adopts HUD's October 19, 2022, proposed rule with minor changes.

DATES: *Effective date:* March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Lisa Saunders, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–8000; telephone number 202–402–2378 (this is not a toll-free number); email address *sffeedback@hud.gov.* HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities.

To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Provisions

Section 251(a) of the National Housing Act (NHA) (12 U.S.C. 1715z–16(a)) authorizes HUD to insure ARMs and provides that adjustments to the interest rate shall correspond to a specified interest rate index approved in regulations by the Secretary, information on which must be readily accessible to mortgagors from generally available published sources. For HECMs, section 255(d) of the NHA (12 U.S.C. 1715z–20(d)) authorizes the Federal Housing Administration (FHA) to insure variable rate HECMs and imposes additional eligibility requirements on HECMs, which include requirements for HECM ARMs.

Forward ARMs

HUD initially provided mortgage insurance of ARMs for single family forward mortgages under 24 CFR part 203 and for part 234 condominium mortgages in 1984.[1] As provided in the statute at that time, the interest rate on ARMs had to be adjusted annually, and there was a one percent cap on annual adjustments and an overall cap of five percent above the initial interest rate over the term of the mortgage. The index originally used by HUD was the U.S. Constant Maturity Treasury (CMT). In 2001 and 2003, statutory changes to section 251 of the NHA, 12 U.S.C. 1715z–16 allowed HUD to insure ARMs that have fixed interest rates for 3 years or more and are not subject to interest rate caps if the interest rate remains fixed for more than 3 years.[2] In 2004, HUD issued a rule (''the 2004 rule'') implementing these statutory changes and providing mortgage insurance for forward ARMs with interest rates first adjustable in 1 year, 3 years, 5 years, 7 years, and 10 years.[3]

Under the 2004 rule, 1, 3, and 5-year ARMs were capped, for each adjustment, in either direction at one percentage point from the interest rate in effect for the period immediately preceding the adjustment. For the life of the mortgage, the overall five percentage point cap in either direction remained. For 7 and 10-year ARMs, HUD raised the per-adjustment cap to 2 percent of the rate in effect for the immediately preceding period, and the life-of-mortgage cap to 6 percent. In all cases, changes that exceeded these amounts could not be carried over for inclusion in an adjustment for the subsequent year. In 2005, HUD revised the regulation to allow for annual adjustments of a 2 percent change in either direction, and a life-of-mortgage cap of 6 percent in either direction for 5-year ARMs in 2005, conforming 5-year ARMs to HUD's 7 and 10-year ARM products.[4]

In 2007, HUD added LIBOR, along with the CMT, as an acceptable index for ARM adjustments for its ARM products (''the 2007 rule'').[5] For forward mortgages, the applicability of these indices is codified at 24 CFR 203.49. The cap on 1 and 3-year ARMs (no more than 1 percent in either direction per single adjustment, with a five percentage points from initial contract rate cap over the life of the loan) is codified at § 203.49(f)(1). The caps for the 5, 7 and 10-year ARMs (2 percent in either direction per adjustment, with a 6 percent from initial contract rate cap for the life of the mortgage) are codified at § 203.49(f)(2). HUD also created model note and mortgage documents for forward ARMs and revised those model documents over the years. The 2015 Model ARM Note[6] contains a provision for the substitution of an index by the note holder based on ''comparable information,'' should the index specified in the note become unavailable.

Reverse Mortgages or HECMs

In 1989, the Home Equity Conversion Mortgage program rule (the HECM rule) provided for ARMs with both capped and uncapped interest rate adjustments.[7] For capped HECM ARMs, the HECM rule retained the five percentage point life-of-mortgage limit on interest rate increases and decreases in § 203.49, but increased the annual limit on rate increases and decreases from 1 percentage point to 2 percentage points. The HECM rule also provided for a HECM ARM that sets a maximum interest rate that could be charged without a cap on monthly or annual increases or decreases.

In the 2007 rule, in which LIBOR was added for forward mortgages, HUD also added LIBOR as an acceptable index for HECM ARM adjustments in current §§ 206.3 (definitions) and 206.21 (interest rate).[8] HUD's model HECM ARM note and mortgage documents have been revised over the years, but the 2015 version contains provisions for the substitution of a Secretary-prescribed index, should the index specified in the note become unavailable.[9]

For the capped option at § 206.21(b)(1), the interest rate cap structure is the same as provided in forward mortgages under § 203.49(a), (b), (d), and (f), except that under § 203.49(d), the reference to first debt service payment means the closing in the HECM ARM context, and under § 203.49(f)(1), the cap on adjustments for one- and three-year mortgages is 2 percentage points in the HECM ARM context. Section 206.21(b)(1)(ii) applies the LIBOR and CMT index options in the same manner as forward ARMs at § 203.49(b) for both the capped and uncapped options. In addition, the uncapped option at § 206.21(b)(2) includes options to adjust based on the one-month CMT or one-month LIBOR index. Section 206.21(b)(1)(iii) also includes ARM interest rate adjustment options for HECMs in the same manner as forward mortgages at § 203.49(d).

On March 11, 2021, in Mortgagee Letter 2021–08, HUD removed LIBOR as an approved index and approved the SOFR index for annually adjustable HECM ARMs closed on or after May 3, 2021.[10] A mortgagee may set rates using CMT or SOFR for annually adjustable HECM ARMs and CMT only for monthly adjustable HECM ARMs. Also, among other changes to the ARM requirements in the Mortgagee Letter, HUD published revised model mortgage documents with ''fallback'' language intended to address future interest rate index transition events. This language was modeled after the Alternative Reference Rates Committee's (ARRC)[11]

[1] 49 FR 23580, June 6, 1984.

[2] Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001); HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, 117 Stat. 2685, approved December 16, 2003).

[3] 69 FR 11500, March 10, 2004.

[4] 70 FR 16080, March 29, 2005.

[5] 72 FR 40047, July 20, 2007.

[6] The 2015 Model ARM Note is available on HUD's website at: *https://www.hud.gov/program_offices/housing/sfh/model_documents.*

[7] 54 FR 24822, June 9, 1989.

[8] 72 FR 40048, July 20, 2007.

[9] The 2015 Model ARM Note is available on HUD's website at: *https://www.hud.gov/program_offices/housing/sfh/model_documents.*

[10] As explained in Mortgagee Letter 2021–08, the changes made by the Mortgagee Letter revised the existing HECM regulations pursuant to the authority granted in the Reverse Mortgage Stabilization Act of 2013 (Pub. L. 113–29; section 255(h)(3) of the National Housing Act (12 U.S.C. 1715z–20(h)(3)).

[11] The ARRC is a group of private-market participants convened by the Federal Reserve Board and the Federal Reserve Bank of New York to help ensure a successful transition from U.S. dollar (USD) LIBOR to a more robust reference rate, its recommended alternative, the Secured Overnight Financing Rate (SOFR). The ARRC is comprised of

Continued

published fallback language for residential ARMs.[12]

Phase-Out of LIBOR

The financial industry is transitioning from use of the LIBOR index given its increasing unreliability and speculative nature. As noted by the Financial Stability Oversight Council, the scarcity of underlying transactions makes LIBOR potentially unsustainable, as many banks have grown uncomfortable in providing submissions based on expert judgment and may eventually choose to stop submitting altogether.[13] The relatively small number of transactions underpinning LIBOR has been driven by changing market structure, regulatory capital, and liquidity requirements as well as changes in bank risk appetite for short-term funding, thereby creating uncertainty as to the integrity of the index.

In July of 2017, the U.K. Financial Conduct Authority (FCA), the financial regulator of LIBOR, announced that it would no longer persuade or compel contributing banks to submit rates used to calculate LIBOR after December 31, 2021, further heightening the uncertainty of LIBOR.[14] On November 30, 2020, the Federal Reserve Board announced that regulators had proposed clear end dates for the USD LIBOR immediately following the December 31, 2021 publication for the one week and two month USD LIBOR settings, and immediately following the June 30, 2023 publication for other USD LIBOR tenors.[15] On March 5, 2021, the ICE Benchmark Administration Limited (IBA) published the feedback it received to a December, 2020, consultation, and announced it would cease publication of the one month and one year USD LIBOR immediately following the LIBOR publication on June 30, 2023.[16]

With the uncertainty and upcoming phase-out of LIBOR, mortgagees have been working to transition to a new replacement interest rate index for existing ARM contracts. The ARRC, a group of private market participants convened by the Federal Reserve Board and the Federal Reserve Bank of New York to ensure the transition from USD LIBOR to a reliable reference rate, recommended the selection of SOFR for use in new USD contracts.[17] SOFR is published by the Federal Reserve Bank of New York in cooperation with the Office of Financial Research, an independent bureau with the U.S. Department of the Treasury, and ''. . . is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities in the repurchase agreement (repo) market.'' [18] HUD anticipates that a spread-adjusted SOFR will be published to minimize the impact of the transition on legacy ARMs and other LIBOR-based contracts.

According to the ARRC, ''SOFR is suitable to be used across a broad range of financial products, including but not limited to, derivatives (listed, cleared, and bilateral-OTC), and many variable rate cash products that have historically referenced LIBOR.'' [19]

As part of the Consolidated Appropriations Act, 2022,[20] Congress passed the Adjustable Interest Rate (LIBOR) Act of 2021 (LIBOR Act) [21] to, in part, create a clear and uniform process, on a nationwide basis, for replacing LIBOR in existing contracts where the terms do not provide for the use of a clearly defined or practicable replacement benchmark rate, without affecting the ability of parties to use any appropriate benchmark rate in a new contract.[22] Generally, for LIBOR-based ARMs without language providing for a specific replacement index, the default replacement index will be a spread-adjusted SOFR as provided for under the LIBOR Act.

The LIBOR Act establishes that this spread-adjusted replacement index will replace LIBOR for existing contracts on the Replacement Date, specified in the LIBOR Act as the first London banking day after June 30, 2023, unless the Federal Reserve Board specifies another date (the ''Replacement Date'').[23] The LIBOR Act also established a one-year linear basis to transition the tenor spread adjustment from LIBOR to the SOFR spread-adjusted index.[24] For FHA-insured LIBOR-based ARMs, the LIBOR Act authorizes HUD to approve the spread-adjusted SOFR index, or another benchmark replacement index selected by HUD, as a replacement to LIBOR for existing ARMs starting on the Replacement Date.[25]

Advanced Notice of Proposed Rulemaking

On October 5, 2021, HUD published an advanced notice of proposed rulemaking (ANPR) to seek input from the public on the transition away from LIBOR.[26] HUD sought comment on how to address a Secretary-approved replacement index for existing loans and provide for a transition date consistent with the cessation of the LIBOR index. HUD also sought comment on replacing the LIBOR index with the SOFR interest rate index, with a compatible spread adjustment to minimize the impact of the replacement index for existing ARMs. The comment period closed on December 6, 2021. HUD received nine comments on the ANPR, which were considered when drafting the proposed rule.

II. The Proposed Rule

On October 19, 2022, HUD published for public comment a proposed rule to amend 24 CFR parts 203 and 206 (''the proposed rule'').[27] HUD proposed three changes. First, HUD proposed to transition from LIBOR to a spread-adjusted SOFR index for existing forward and HECM ARMs, update the HECM ARM regulation consistent with changes already made through Mortgagee Letter 2021–08 regarding new originations, and replace LIBOR with SOFR as a Secretary-approved index for new forward ARMs. HUD also proposed that the Secretary will publish through notice any additional requirements for transition of existing LIBOR-based

a diverse set of private-sector entities that have an important presence in markets affected by USD LIBOR and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members. *https://www.newyorkfed.org/arrc.*

[12] ARRC Recommendations Regarding More Robust LIBOR Fallback Contract Language for New Closed-End, Residential Adjustable Rate Mortgages, newyorkfed.org (Nov. 15, 2019), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARM_Fallback_Language.pdf.*

[13] *See* Second Report, The Alternative Reference Rates Committee, p. 6 (March 2018), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

[14] Andrew Bailey, The Future of LIBOR, Fin. Conduct Authority (July 27, 2017), *https://www.fca.org.uk/news/speeches/the-future-of-libor.*

[15] See Federal Reserve Board Welcomes and Supports Release of Proposal and Supervisory Statements that Would Enable Clear End Date for U.S. Dollar (USD) LIBOR and Would Promote the Safety and Soundness of the Financial System, Board of Governors of the Federal Reserve System (Nov. 30, 2020), *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201130b.htm.*

[16] ICE LIBOR, Feedback Statement on Consultation on Potential Cessation, ICE Benchmark Admin. (March 5, 2021), *https://www.theice.com/publicdocs/ICE_LIBOR_feedback_statement_on_consultation_on_potential_cessation.pdf.*

[17] About, Alternative Reference Rates Comm., *https://www.newyorkfed.org/arrc/about* (last visited June 10, 2021).

[18] Transition from LIBOR, Alternative Reference Rates Comm., *https://www.newyorkfed.org/arrc/sofr-transition* (last visited June 10, 2021).

[19] Frequently Asked Questions, Alternative Reference Rates Comm (April 21, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf.*

[20] Consolidated Appropriations Act, 2022, Public Law 117–103.

[21] *Id.* at Division U.

[22] *Id.* at Division U, section 102(b)(1).

[23] *Id.* at Division U, section 103(6), (17), (19) and section 104(a)(3).

[24] *Id.* at Division U, section 104(e)(2).

[25] Id. at Division U, section 103(10) and section 104(c).

[26] 86 FR 54876.

[27] 87 FR 63458.

ARMs to address technical aspects of the transition process, newly published SOFR tenors, and any developments arising from the transition.

Second, HUD proposed to clarify its regulations regarding the Monthly Adjustable Interest Rate HECMs at § 206.21(b)(2) to clarify the requirements applicable to monthly adjustments to align with those provided for annual adjustments.

Third, HUD proposed to establish a five percentage point lifetime cap on the adjustment of the HECM monthly ARM interest rate to align with similar ARM interest rate caps that are currently used for annual interest rate HECMs and forward ARMs in the mortgage industry.

III. This Final Rule

In response to public comments as discussed further below, and in further consideration of issues addressed at the proposed rule stage, HUD is publishing this final rule with the following changes from the proposed rule.

Lifetime Adjustment Cap for Monthly Adjustable Interest Rate HECMs at § 206.21(b)(2)(iii)

HUD proposed to establish a five percentage point cap for monthly HECM ARMs. After consideration of comments, HUD is revising § 206.21(b)(2)(iii) to state that the maximum lifetime adjustment cap for monthly HECM mortgages will be set at no more than ten percentage points in either direction from the initial mortgage interest rate, and that HUD may revise this cap through notice.

Constant Maturity of the SOFR Tenor at §§ 203.49(b)(1) and 206.21(b)(1)(ii)

In response to comments stating that the language regarding constant maturity is unique to the U.S. Treasury and does not apply to SOFR, HUD is removing the clause ''adjusted to a constant maturity'' from application to SOFR at §§ 203.49(b)(1) and 206.21(b)(1)(ii).

Reorganization of § 206.21(b)

To make clear that the paragraph regarding application of the replacement index to existing mortgages applies to both annual and monthly HECM mortgages, HUD is moving the proposed § 206.21(b)(1)(ii)(B) to a new paragraph at § 206.21(b)(3).

Index Rate Dropping Below Zero at § 206.21(b)(1)(ii) and (b)(2)(i)

In response to a comment suggesting that it is the index, not the mortgage rate, which should be prohibited from going below zero, HUD has revised § 206.21(b)(1)(ii) and (b)(2)(i) to replace ''mortgage rate'' with ''index figure''.

HUD is also making two other clarifying changes to these paragraphs. First, HUD is revising the word ''change'' to ''periodic adjustment'' in both § 206.21(b)(1)(ii) and (b)(2)(i). Second, HUD is changing ''Note rate'' to ''mortgage interest rate'' in § 206.21(b)(2)(i) to align with § 206.21(b)(1)(ii).

IV. Public Comments

The public comment period for the proposed rule closed on November 18, 2022. HUD received 4 comments relating to the rule.

Support for the Proposed Rule

Commenters supported the proposed rule. Commenters stated that SOFR rates are more accurate rates based off historical trends, more stable, less risky, and less prone to manipulation. A commenter stated that without a transition from LIBOR, forward mortgage borrowers could see their monthly payments become unaffordable and HECM borrowers could see their equity eroded. A commenter noted that SOFR is calculated from billions of dollars of actual daily transactions compared to LIBOR, which is calculated based on fewer transactions and often uses estimates or even simply expert judgment. A commenter stated that lenders have manipulated the LIBOR interest rate system and suggested that this manipulation contributed to the real estate crash of 2008. This commenter stated that LIBOR allowed lenders to manipulate interest rates over 3, 6, and 12 month periods. This commenter stated that these advantages of SOFR will lead to lower borrowing cost for companies, which should help improve the US economy. A commenter noted that SOFR is publicly available for free and maintained by an independent, quasi-governmental entity, compared to LIBOR, which is controlled by a private benchmark administrator that restricts access to those who pay for it.

A commenter noted that Fannie Mae and Freddie Mac have already replaced LIBOR with SOFR in their uniform instruments, giving substantial weight to the use of this index in the mortgage market. This commenter also noted that Ginnie Mae has already stopped purchasing loans that use LIBOR, and better alternatives (*e.g.,* the 30-day SOFR) are now available, so it is appropriate for HUD to formally prevent the issuance of any more LIBOR loans.

A commenter, in support of the proposed rule, emphasized that without a good transition off LIBOR, forward mortgage borrowers could see their monthly payments become unaffordable or more volatile, driving them into default and foreclosure, and HECM borrowers could see their equity be eroded at an unsustainable pace. This commenter also noted the Mutual Mortgage Insurance Fund (MMIF) would bear the financial cost of any mismanagement in the LIBOR transition. This commenter further noted that borrowers have no control over what happens in this process and mortgage contracts provide them with no say in the noteholder's decision, and so borrowers' only form of recourse would be to complain or initiate litigation.

This commenter also specifically supported HUD's proposal to require noteholders to follow the Alternative Reference Rates Committee's (ARRC) recommendation to replace LIBOR with the spread-adjusted SOFR in existing mortgages. This commenter asserted that the spread-adjusted SOFR accurately accounted for SOFR's slightly lower historical trend compared to LIBOR, and was therefore the best replacement index available.

HUD Response: HUD appreciates the support for its proposal to remove the LIBOR index and add SOFR as a Secretary-approved index for newly originated ARMs and to approve a spread-adjusted SOFR index as the replacement index for existing forward and HECM ARMs that will transition from LIBOR. HUD believes that following the ARRC recommendations to replace LIBOR with SOFR is a crucial step for aligning with the GSEs and is also in the best interest of borrowers and mortgagees. Using a spread-adjusted SOFR as the Secretary-approved replacement index should facilitate a smooth transition for existing mortgages. HUD will publish a Mortgagee Letter to implement the requirements in this final rule.

Opposition to a Five Percent Lifetime Rate Cap

Commenters opposed HUD's proposal to cap HECM ARMs at five percentage points. A commenter disagreed with HUD's assertion that, currently, HECM ARMs may be uncapped. The commenter stated that lenders must set a maximum interest rate to comply with section 1204 of the Competitive Equality Banking Act of 1987 (''CEBA''). This commenter stated that CEBA does not specify what the rate cap might be, but in the commenter's experience, lenders set their rate caps between five and ten percentage points over the initial interest rate. The commenter objected to HUD's statement that setting a five

percentage point rate cap would reduce risk to borrowers and the MMIF, stating that HUD offers no evidence to support the assertion. The commenter also objected that the statement ignores that lenders have been voluntarily offering monthly ARMs with a five percentage point rate cap. The commenter noted that if HUD required a five percentage point rate cap, lenders might increase the initial rate by increasing the margin, and suggested that lenders have indicated that the ability to set the rate cap at ten percentage points allows lenders to offer lower margins which could be more beneficial to borrowers and the MMIF than the proposed rate cap. This commenter also noted that taking away the lower rate option by mandating a specific rate cap would increase risk for GNMA and HMBS issuers, where in an increasing rate environment, participations subject to lower rate caps can trade below par. This commenter concluded by requesting that FHA recognize that monthly adjustable HECM ARMs per current law cannot be ''uncapped,'' recognize existing lender practice, and allow lenders to continue to set their own cap.

Another commenter referred to the ten percentage point cap as being ''tried and true.'' This commenter warned that the five percentage point cap would appear to, but would not actually, benefit senior borrowers. The commenter explained that the five percentage point cap would have a much more conservative limit to growth in situations where the borrower chooses not to access their line of credit immediately, and instead lets it grow over time. The commenter noted the importance to senior couples or surviving spouses of the ability to use this additional growth. This commenter also noted that the five percentage point cap would reduce lender participation in the current volatile interest rate environment where many of the recent loans in the pool are already pushing the limits of the five percentage point caps.

HUD Response: HUD recognizes that the reverse mortgage industry has a ''self-imposed'' ten percent maximum interest rate cap, and more recently, some mortgagees have used a maximum interest rate of five percent on a monthly ARM. HUD notes that CEBA does not mandate a specific cap and the current industry standard may change or may not be universally followed. HUD recognizes that there may be situations where a ten percent cap is beneficial both to the borrower and mortgagee. However, HUD also notes that HUD's responsibility for managing and mitigating risks to the MMIF, is challenged when house price appreciation slows, the housing market is volatile, or inflation is increasing. Therefore, after considering comments, HUD has determined it will establish a maximum interest rate cap of up to ten percent beyond the initial mortgage interest rate for monthly mortgages, but may adjust this cap in the future through notice.

Overall, setting a cap will reduce risk to the borrower and the MMIF by reducing potential loan balance growth and slow the rate at which the outstanding principal limit balance reaches 98% of the maximum claim amount while reserving the property's equity in a declining market. Borrowers would also be protected from the risk of entering into a financial product where the maximum interest rate could exceed the ten percent limit during a period of higher interest rates. This change will also permit mortgagees to continue to offer monthly ARMs that align with current mortgagee practices and supports the borrower's ability to negotiate with the mortgagee for best interest rate terms.

HUD initially intends to set the cap at up to ten percent above the initial mortgage interest rate. If HUD determines it is necessary to change the maximum mortgage interest rate range, HUD will examine a variety of market factors. These factors may include the FHA portfolio analysis of default and claim rates of HECMs with similar attributes, analysis of HECMs across geographical areas segmented by the maximum mortgage interest rate, and any other relevant factors.

Constant Maturity of the SOFR Tenor

A commenter noted that HUD proposed to use the 30-day average SOFR tenor ''adjusted to a constant maturity of one year,'' but the concept of adjustments to a constant maturity is a U.S. treasury concept and does not apply to SOFR. This commenter therefore suggested that HUD issue either in the final rule or in a concurrent mortgagee letter, that for the replacement index for existing ARMs indexed to LIBOR, that HUD approved SOFR tenors are the spread-adjusted SOFR rates published by Refinitiv for the one-, three-, six-, and twelve-month indices.

HUD Response: HUD appreciates the feedback and has adopted the change suggested by commenters to remove ''adjusted to a constant maturity of one year'' from §§ 203.49(b)(1) and 206.21(b)(1)(ii) since this reference is not applicable to the 30-day average SOFR tenor. HUD also recognizes the index selected must be appropriate and from a publicly available source such as the one suggested. HUD will take this suggestion into consideration when it publishes the notice establishing approved indices.

Applicability of § 206.21(b)(1)(ii)(B) to Monthly Adjustable HECMs

A commenter noted that the proposed rule established the replacement index for mortgages with an existing adjustable interest rate indexed to LIBOR in § 206.21(b)(1)(ii)(B), but the commenter noted that § 206.21(b)(1) addresses annually adjustable HECM ARMs, whereas monthly adjustable HECMs are primarily addressed in § 206.21(b)(2). This commenter requested that HUD make clear that the entirety of § 206.21(b)(1)(ii)(B) applies to monthly adjustable HECMs. This commenter also requested that HUD clarify that for any monthly adjustable HECM ARMs, the remainder of the contract provisions of the HECM loan notes will remain unchanged, which the commenter said was clearly required under § 206.21(b)(1)(ii)(B), but did not clearly also apply to § 206.21(b)(2).

HUD Response: HUD appreciates the concerns raised by this commenter and has restructured § 206.21(b) by creating a new paragraph (b)(3) to avoid confusion and ensure the requirements for transitioning existing HECMs from LIBOR to the Secretary-approved spread-adjusted SOFR replacement index is applicable to annual and monthly HECM ARMs.

Calculating a New Interest Rate

A commenter noted that the proposed § 206.21(b)(2)(ii) differed from language included in section 5(C) of the Model Note for HECMs as updated in March of 2021 and suggested that HUD revise § 206.21(b)(2)(ii) to align with the Model Note.

This commenter also requested that HUD clarify that the index only needs to be rounded 3 digits to the right of the decimal point.

HUD Response: HUD appreciates the feedback provided; however, HUD believes the changes made to § 206.21(b)(2) accomplishes its intent to clarify the requirements applicable to monthly ARMs in a similar manner that is currently provided for annual ARMs. HUD will revise and publish a Model Note that corresponds to the requirements in this final rule.

Currently, the mortgage interest rate that is entered into HUD's systems must be rounded to 3 digits to the right of the decimal point. HUD does not anticipate making changes to this requirement.

Index Rate Dropping Below Zero

A commenter noted HUD proposed that the downward change in the index ''will not result in a mortgage interest rate that is less than zero'' and suggested changing ''mortgage interest rate'' to ''index'', consistent with HUD's Model HECM ARM Note.

HUD Response: HUD appreciates the feedback provided and has adopted the suggested language to replace ''mortgage interest rate'' with ''index figure''.

Effective Dates of Specific SOFR Rates

A commenter requested that HUD issue guidance that SOFR rates ''established on Mondays and going into effect on Tuesday and are good until the following week's index is established.'' This commenter noted that this would be consistent with the method used for LIBOR rates under Mortgagee Letter 2007–13.

HUD Response: HUD will consider this comment when issuing guidance to implement the requirements in this final rule.

Unsecured Debt

A commenter suggested the HECM program should align with the forward mortgage program and allow borrowers to immediately qualify by paying off unsecured debt. The commenter stated that not allowing a client to participate in the HECM program due to not being able to restructure debt in a better way had no justification.

HUD Response: HUD appreciates this comment, but this recommendation is outside the scope of this rulemaking.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The current rules providing for the use of LIBOR as an index for interest rate adjustments for ARMs in HUD's forward and reverse mortgage insurance programs are becoming obsolete as LIBOR is in the process of being phased out. HUD is required by statute to approve by regulation interest rate indices for its forward ARM products. HUD must also amend by regulation its permitted interest rate indices for HECM ARM products and permit lenders to transition from LIBOR to a replacement index for existing HECM ARMs. Therefore, this rule is necessary to prevent HUD's rules on ARMs from becoming obsolete as well as to avoid the risk of financial harm for all ARM lenders and borrowers, and the larger ARM market, and the MMIF.

HUD does not expect the rule to have an economic impact as a result of the transition to the alternative rate. For newly endorsed forward ARMs, SOFR will become an available index in addition to the one-year CMT index. HUD has already removed LIBOR and approved SOFR for new annually adjustable HECM ARM originations. As of the Effective Date or prior to the cessation of LIBOR, existing LIBOR indexed FHA-insured ARMs may transition to a spread-adjusted SOFR to make it a comparable rate for existing LIBOR-based ARMs. Transition to the spread-adjusted SOFR will align FHA-insured ARMs with other LIBOR contracts covered by the LIBOR Act.

For existing mortgages that transition to spread-adjusted SOFR, we do not anticipate a significant economic impact. For all existing FHA-insured ARMs, the per-adjustment and lifetime caps on total adjustments will continue to apply, minimizing the impact to borrowers or mortgagees as a result of the transition to SOFR.

This rule was not subject to OMB review. This rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not an economically significant regulatory action.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Environmental Review

This rule consists of statutorily required and/or discretionary establishment and review of interest rates and similar rate and cost determinations and related external administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule provides for the removal of LIBOR as an allowable index rate for adjustments for new FHA-insured forward ARMs and establish SOFR as a new index along with the CMT for new forward ARMs, aligning it with the available indices for annually adjustable HECM ARMs. There will be a Secretary-approved spread-adjusted SOFR for existing FHA-insured ARMs transitioning from LIBOR.

The rule requires mortgagees to, where appropriate, utilize a new approved index. Mortgagees are already required to substitute an index under the terms of their existing loan documents when the index used becomes unavailable. Additionally, this rule establishes a new index for origination of new forward ARMs, which mortgagees regularly provide when originating a loan. Therefore, the changes in this rule should not have a significant economic impact on mortgagees. If there is an economic effect on mortgagees, it would fall equally on all mortgagees who originate or service ARMs. Further, HUD anticipates that allowing an additional index for newly originated ARMs will have a net positive economic impact on borrowers and mortgagees by providing additional market opportunities, decreasing the cost of credit associated with these ARMs.

Therefore, the undersigned certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism (64 FR 43255; August 10, 1999)

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Paperwork Reduction Act

The information collection requirements contained in this rule are currently approved by OMB and have been given OMB Control Number 2502–0322 and OMB Control Number 2502–0524 and 2502–0611. In accordance with 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 displays a currently valid OMB control number.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loans programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR parts 203 and 206 as follows:

PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z–16, 1715u, and 1715z-21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 2. Amend § 203.49 by revising paragraph (b) to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * * *

(b) *Interest-rate index*—(1) *CMT and SOFR indices.* Changes in the interest rate charged on an adjustable rate mortgage must correspond either to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of one year (CMT); to the 30-day average Secured Overnight Financing Rate (SOFR) published by the Federal Reserve Bank of New York (or a successor administrator); or to an alternative SOFR tenor approved by the Secretary. The Secretary may publish approved SOFR tenors as alternatives to the 30-day average SOFR tenor through notice.

(2) *Transition for existing mortgages indexed to LIBOR.* Mortgages with an existing adjustable interest rate indexed to the London Interbank Offered Rate (LIBOR) must be transitioned to the spread-adjusted SOFR replacement index approved by the Secretary by the next interest rate adjustment date for the mortgage on or after the Replacement Date, which means the first London banking day after June 30, 2023, unless the Board of Governors of the Federal Reserve System determines that any LIBOR tenor will cease to be published or cease to be representative on a different date. In such case, Replacement Date means the first business day following the date announced by the Board of Governors of the Federal Reserve System. Notice of the transition to the SOFR replacement index must be sent to the borrower in accordance with the mortgage documents. The Secretary will publish through Mortgagee Letter any additional requirements for the transition of existing mortgages.

(3) *Changes in the mortgage interest rate.* Except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

* * * * *

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ 3. The authority citation for part 206 continues to read as follows:

Authority: 2 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d)

■ 4. Amend § 206.3 by revising the definition of ''Expected average mortgage interest rate'' and adding, in alphabetical order, definitions for ''Margin'', ''Replacement Date'', and ''SOFR'' to read as follows:

§ 206.3 Definitions.

* * * * *

Expected average mortgage interest rate means the interest rate used to calculate the principal limit established at closing.

(1) For fixed interest rate HECMs, the expected average mortgage interest rate is the same as the fixed mortgage (Note) interest rate and is set simultaneously with the fixed interest (Note) rate.

(2) For adjustable interest rate HECMs, the expected average mortgage interest rate is the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury securities (CMT) adjusted to a constant maturity of 10 years or an additional SOFR index as approved by the Secretary. Commingling the index type used to calculate the expected average mortgage interest rate and the index type used to calculate the adjustable mortgage interest (Note) rate and adjustments is only permissible as provided for by the Secretary.

(3) Mortgagees, with the agreement of the borrower, may simultaneously lock in the expected average mortgage interest rate and the mortgagee's margin prior to the date of mortgage closing or simultaneously establish the expected average mortgage interest rate and the mortgagee's margin on the date of mortgage closing.

* * * * *

Margin means the amount added to the index value to compute the expected average mortgage interest rate and the initial mortgage interest (Note) rate and periodic adjustments to the mortgage interest (Note) rate.

* * * * *

Replacement Date means the first London banking day after June 30, 2023, unless the Board of Governors of the Federal Reserve System determines that any LIBOR tenor will cease to be published or cease to be representative on a different date. In such case, Replacement Date means the first business day following the date announced by the Board of Governors of the Federal Reserve System.

SOFR means the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (or a successor administrator).

■ 5. Amend § 206.21 by revising paragraphs (b)(1)(ii) and (b)(2) and adding paragraph (b)(3) to read as follows:

§ 206.21 Interest rate.

* * * * *

(b) * * *

(1) * * *

(ii) *Interest rate index.* Changes in the mortgage interest rate charged on an adjustable interest rate mortgage must correspond to changes in the weekly average yield on U.S. Treasury

securities (CMT) adjusted to a constant maturity of one year; to the 30-day average Secured Overnight Financing Rate (SOFR); or to an alternative SOFR tenor approved by the Secretary. The Secretary may publish approved SOFR tenors as alternatives to the 30-day average SOFR tenor through notice. The index type used to calculate the initial mortgage interest rate must be the same index type used to calculate the mortgage interest rate adjustments, except as provided in paragraph (b)(3) of this section. Commingling of index types for the mortgage interest rate and adjustments is not otherwise allowed, unless approved by the Secretary. Unless otherwise provided in this section, each periodic adjustment in the mortgage interest rate must correspond to the upward and downward change in the index, except that downward changes in the index will not result in an index figure that is less than zero.

* * * * *

(2) *Monthly adjustable interest rate HECMs.* If a mortgage meeting the requirements of paragraph (b)(1) of this section is offered, the mortgagee may also offer a mortgage which provides for monthly adjustments to the interest rate subject to the following requirements:

(i) *Interest rate index.* Changes in the interest rate charged on an adjustable interest rate mortgage shall correspond to changes in the weekly average yield on U.S. Treasury securities (CMT) adjusted to a constant maturity of one year, to the weekly average yield on CMT adjusted to one-month, or to an alternative SOFR index approved by the Secretary. The index type used to calculate the initial mortgage interest rate must be the same index type used to calculate the mortgage interest rate adjustments, except as provided in paragraph (b)(3) of this section. Commingling of index types for the mortgage interest rate and adjustments is not otherwise allowed, unless approved by the Secretary. Unless otherwise provided in this section, each periodic adjustment in the mortgage interest rate must correspond to the upward and downward change in the index, except that downward changes in the index will not result in an index figure that is less than zero.

(ii) *Frequency of interest rate changes.* (A) The interest rate adjustments must occur monthly, calculated from the date of the closing, except that the first adjustment shall be no sooner than 30 days (28 days for February, as applicable) or later than three months from the date of the closing.

(B) To set the new interest rate, the mortgagee will determine the change between the initial (*i.e.,* base) index figure and the current index figure, or will add a specific margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days (28 days for February, as applicable) before the date of each interest rate adjustment.

(iii) *Magnitude of changes.* The initial mortgage interest rate shall be agreed upon by the mortgagee and the borrower. Adjustments in the effective rate of interest over the entire term of the mortgage (the lifetime adjustment cap) may result in a change in either direction of no more than ten percentage points from the initial contract interest rate. The Secretary may change this lifetime adjustment cap through notice.

(3) *Transition for existing mortgages indexed to LIBOR.* Mortgages with an existing adjustable interest rate indexed to the London Interbank Offered Rate (LIBOR) must be transitioned to the spread-adjusted SOFR replacement index approved by the Secretary by the next interest rate adjustment date for the mortgage on or after the Replacement Date. Notice of the transition to the SOFR replacement index must be sent to the borrower in accordance with the mortgage documents. The Secretary will publish through Mortgagee Letter any additional requirements for the transition of existing mortgages.

* * * * *

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2023–03952 Filed 2–28–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0170]

RIN 1625–AA00

Safety Zone; Aransas Bay, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters in the Aransas Bay. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a firework display launched from a barge in the Aransas Bay, Corpus Christi, Texas. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective from 8 p.m. through 9 p.m. on March 2, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with fireworks launched from a barge in the waters of the Aransas Bay.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The

Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the fireworks display from 8 p.m. through 9 p.m. on March 2, 2023, will be a safety concern for anyone within the waters of the Aransas Bay area with a 400yds radius from the following point; 28°03′58.1″ N, 97°01′45.3″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while the display of the fireworks takes place in the Aransas Bay.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. through 9 p.m. on March 2, 2023. The safety zone will encompass certain navigable waters of the Aransas Bay and is defined by a 400yds radius around the launching platform. The regulated area encompasses a 400yds radius from the following point; 28°03′58.1″ N, 97°01′45.3″ W. The fireworks display will take place in waters of the Aransas Bay. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

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 duration of the safety zone. The temporary safety zone will be enforced for a short period of one hour. The zone is limited to a 400yds radius from the launching position of in the navigable waters of the Aransas Bay. The rule does not completely restrict the traffic within a waterway and allows mariners to request 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 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 temporary 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, 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 establishment of a temporary safety zone for navigable waters of the Aransas Bay in a zone defined by a 400yds radius from the following coordinate: 28°03′58.1″ N, 97°01′45.3″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by fireworks display in the waters of the Aransas Bay. It is categorically excluded from further review under paragraph L60 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 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0170 to read as follows:

§ 165.T08–0170 Safety Zone; Aransas Bay, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Aransas Bay encompassed by a 400yds radius from the following point; 28°03′58.1″ N, 97°01′45.3″ W.

(b) *Effective period.* This section is effective from 8 p.m. through 9 p.m. on March 2, 2023.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: February 23, 2023.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2023–04208 Filed 2–28–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0134]

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of Enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the annual Parade of Lights event in the Captain of the Port of Buffalo zone. Enforcement of this safety zone is necessary to protect the safety of life and property on the navigable waters immediately prior to, during, and immediately after this event. During the enforcement period, no person or vessel may enter the respective safety zone without permission from the Captain of the Port Buffalo or a designated representative.

DATES: The regulations in 33 CFR 165.939, as listed in Table 165.939(b)(6), will be enforced from 8:45 p.m. through 11:15 p.m. on July 22, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this Notice 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 a Safety Zone: Annual Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939, Table 165.939(b)(6) for the Parade of Lights on July 22, 2023, in Cleveland, Ohio on the Cuyahoga River. 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 Port Buffalo via channel 16, VHF–FM. Requests must be made in advance and approved by the Captain of Port Buffalo before transits will be authorized. Approvals will be granted on a case-by-case basis. 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: February 23, 2023.

J.B. Bybee,

Commander, U.S. Coast Guard, Captain of the Port Buffalo, By direction.

[FR Doc. 2023–04154 Filed 2–28–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0727; FRL–10421–02–R4]

Air Plan Approval; Kentucky; Revision to Federally Enforceable District Origin Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet (Cabinet) on June 15, 2022. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The District's revision modifies the permit application timing requirements in the Federally Enforceable District Origin Operating Permits (FEDOOP) rule in the Jefferson County portion of the Kentucky SIP (Jefferson County Local Implementation Plan, or LIP). EPA is finalizing these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective March 31, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0727. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9144. Ms. Williams-Miles can also be reached via electronic mail at *williamsmiles.pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

On June 15, 2022, the Commonwealth of Kentucky submitted changes to the Jefferson County LIP for EPA approval.[1] [2] EPA is approving changes to Section 4—*Permit Applications* of the District's Regulation 2.17—*Federally Enforceable District Origin Operating Permits.*[3] Under Regulation 2.17, Section 1.1, a FEDOOP is an operating permit that contains a federally enforceable condition, limit, or provision that is issued to a stationary source that is not, or would not subsequently be, required to obtain a permit under Regulation 2.16—*Title V Operating Permits.*

The changes in the June 15, 2022, submission add timing requirements for sources applying for FEDOOP permits that are similar to those in Regulation 2.16. Through a Notice of Proposed Rulemaking (NPRM) published on December 27, 2022 (87 FR 79261), EPA proposed to approve these changes as being consistent with the CAA. Additional details on Kentucky's June 15, 2022, revision and EPA's analysis of the changes can be found in the December 27, 2022, NPRM. Comments on the December 27, 2022, NPRM were due on or before January 26, 2023. EPA received one anonymous comment on the NPRM. That comment was unrelated to the specifics of the NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Jefferson County Regulation 2.17—*Federally Enforceable District Origin Operating Permits,* version 5, with a local-effective date of March 16, 2022, which adds timing requirements to the permit application process. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

III. Final Action

EPA is approving the aforementioned changes to Regulation 2.17—*Federally Enforceable District Origin Operating Permits,* with a local-effective date of March 16, 2022, into the Jefferson County LIP. EPA is approving these changes because they are consistent with the CAA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

[1] EPA received this submission on June 13, 2022, in a letter dated June 15, 2022. Throughout this final rulemaking, this submission will be referred to as the June 15, 2022, submission.

[2] In 2003, the City of Louisville and Jefferson County governments merged, and the ''Jefferson County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' However, to be consistent with the terminology used in the subheading in Table 2 of 40 CFR 52.920(c), throughout this notice we refer to regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

[3] The June 15, 2022, submittal contains changes to other Kentucky SIP-approved rules that are not addressed in this notice. EPA will act on those rules in separate actions.

[4] *See* 62 FR 27968 (May 22, 1997).

country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 1, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: February 22, 2023.

Daniel Blackmon,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart S—Kentucky

■ 2. In § 52.920(c), in table 2, revise the entry for ''2.17'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	**Federal Register** notice	District effective date	Explanation
*	*	*	*	*	*
2.17	Federally Enforceable District Origin Operating Permits.	3/1/2023	[Insert citation of publication]	3/16/2022	
*	*	*	*	*	*

* * * * *

[FR Doc. 2023–04012 Filed 2–28–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0947; FRL–10473–02–R4]

Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving portions of a State Implementation Plan (SIP) submission provided by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), via a letter dated January 25, 2021, and supplemented through a letter dated November 18, 2022. This approval pertains to certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standards (NAAQS or standards). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of that NAAQS. The January 25, 2021, SIP submission addresses all infrastructure elements except for those pertaining to the contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA is conditionally approving the portions of the submittal related to the prevention of significant deterioration (PSD) infrastructure elements and the air quality modeling element.

DATES: This rule is effective March 31, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0947. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP'' or ''iSIP.'' States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

This action conditionally approves portions of Mississippi's January 25, 2021, SIP revision, as supplemented on November 18, 2022,[2] provided to EPA through the MDEQ for the applicable requirements of the 2015 8-hour ozone NAAQS regarding the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K).[3] Mississippi's submission included a written commitment under CAA section 110(k)(4) to take action to meet the requirements of the PSD and air quality modeling elements for its 2015 ozone iSIP by adopting a rule revision no later than one year after EPA's conditional approval of these portions of Mississippi's ozone iSIP. Specifically, MDEQ intends to amend 11 Mississippi Administrative Code (MAC), Part 2, Chapter 2, as well as 11 MAC, Part 2, Chapter 5, to cite to the current version of 40 CFR part 51, Appendix W, *Guideline on Air Quality Models.* Separately, EPA took final action on the remaining elements of Mississippi's January 25, 2021, SIP revision with the exception of the visibility protection provisions of section 110(a)(2)(D)(i)(II).[4] EPA will consider the portion of Mississippi's January 25, 2021, SIP revision that addresses the visibility protection provisions in a separate rulemaking.

Through a notice of proposed rulemaking (NPRM) published on December 23, 2022 (87 FR 78896), EPA proposed to conditionally approve changes to portions of Mississippi's 2015 8-hour Ozone NAAQS iSIP contained in MDEQ January 25, 2021, submittal as supplemented November 18, 2022. The details of Mississippi's submission, as well as the background and EPA's rationale for conditionally approving the changes, are described in more detail in the December 23, 2022, NPRM. Comments on the December 23, 2022, NPRM were due on or before January 23, 2023. No comments were received.

II. Final Action

EPA is conditionally approving the portions of the 2015 8-hour Ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K). With the exception of the visibility provisions, EPA has already taken final action on the remainder of Mississippi's January 25, 2021, submittal. EPA will consider Mississippi's visibility provisions in the January 25, 2021, SIP revision through a future rulemaking.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely conditionally approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final 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 EPAwith the discretionary authorityto 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small

[1] In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

[2] On November 21, 2022, Mississippi submitted a letter, dated November 18, 2022, related to its request for conditional approval of the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K). This letter is in the docket for this proposed rulemaking.

[3] On September 6, 2019, Mississippi provided a SIP submission addressing the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA will address the interstate transport provisions of section 110(a)(2)(D)(i)(I) through a separate rulemaking.

[4] *See* 87 FR 57832 (September 22, 2022).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 1, 2023. 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) of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 22, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart Z—Mississippi

■ 2. Section 52.1276 is added to read as follows:

§ 52.1276 Conditional approval.

Mississippi submitted a SIP revision to EPA on January 25, 2021, as supplemented on November 18, 2022, regarding Mississippi's 2015 8-hour Ozone NAAQS infrastructure SIP that addresses the prevention of significant deterioration related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K). The SIP revision included a commitment to adopt a rule revision to meet requirements of these sections and submit a SIP revision containing the revised rules. EPA conditionally approved these portions of the January 25, 2021, SIP revision, as supplemented November 18, 2022, in an action published in the **Federal Register** on March 1, 2023. If Mississippi fails to meet its commitment by March 1, 2024, the conditional approval will become a disapproval on March 1, 2024.

■ 3. In § 52.1270, in paragraph (e), amend the table by adding an entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2015 8-hour Ozone NAAQS'' at the end of the table to read as follows.

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-hour Ozone NAAQS.	Mississippi	1/25/2021	3/1/2023, [Insert citation of publication].	Addressing and conditionally approving the PSD elements of sections 110(a)(2)(C), (D)(i)(II), and J, and section 110(a)(2)(K) only.

[FR Doc. 2023–04011 Filed 2–28–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0012; FRL–9727–01–R4]

Air Plan Approval; Florida; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Florida State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by Florida and approved by EPA. In this notice, EPA is also notifying the public of corrections and clarifying changes in the Code of Federal Regulations (CFR) tables that identify material incorporated by reference into the Florida SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective March 1, 2023.

ADDRESSES: The SIP materials whose incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303; and *www.regulations.gov*. To view the materials at the Region 4 Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S Environmental Protection Agency, Region 4, 61 Forsyth

Street SW, Atlanta, Georgia 30303–8960. Ms. LaRocca can be reached via telephone at (404) 562–8994 and via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to EPA. Once these control measures and strategies are approved by EPA, and after notice and comment, they are incorporated into the federally-approved SIP and are identified in part 52—''Approval and Promulgation of Implementation Plans,'' Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52 but is ''incorporated by reference.'' This means that EPA has approved a given state regulation or specified changes to a given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on proposed revisions containing new or revised state regulations. A submission from a state can revise one or more rules in their entirety or portions of rules. The state indicates the changes in the submission (such as by using redline/strikethrough text), and EPA then takes action on the requested changes. EPA establishes a docket for its actions using a unique Docket Identification Number, which is listed in each action. These dockets and the complete submission are available for viewing on *www.regulations.gov.*

On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials approved by EPA into each SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain ''SIP Compilations'' that contain the federally approved regulations and source-specific permits submitted by each state agency. EPA generally updates these SIP Compilations on an annual basis. Under the revised procedures, EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular state. EPA began applying the 1997 revised procedures to Florida on June 16, 1999, and is providing this notice in accordance with such procedures. *See* 64 FR 32346.

II. EPA Action

In this action, EPA is providing notice of an update to the materials incorporated by reference into the Florida SIP as of August 31, 2022, and identified in 40 CFR 52.520(c) and (d). This update includes SIP materials approved by EPA since the last IBR update. *See* 83 FR 17081 (April 18, 2018). In addition, EPA is providing notice of the following corrections and clarifying changes to 40 CFR 52.520(c) and (d):

Changes Applicable to Paragraph (c), EPA Approved Florida Laws and Regulations

A. Correcting Table (c)'s title, from ''*(c) EPA Approved Florida Regulations*'' to ''*(c) EPA-Approved Florida Laws and Regulations*''.

B. Correcting the header of paragraph (c), from ''EPA Approved Florida Regulations'' to ''EPA-Approved Florida Laws and Regulations''.

C. Where applicable, under the ''State effective date'' and ''EPA Approval Date,'' removing the leading zero from the month and day, and change the 2-digit year to reflect a 4-digit year (for consistency), and correcting a **Federal Register** citation to reflect the beginning page of the preamble as opposed to that of the regulatory text.

D. Correcting a typographical error for State Statute 62–296.570 by changing the title, ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC and NO_X- Emitting Facilities'' to ''Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities''.

E. Correcting a typographical error for State Statute 62–296.705 by changing the title, ''Phosphate Processing operations'' to ''Phosphate Processing Operations''.

F. Correcting a typographical error for State Statute 62–296.711 by changing the title, ''Materials Handling, Sizing, Screening, Crushing and Grinding operations'' to ''Materials Handling, Sizing, Screening, Crushing and Grinding Operations''.

G. Changing the reference to State Statute 112.3143(4) by removing reference to subsection (4) and correcting a typographical error by changing the title, ''Voting Conflict'' to ''Voting conflicts''.

H. Reformatting ''State Statutes'' 120.569 and 403.131 to be in sequential order.

I. Correcting state effective dates listed under State Statutes in paragraph 52.520(c), as described below:

a. 112.3143, Voting conflicts, State effective date is revised to read ''6/29/1999.''

b. 112.3144, Full and public disclosure of financial interests, State effective date is revised to read ''10/1/2006.''

c. 120.569, Decisions which affect substantial interests, State effective date is revised to read ''6/24/2011.''

d. 403.131, Injunctive relief, remedies, State effective date is revised to read ''6/15/2001.''

J. Adding language to the explanation column under State Statute 120.569, Decisions which affect substantial interests, to read as follows: ''Paragraph (2)(n) only; to satisfy the requirements of section 110(a)(2)(G).''

Changes Applicable to Paragraph (d), EPA Approved Florida Source-Specific Requirements

A Correcting Table (d)'s title, from ''*(d) EPA-approved State Source-specific requirements*'' to ''*(d) EPA-Approved State Source-Specific Requirements.*''

B. Correcting the header of paragraph (d) from ''EPA-approved Florida source-specific requirements'' to ''EPA-Approved Florida Source-Specific Requirements.''

C. Where applicable, under the ''State effective date'' and ''EPA Approval Date,'' removing the leading zero from the month and day, changing the 2-digit year to reflect a 4-digit year (for consistency), and correcting a **Federal Register** citation to reflect the beginning

page of the preamble as opposed to that of the regulatory text.

D. Correcting the explanation column listed in Table (d), as described below:

a. Mosaic Fertilizer, LLC, revised to read ''Specific Conditions pertaining to EU004; EU005; and EU006.''

b. Rayonier Performance Fibers, LLC, revised to read ''Specific Conditions pertaining to EU005; EU006; and EU022.''

c. Tampa Electric Company—Big Bend Station, Air Permit No. 0570039–074–AC, removing the word ''only.''

d. Tampa Electric Company—Big Bend Station, Air Permit No.0570039–120–AC, removing the word ''only.''

III. Good Cause Exemption

EPA has determined that this action falls under the ''good cause'' exemption in the section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs, makes typographical/ministerial revisions to the tables in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553(b)(3)(B) of the APA, an agency may find good cause where procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and corrections) only reflect existing law and the changes to the prefatory heading to the tables are ministerial in nature. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Florida SIP Compilation and notice of corrections to the Florida ''Identification of Plan'' portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP Compilation and the CFR ''Identification of plan'' section (which includes table entry corrections).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference as described in Sections I and II of this preamble. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of previously EPA-approved regulations promulgated by Florida and federally effective prior to August 31, 2022. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 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 CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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 final rule and notification of administrative change does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the Florida SIP Compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA believes judicial review of this action under section 307(b)(1) is not available.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 22, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

40 CFR part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority for citation for part 52 continues to read as follows:

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

Subpart K—Florida

■ 2. § 52.520, paragraphs (b), (c), and (d) are revised to read as follows:

§ 52.520 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 31, 2022, for Florida was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after August 31, 2022, for Florida will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street SW, Atlanta, GA 30303. To obtain the material, please call (404) 562–9022. You may inspect the material with an EPA approval date prior to August 31, 2022, for Florida at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA email *fedreg.legal@nara.gov* or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA-approved Florida laws and regulations.*

EPA-APPROVED FLORIDA LAWS AND REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
Chapter 62–204 Air Pollution Control—General Provisions				
62–204.100	Purpose and Scope	3/13/1996	6/16/1999, 64 FR 32346.	
62–204.200	Definitions	2/12/2006	6/27/2008, 73 FR 36435.	
62–204.220	Ambient Air Quality Protection	3/13/1996	6/16/1999, 64 FR 32346.	
62–204.240	Ambient Air Quality Standards	3/13/1996	6/16/1999, 64 FR 32346.	
62–204.260	Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments).	2/12/2006	6/27/2008, 73 FR 36435.	
62–204.320	Procedures for Designation and Redesignation of Areas.	3/13/1996	6/16/1999, 64 FR 32346.	
62–204.340	Designation of Attainment, Nonattainment, and Maintenance Areas.	3/13/1996	6/16/1999, 64 FR 32346.	
62–204.360	Designation of Prevention of Significant Deterioration Areas.	3/13/1996	6/16/1999, 64 FR 32346.	
62–204.400	Public Notice and Hearing Requirements for State Implementation Plan Revisions.	11/30/1994	6/16/1999, 64 FR 32353.	
62–204.500	Conformity	8/31/1998	8/11/2003, 68 FR 47468	Except for the incorporation by reference of 40 CFR 93.104(e) of the Transportation Conformity Rule.
Chapter 62–210 Stationary Sources—General Requirements				
62–210.200	Definitions	10/23/2013	9/16/2020, 85 FR 57707	The ethanol production facility exclusion within the definition of ''major stationary source'' at 62–210.200 does not apply to 62–212.500. Except the following definitions: ''animal crematory''; ''biological waste''; ''biological waste incinerator''; ''biomedical waste''; ''capture efficiency''; ''cast polymer operation''; ''human crematory''; ''major source of air pollution,'' ''major source,'' or ''title V source''; ''printed interior panels''; ''unit-specific applicable requirement''; and ''waste-to-energy facility''.
62–210.220	Small Business Assistance Program.	10/6/2008	7/3/2017, 82 FR 30767.	
62–210.300	Permits Required	5/9/2007	6/1/2009, 63 FR 26103.	
62–210.310	Air General Permits	6/29/2011	10/6/2017, 82 FR 46682.	
62–210.350	Public Notice and Comment	10/12/2008	7/29/2020, 85 FR 45539	Except for 62–210.350(1)(c).

EPA-APPROVED FLORIDA LAWS AND REGULATIONS—Continued

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
62–210.360	Administrative Permit Corrections	11/23/1994	6/16/1999, 64 FR 32346.	
62–210.370	Emissions Computation and Reporting.	2/2/2006	6/27/2008, 73 FR 36435.	
62–210.550	Stack Height Policy	11/23/1994	6/16/1999, 64 FR 32346.	
62–210.650	Circumvention	10/15/1992	10/20/1994, 59 FR 52916.	
62–210.700	Excess Emissions	11/23/1994	6/16/1999, 64 FR 32346.	
62–210.900	Forms and Instructions	2/9/1993	11/7/1994, 59 FR 46157.	
Chapter 62–212 Stationary Sources—Preconstruction Review				
62–212.300	General Preconstruction Review Requirements.	6/29/2009	4/12/2011, 76 FR 20239.	
62–212.400	Prevention of Significant Deterioration.	3/28/2012	9/16/2020, 85 FR 57707	Except the provisions for the $PM_{2.5}$ significant impact levels at (5)(b).
62–212.500	Preconstruction Review for Nonattainment Areas.	2/2/2006	6/27/2008, 73 FR 36435	The ethanol production facility exclusion within the definition of ''major stationary source'' at 62–210.200 does not apply to 62–212.500.
62–212.720	Actuals Plantwide Applicability Limits (PALs).	12/17/2013	7/3/2017, 82 FR 30767.	
Chapter 62–252 Gasoline Vapor Control				
62–252.300	Gasoline Dispensing Facilities Stage I Vapor Recovery.	5/1/2015	8/12/2015, 80 FR 48259.	
Chapter 62–256 Open Burning and Frost Protection Fires				
62–256.100	Declaration and Intent	12/9/1975	11/1/1977, 42 FR 57124.	
62–256.200	Definitions	11/30/1994	6/16/1999, 64 FR 32346.	
62–256.300	Prohibitions	11/30/1994	6/16/1999, 64 FR 32346.	
62–256.400	Agricultural and Silvicultural Fires	7/1/1971	5/31/1972, 37 FR 10842.	
62–256.450	Burning for Cold or Frost Protection.	6/27/1991	9/9/1994, 59 FR 46552.	
62–256.500	Land Clearing	11/30/1994	6/16/1999, 64 FR 32346.	
62–256.600	Industrial, Commercial, Municipal, and Research Open Burning.	7/1/1971	5/31/1972, 37 FR 10842.	
62–256.700	Open Burning Allowed	11/30/1994	6/16/1999, 64 FR 32346.	
62–256.800	Effective Date	7/1/1971	5/31/1972, 37 FR 10842.	
Chapter 62–296 Stationary Sources—Emission Standards				
62–296.100	Purpose and Scope	10/6/2008	10/6/2017, 82 FR 46682.	
62–296.320	General Pollutant Emission Limiting Standards.	3/13/1996	6/16/1999, 64 FR 32346.	
62–296.340	Best Available Retrofit Technology.	1/31/2007	8/29/2013, 78 FR 53250.	
62–296.401	Incinerators	3/13/1996	6/16/1999, 64 FR 32346.	
62–296.402	Sulfuric Acid Plants	3/13/1996	6/16/1999, 64 FR 32346.	
62–296.403	Phosphate Processing	3/13/1996	6/16/1999, 64 FR 32346.	
62–296.404	Kraft (Sulfate) Pulp Mills and Tall Oil Plants.	3/13/1996	6/16/1999, 64 FR 32346.	
62–296.405	Fossil Fuel Steam Generators with more than 250 million Btu per Hour Heat Input.	3/2/1999	10/6/2017, 82 FR 46682.	
62–296.406	Fossil Fuel Steam Generator with less than 250 million Btu per Hour Heat Input, New and Existing Emissions Units.	3/2/1999	10/6/2017, 82 FR 46682.	
62–296.408	Nitric Acid Plants	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.409	Sulfur Recovery Plants	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.410	Carbonaceous Fuel Burning Equipment.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.412	Dry Cleaning Facilities	3/11/2010	10/6/2017, 82 FR 46682.	
62–296.414	Concrete Batching Plants	1/10/2007	10/6/2017, 82 FR 46682.	
62–296.415	Soil Thermal Treatment Facilities	3/13/1996	6/16/1999, 64 FR 32346.	
62–296.418	Bulk Gasoline Plants	3/11/2010	10/6/2017, 82 FR 46682.	
62–296.470	Implementation of Federal Clean Air Interstate Rule.	4/1/2007	10/12/2007, 72 FR 58016.	

EPA-APPROVED FLORIDA LAWS AND REGULATIONS—Continued

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
62–296.500	Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X) Emitting Facilities.	3/11/2010	10/6/2017, 82 FR 46682.	
62–296.501	Can Coating	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.502	Coil Coating	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.503	Paper Coating	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.504	Fabric and Vinyl Coating	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.505	Metal Furniture Coating	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.506	Surface Coating of Large Appliances.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.507	Magnet Wire Coating	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.508	Petroleum Liquid Storage	10/6/2008	10/6/2017, 82 FR 46682	Amendments effective 10/6/2008.
62–296.510	Bulk Gasoline Terminals	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.511	Solvent Metal Cleaning	6/5/1996	01/16/2003, 68 FR 2204.	
62–296.512	Cutback Asphalt	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.513	Surface Coating of Miscellaneous Metal Parts and Products.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.514	Surface Coating of Flat Wood Paneling.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.515	Graphic Arts Systems	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.516	Petroleum Liquid Storage Tanks with External Floating Roofs.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.570	Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.600	Reasonably Available Control Technology (RACT)—Lead.	3/13/1996	6/16/1999, 64 FR 32346.	
62–296.601	Lead Processing Operations in General.	8/8/1994	9/18/1996, 61 FR 49064.	
62–296.602	Primary Lead Acid Battery Manufacturing Operations.	3/13/1996	9/18/1996, 61 FR 49064.	
62–296.603	Secondary Lead Smelting Operations.	8/8/1994	9/18/1996, 61 FR 49064.	
62–296.604	Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations.	8/8/1994	9/18/1996, 61 FR 49064.	
62–296.605	Lead Oxide Handling Operations	8/8/1994	9/18/1996, 61 FR 49064.	
62–296.700	Reasonably Available Control Technology (RACT)—Particulate Matter.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.701	Portland Cement Plants	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.702	Fossil Fuel Steam Generators	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.703	Carbonaceous Fuel Burners	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.704	Asphalt Concrete Plants	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.705	Phosphate Processing Operations.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.706	Glass Manufacturing Process	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.707	Electric Arc Furnaces	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.708	Sweat of Pot Furnaces	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.709	Lime Kilns	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.710	Smelt Dissolving Tanks	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.711	Materials Handling, Sizing, Screening, Crushing and Grinding Operations.	11/23/1994	6/16/1999, 64 FR 32346.	
62–296.712	Miscellaneous Manufacturing Process Operations.	11/23/1994	6/16/1999, 64 FR 32346.	
Chapter 62–297 Stationary Sources—Emissions Monitoring				
62–297.310	General Emissions Test Requirements.	3/9/2015	10/6/2017, 82 FR 46682.	
62–297.440	Supplementary Test Procedures	7/10/2014	4/2/2018, 83 FR 13875.	
62–297.450	EPA VOC Capture Efficiency Test Procedures.	7/10/2014	4/2/2018, 83 FR 13875.	

EPA-APPROVED FLORIDA LAWS AND REGULATIONS—Continued

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
62–297.620	Exceptions and Approval of Alternate Procedures and Requirements.	11/23/1994	6/16/1999, 64 FR 32346.	
State Statutes				
112.3143	Voting conflicts	6/29/1999	7/30/2012, 77 FR 44485	Paragraph (4) only; to satisfy the requirements of sections 128 and 110(a)(2)(E)(ii).
112.3144	Full and public disclosure of financial interests.	10/1/2006	7/30/2012, 77 FR 44485	To satisfy the requirements of sections 128 and 110(a)(2)(E)(ii).
120.569	Decisions which affect substantial interests.	6/24/2011	7/30/2012, 77 FR 44485	Subsection (2)(n) only; to satisfy the requirements of section 110(a)(2)(G).
403.131	Injunctive relief, remedies	6/15/2001	7/30/2012, 77 FR 44485	To satisfy the requirements of section 110(a)(2)(G).

(d) EPA-approved Florida Source-Specific requirements.

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Harry S Truman, animal import center	NA	11/26/1996	1/19/2000, 65 FR 2882.	
Martin Gas Sales, Inc	0570477–007–AC	1/17/2003	5/1/2003, 68 FR 23209.	
Broward County Aviation Department		8/15/2003	6/17/2003, 69 FR 33862	Order Granting Variance from Rule 62–252.400.
Lockheed Martin Aeronautics Company.		4/16/2005	11/28/2006, 71 FR 68745	Requirement that Lockheed Martin Aeronautics Company comply with EPA's Aerospace CTG at its Pinellas County facility.
Combs Oil Company		7/31/2009	9/25/2015, 80 FR 57727	Order Granting Variance from Rule 62–296.418(2)(b)2.
Mosaic Fertilizer, LLC	Air Permit No. 0570008–080–AC	1/15/2015	7/3/2017, 82 FR 30749	Specific Conditions pertaining to EU004; EU005; and EU006.
Rayonier Performance Fibers, LLC	Air Permit No. 0890004–036–AC	4/12/2012	7/3/2017, 82 FR 30749	Specific Conditions pertaining to EU005; EU006; and EU022.
Tampa Electric Company—Big Bend Station.	Air Permit No. 0570039–074–AC	2/26/2015	7/3/2017, 82 FR 30749	Section 3, Subsection B, Condition 5.
WestRock, LLC	Air Permit No. 0890003–046–AC	1/9/2015	7/3/2017, 82 FR 30749	Specific Conditions pertaining to EU006; EU015; EU007; and EU011.
Tampa Electric Company—Big Bend Station.	Air Permit No. 0570039–120–AC	12/14/2018	11/12/2019, 84 FR 60927	Section 2, Condition 4; the ''SO_2 Emissions Cap'' provision from Section 3, Condition 4; the ''SO_2 CEMS'' provision from Section 3, Condition 4; and the ''Methods of Operation'' for Units 1 and 2 provision from Section 3, Condition 6.
Mosaic Fertilizer, LLC—Bartow Facility.	Air Permit No. 1050046–050–AC	7/3/2017	2/20/2020, 85 FR 9666	Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050046–063–AC with an effective date of January 11, 2019); Condition 4; and Condition 5.
Mosaic Fertilizer, LLC—New Wales Facility.	Air Permit No. 1050059–106–AC	10/30/2017	2/20/2020, 85 FR 9666	Section III, Subsection A, Specific Condition 3 (as administratively corrected by Permit No. 1050059–114–AC with an effective date of January 11, 2019); Condition 4; and Condition 5.
EnviroFocus Technologies, LLC	Air Construction Permit No. 0570057–27–AC.	12/14/2012	6/4/2021, 86 FR 29949	Except for conditions not specifically related to lead emissions; Section 3, Subsection B, Specific Conditions 3 and 10; Section 3, Subsection C, Specific Condition 5; and Section 3, Subsection G, Specific Condition 5.

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanation
EnviroFocus Technologies, LLC	Air Construction Permit No. 0570057–37–AC.	11/6/2019	6/14/2021, 86 FR 29949	Only incorporating the following conditions: Section 3, Subsection B, Specific Conditions 2 and 3a; Section 3, Subsection C, Specific Condition 1; and Section 3, Subsection D, Specific Condition 1.

* * * * *

[FR Doc. 2023–04013 Filed 2–28–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–1

RIN 1250–AA09

Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption Rule

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule; rescission.

SUMMARY: This action finalizes the proposal of the Office of Federal Contract Compliance Programs (OFCCP) to rescind the final rule titled ''Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption,'' which took effect on January 8, 2021. This rescission removes the regulations established by that rule.

DATES: This final rule is effective on March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Tina Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0104 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

OFCCP enforces Executive Order 11246, which prohibits Federal Government contractors and subcontractors from discriminating against employees in a manner that would impair the economy and efficiency of work performed on government contracts and would allow Federal tax dollars to be used to deny equal employment opportunities. Section 202 of Executive Order 11246, as amended, requires every non-exempt contract and subcontract to include an equal opportunity clause, which specifies the nondiscrimination and affirmative action obligations each contractor or subcontractor assumes as a condition of its Government contract or subcontract. Among other obligations, each contractor agrees, as a condition of its Government contract, not to discriminate in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.

As amended in 2002, Executive Order 11246 includes a limited exemption for certain religious organizations that is expressly modeled on the religious exemption in Title VII of the Civil Rights Act of 1964. Since 2003, this religious exemption has been included in OFCCP's regulations at 41 CFR 60–1.5(a)(5). For over 17 years, under the administrations of both President George W. Bush and President Barack Obama, OFCCP's policy was to determine the scope and applicability of the religious exemption, if invoked, by applying Title VII case law and principles to the facts and circumstances of each situation. In December 2020, OFCCP promulgated a rule that purported to clarify the scope and application of the Executive Order 11246 religious exemption (hereinafter ''2020 rule''). On balance, however, the 2020 rule increased confusion and uncertainty about the religious exemption, largely because it departed from and questioned longstanding Title VII precedents. Upon further consideration, OFCCP now believes that this could have the effects of diminishing the economy and efficiency of work performed on Federal contracts and weakening nondiscrimination protections for workers. With the present action, for the reasons explained below, OFCCP is rescinding the entire 2020 rule so that the agency can return to its longstanding approach of aligning the Executive Order 11246 religious exemption with Title VII case law as applied to the facts and circumstances of each situation. OFCCP remains committed to protecting religious freedom in accordance with applicable law and will continue to provide any needed compliance assistance on the religious exemption.

II. Background

Executive Order 11246, as amended, and its predecessors reflect the Government's longstanding policy of prohibiting Federal contractors from engaging in discrimination that undermines efficiency and economy as well as equal employment opportunity. *See, e.g.,* E.O. 8802, 6 FR 3109 (June 27, 1941) (''reaffirm[ing] the policy of the United States that there shall be no discrimination in the employment of workers in defense industries or government because of race, creed, color, or national origin''); E.O. 10479, 18 FR 4899 (Aug. 18, 1953) (reiterating ''the policy of the United States Government to promote equal employment opportunity for all qualified persons employed or seeking employment on government contracts because such persons are entitled to fair and equitable treatment in all aspects of employment on work paid for from public funds''); E.O. 10925, 26 FR 1977 (Mar. 8, 1961) (describing it as ''the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts''); E.O. 13672, 79 FR 42971 (July 23, 2014) (amending Executive Order 11246 to include sexual orientation and gender identity to ''provide for a uniform policy for the Federal Government to prohibit discrimination and take further steps to promote economy and efficiency in Federal Government procurement''). Presidents have long implemented this nondiscrimination policy, which also ensures that taxpayer funds are not used to discriminate, especially in the performance of functions for the Government itself and, thus, for the public, pursuant to the Federal Property and Administrative Services Act of 1949 (Procurement Act). *See* 40 U.S.C. 101, 121(a); *Contractors Ass'n of E. Pa.* v.

Sec'y of Labor, 442 F.2d 159, 170 (3d Cir. 1971).[1]

It is OFCCP's longstanding policy and practice, when analyzing potential discrimination under Executive Order 11246, to follow the principles of Title VII, which prohibits employers from discriminating against applicants and employees on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), or national origin. 42 U.S.C. 2000e–2; *see OFCCP* v. *Bank of Am.,* No. 13–099, Final Decision & Order, 2016 WL 2892921, at *7 (ARB Apr. 21, 2016) (''[I]n addition to relevant provisions of E.O. 11246, its implementing regulations, and Department precedent, we also look to federal appellate court decisions addressing similar pattern or practice claims of intentional discrimination adjudicated under Title VII. . . .''); *OFCCP* v. *Greenwood Mills, Inc.,* Nos. 00–044, 01–089, Final Decision & Order, 2002 WL 31932547, at *4 (ARB Dec. 20, 2002) (''The legal standards developed under Title VII of the Civil Rights Act of 1964 apply to cases brought under [Executive Order 11246]''). As amended in 1972, Title VII contains an exemption for religious corporations, associations, educational institutions, and societies with regard to the employment of individuals ''of a particular religion'' to perform work connected with their activities. Equal Employment Opportunity Act of 1972, Public Law 92–261, sec. 3, 86 Stat. at 104 (codified at 42 U.S.C. 2000e–1(a)). In the decades since the enactment of the Title VII religious exemption, a robust body of case law interpreting the exemption has developed.

In 2002, President George W. Bush amended Executive Order 11246 to include, almost verbatim, Title VII's exemption for religious organizations. Sec. 4, E.O. 13279, 67 FR 77143 (Dec. 16, 2002) (codified at sec. 204(c), E.O. 11246). The amendment was intended ''to ensure the economical and efficient administration and completion of Government contracts.'' *Id.* The only substantive difference between the text of the Title VII religious exemption and that of the Executive Order 11246 religious exemption is that the latter includes an express proviso that, although a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society is exempt from having to comply with section 202 (the equal opportunity clause of Executive Order 11246) ''with respect to the employment of individuals of a particular religion,'' it is ''not exempted or excused from complying with the other requirements contained in this Order.'' Sec. 204(c), E.O. 11246.

In 2003, OFCCP published a final rule amending its Executive Order 11246 regulations to incorporate this religious exemption.[2] Affirmative Action and Nondiscrimination Obligations of Government Contractors, Executive Order 11246, as amended; Exemption for Religious Entities, Final Rule, 68 FR 56392 (Sept. 30, 2003) (codified at 41 CFR 60–1.5(a)(5)). In the preamble to that rule, OFCCP explained that the religious exemption recently added to Executive Order 11246 was ''modeled on'' the Title VII religious exemption. *Id.* In turn, OFCCP noted, the new regulation itself ''directly tracks the President's amendment to'' Executive Order 11246 and ''simply incorporates'' the amendment in the regulation. *Id.* The preamble and regulation did not provide further guidance regarding the scope or application of the religious exemption. OFCCP continued its longstanding policy and practice of applying Title VII principles and case law when analyzing claims of discrimination under Executive Order 11246. OFCCP provided compliance assistance on the interpretation and application of the religious exemption through hosting webinars and publishing guidance on its website. In doing so, OFCCP abided by relevant religious liberty authorities, including the Religious Freedom Restoration Act (RFRA) and the ministerial exception mandated by the religion clauses of the First Amendment; maintained a policy of considering RFRA claims raised by contractors on a case-by-case basis; and refrained from applying any regulatory requirement to a case in which it would violate RFRA. *See, e.g.,* OFCCP Compliance Webinar (Mar. 25, 2015), *https://www.dol.gov/ofccp/LGBT/FTS_TranscriptEO13672_PublicWebinar_ES_QA_508c.pdf*; OFCCP Frequently Asked Questions: E.O. 13672 Final Rule (2015), archived at *https://web.archive.org/web/20150709220056/http:/www.dol.gov/ofccp/LGBT/LGBT_FAQs.html.* OFCCP recommended that contractors with questions about the applicability of the religious exemption to their employment practices seek guidance from OFCCP. *See, e.g.,* Discrimination on the Basis of Sex, Final Rule, 81 FR 39108, 39120 (June 15, 2016).

For over 17 years, under the administrations of both President George W. Bush and President Barack Obama, OFCCP continued this approach, applying the language of the religious exemption to the facts and circumstances at issue, in accordance with Title VII case law. Adhering to Title VII case law enabled OFCCP to conform to the President's original intent in modeling the religious exemption on that in Title VII, as noted above. This approach was also consistent with OFCCP's longstanding practice under Title VII more broadly, and moreover, it provided employers and employees with the efficiency and clarity of having a single standard for the religious exemption that applied under both Title VII and Executive Order 11246.

In 2020, for the first time since the religious exemption was added to Executive Order 11246, OFCCP promulgated a rule purporting to clarify the scope and application of the religious exemption. Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, Final Rule, 85 FR 79324 (Dec. 9, 2020). Shortly after it took effect on January 8, 2021, the 2020 rule was challenged in two Federal district

[1] A civil liberties organization submitted a comment on OFCCP's notice of proposed rescission of the 2020 rule asserting that OFCCP is without power to issue or enforce regulations because neither the Federal Property and Administrative Services Act of 1949 (Procurement Act) nor any other statute authorizes Executive Order 11246 or OFCCP's regulations. Over the past 80 years, however, numerous Presidents have imposed antidiscrimination conditions for Federal contracts, invoking both statutory and constitutional authorities. *See, e.g.,* E.O. 9346 (May 27, 1943); E.O. 10925 (Mar. 6, 1961); E.O. 11246 (Sept. 24, 1965); E.O. 13279 (Dec. 12, 2002); E.O. 13672 (July 21, 2014). Moreover, courts of appeals long ago pronounced that E.O. 11246 ''is . . . firmly rooted in congressionally delegated authority,'' *United States* v. *Mississippi Power & Light Co.,* 638 F.2d 899, 905 (5th Cir. 1981); *see also Contractors Ass'n,* 442 F.2d at 170–71; *Farkas* v. *Texas Instrument, Inc.,* 375 F.2d 629, 632 n.1 (5th Cir. 1967); *Farmer* v. *Philadelphia Elec. Co.,* 329 F.2d 3, 8 (3d Cir. 1964), and that regulations implementing that order ''embod[y] a longstanding, congressionally approved policy in government procurement,'' *Mississippi Power & Light Co,* 638 F. 2d at 906. In the many decades since those decisions, Congress has specifically reviewed E.O. 11246, *see, e.g.,* Hearings Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary on the Philadelphia Plan and S. 931, 91st Cong., 1st Sess. (1969), and has repeatedly revised the Procurement Act, see, *e.g.,* Public Law 107–217, secs. 1, 5(a)–(b), 116 Stat. 1062, 1063, 1068, 1303 (2002) (recodifying relevant provisions of the Act while ''mak[ing] no substantive change in existing law''), yet has not taken any steps to question or limit the well-known judicial understanding of those authorities.

[2] Since 1978, OFCCP's regulations implementing Executive Order 11246 have contained a second exemption allowing certain educational institutions to hire and employ individuals of a particular religion. *See* Compliance Responsibility for Equal Employment Opportunity: Consolidation of Functions Pursuant to Executive Order 12086, 43 FR 49240, 49243 (Oct. 20, 1978) (codified at 41 CFR 60–1.5(a)(6)). This exemption is modeled on Title VII's exemption for religiously affiliated educational institutions. *See* 42 U.S.C. 2000e–2(e).

courts.[3] The 2020 rule made no changes to the text of the religious exemption at 41 CFR 60–1.5(a)(5); instead, it defined the terms ''particular religion''; ''religion''; ''religious corporation, association, educational institution, or society''; and ''sincere.'' *Id.* at 79371–72 (codified at 41 CFR 60–1.3). The 2020 rule also established a rule of construction for all of subpart A of 41 CFR part 60–1, specifying that the subpart must be construed in favor of the broadest protection of religious exercise ''permitted by the U.S. Constitution and law.'' *Id.* at 79372 (codified at 41 CFR 60–1.5(e)).

The preamble to the 2020 rule accurately described section 204(c) of Executive Order 11246 as ''expressly importing Title VII's exemption for religious organizations'' and as ''spring[ing] directly from the Title VII exemption.'' *Id.* at 79324. The preamble continued that the Executive Order 11246 religious exemption should therefore ''be given a parallel interpretation.'' *Id.* (citing *Northcross* v. *Bd. of Educ. of Memphis City Sch.,* 412 U.S. 427, 428 (1973) (per curiam) (''The similarity of language in [two statutes] is, of course, a strong indication that the two statutes should be interpreted pari passu.''). Nevertheless, the 2020 rule and its new definitions departed from OFCCP's longstanding reliance on Title VII principles and case law, disregarding the President's intent in Executive Order 13279 to incorporate the scope and application of the Title VII religious exemption into Executive Order 11246. Upon further consideration of the 2020 rule, including its departures from Title VII principles and case law, OFCCP believed that a return to its traditional approach of applying Title VII case law and principles to the facts and circumstances of each situation would better promote clarity and consistency for contractors and their employees. OFCCP also believed that returning to its traditional approach would better support its mission to promote equal employment opportunity, as well as advancing economy and efficiency in government contracting by preventing the arbitrary exclusion of qualified and talented employees on the basis of characteristics that have nothing to do with their ability to do work on government contracts. In November 2021, OFCCP proposed rescission of the 2020 rule and sought public comments on its proposal. 86 FR 62115 (Nov. 9, 2021).

III. Comments and Decision

OFCCP received 761 unique comments and 4,464 form letter comments on its proposal to rescind the 2020 rule. State officials, members of Congress, labor unions, contractor associations, think tanks, advocacy organizations, religious and civil liberties organizations, and individuals submitted comments supporting OFCCP's proposal to rescind the 2020 rule, including a number of comments with similar template language. These commenters supported rescission predominantly because, in their view, the 2020 rule impermissibly expanded the religious exemption, both as to which employers qualified for it and which actions those employers were permitted to take. Commenters supporting rescission viewed the 2020 rule as departing from established legal principles, as well as from OFCCP's longstanding policy and practice, without reasonable justification, which many commenters asserted was arbitrary and capricious in violation of the Administrative Procedure Act (APA). 5 U.S.C. 706(2). Many commenters asserted that the 2020 rule, by creating new standards that departed from precedent, increased confusion and uncertainty about the scope and application of the religious exemption. Commenters supporting rescission overwhelmingly criticized the 2020 rule for, in their view, reducing nondiscrimination protections for employees of Federal contractors, which commenters asserted conflicted both with legal precedent, including constitutional protections, and with OFCCP's stated policy of requiring Federal contractors to prevent discrimination and provide equal employment opportunity. Commenters also raised numerous other legal and policy criticisms of the 2020 rule, discussed in greater detail below.

Members of Congress, religious colleges and universities, religious advocacy organizations, religious and civil liberties litigation organizations, and individuals submitted comments opposing OFCCP's proposal, also including a number of comments with similar template language. These commenters generally supported the 2020 rule for, in their view, providing helpful, clear standards, which they believed encouraged religious organizations to become Federal contractors while appropriately protecting employers' religious liberties. Many of these commenters expressed the view that OFCCP's proposal to rescind the 2020 rule would have the effect of unduly narrowing the religious exemption, which they criticized on policy grounds or asserted was inconsistent with established legal principles. Commenters raised numerous other legal and policy arguments in defense of the 2020 rule and in opposition to the proposed rescission, discussed in greater detail below.

Having considered the comments submitted in response to the proposed rescission of the 2020 rule, OFCCP has decided to finalize the rescission. OFCCP has concluded that the standards in the 2020 rule were not warranted to the extent that they departed, without adequate justification, from applicable legal precedents, creating inconsistency with the application of Title VII's parallel religious exemption. Furthermore, the 2020 rule, on balance, increased confusion and uncertainty because of its divergence from the approach to the Title VII religious exemption taken by courts, the Equal Employment Opportunity Commission (EEOC), and the Department of Justice, as well as OFCCP's past practice. In addition to increasing confusion, the 2020 rule also weakened discrimination protections for workers, which was contrary not only to relevant legal authorities but also to the objective of Executive Order 11246, to ensure economy and efficiency in Federal contracting, and to OFCCP's policy goal of promoting equal employment opportunity. Moreover, OFCCP agrees with commenters that the 2020 rule, as a whole, was unnecessary. The comments that OFCCP received from existing religious contractors confirmed that they were able to participate in Federal contracting while relying on the Executive Order 11246 religious exemption as delineated in Title VII case law. As explained below, OFCCP is therefore rescinding the entire 2020 rule. OFCCP has determined that rescission of the entire rule is necessary to enable the agency to return to its longstanding approach of aligning the Executive Order 11246 religious exemption with Title VII principles and case law as applied to the facts and circumstances of each situation. OFCCP's responses to commenter feedback on specific aspects of the proposed rescission are also provided below.

For the reasons summarized above and detailed below, OFCCP has decided to rescind the 2020 rule in its entirety. OFCCP nonetheless intends for distinct portions of this rescission to be severable from each other. The rescissions of the 2020 rule's religious

[3] *New York* v. *U.S. Dep't of Labor,* No. 21–cv–00536 (S.D.N.Y. filed Jan. 21, 2021); *Or. Tradeswomen, Inc.* v. *U.S. Dep't of Labor,* No. 21–cv–00089 (D. Or. filed Jan. 21. 2021). Both matters have been stayed, and the courts have not yet issued any substantive rulings.

employer test, its other definitions, its inappropriately broad rule of construction, and its inappropriately categorical approach to RFRA analysis are distinct and function independently of each other.

A. Reasons for Rescission of the Rule

1. Unprecedented Religious Employer Test

Under both Title VII and Executive Order 11246, an employer that is determined to be a ''religious corporation, association, educational institution, or society'' qualifies for the religious exemption. As OFCCP noted in its rescission proposal, there is extensive Title VII case law interpreting this term. The courts' tests are not uniform, but in general they weigh the following factors to determine whether the employer's purpose and character are primarily religious:

> (1) whether the entity operates for a profit, (2) whether it produces a secular product, (3) whether the entity's articles of incorporation or other pertinent documents state a religious purpose, (4) whether it is owned, affiliated with or financially supported by a formally religious entity such as a church or synagogue, (5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees, (6) whether the entity holds itself out to the public as secular or sectarian, (7) whether the entity regularly includes prayer or other forms of worship in its activities, (8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution, and (9) whether its membership is made up by coreligionists.

LeBoon v. *Lancaster Jewish Cmty. Ctr.,* 503 F.3d 217, 226 (3d Cir. 2007); *see also, e.g., Garcia* v. *Salvation Army,* 918 F.3d 997, 1003 (9th Cir. 2019); *Spencer* v. *World Vision, Inc.,* 633 F.3d 723, 724 (9th Cir. 2011) (per curiam); *Hall* v. *Baptist Mem'l Health Care Corp.,* 215 F.3d 618, 624 (6th Cir. 2000); *Killinger* v. *Samford Univ.,* 113 F.3d 196, 198–99 (11th Cir. 1997). Historically, this case law has guided both OFCCP and contractors in determining whether an employer is entitled to the Executive Order 11246 religious exemption. The 2020 rule, however, adopted a religious employer test that no court has applied under Title VII. *See* 85 FR 79371 (codified at 41 CFR 60–1.3).

In adopting this new test, the preamble to the 2020 rule characterized the multifactor approach described above as being among Federal appellate courts' ''confusing variety of tests, [which] themselves often involve unclear or constitutionally suspect criteria.'' *Id.* at 79331. It endorsed two concurring opinions in *Spencer* v. *World Vision,* which concluded that ''assess[ing] the religiosity of an organization's various characteristics[ ] can lead the court into a 'constitutional minefield.' '' 84 FR 41681 (quoting *World Vision,* 633 F.3d at 730 (O'Scannlain, J., concurring), and citing *World Vision,* 633 F.3d at 741 (Kleinfeld, J., concurring)); *see also* 85 FR 79361. The preamble asserted that courts' typical inquiry into whether a contractor is ''primarily religious'' requires a ''*comparison* between the amount of religious and secular activity at an organization,'' which the preamble asserted created constitutional problems. 85 FR 79336. The 2020 rule thus adopted a definition of the term ''religious corporation, association, educational institution, or society'' that departed from the longstanding judicial approach of evaluating whether the employer's purpose and character are primarily religious. The 2020 rule further provided that for-profit organizations could qualify for the religious exemption if they presented ''other strong evidence'' that they possessed ''a substantial religious purpose.'' *Id.* at 79371 (codified at 41 CFR 60–1.3).

The 2020 rule's creation of a test that deviated from all established Title VII interpretations was the principal reason OFCCP proposed rescinding the 2020 rule. As OFCCP explained in its proposal, the religious employer test adopted by the 2020 rule cannot be squared with Executive Order 13279's incorporation of Title VII as the touchstone for the Executive Order 11246 religious exemption.

Numerous commenters agreed with OFCCP's concerns about the 2020 rule's religious employer test on both legal and policy grounds. These commenters overwhelmingly viewed the test as inappropriately broad; many commenters, including a group of state attorneys general (plaintiffs in one of the cases challenging the 2020 rule), a religious organization, and a lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights advocacy organization, asserted that the 2020 rule's expansive test was inconsistent with both congressional intent and judicial interpretations under Title VII. Several of these commenters further asserted that the 2020 rule's departures from precedent, described in more detail below, were inadequately justified. Commenters including a contractor association, a civil liberties advocacy organization, an organization that advocates separation of church and state, and a think tank further asserted that the 2020 rule's religious employer test, in deviating from Title VII precedent, had increased rather than decreased confusion about the application of the Executive Order 11246 religious exemption. As the contractor association commented:

> Whether an employer is entitled to an exemption based on religion is determined by the statutory text of Title VII and case law interpreting it. The OFCCP must be guided by these principles in interpreting the scope and application of Executive Order 11246. The test created by the 2020 rule produces unnecessary confusion and uncertainty by departing from established legal principles.

Some commenters observed that the 2020 rule deviated even from the *World Vision* opinions it commended. For example, a legal think tank stated that, rather than adopting the religious employer test from the *World Vision* per curiam opinion or the test from either concurring opinion, the 2020 rule ''instead forge[d] its own test that would qualify more types of contractors for the exemption.'' An LGBTQ rights advocacy organization noted that, despite the 2020 rule's praise for the test proposed in Judge O'Scannlain's concurring opinion, the 2020 rule rejected Judge O'Scannlain's prerequisite that the employer be nonprofit—but, the commenter asserted, ''[o]mitting the requirement that an entity seeking a religious exemption be not-for-profit is not a minor alteration.'' Commenters also criticized the 2020 rule for, in their view, reducing the objectivity of the factors described in *World Vision* for determining whether an employer qualifies for the religious exemption. A civil liberties advocacy organization, for example, asserted that the 2020 rule relied ''only on the employer's own characterization of its activities, with no minimum, objective standards of evidence required,'' which the commenter asserted ''makes it easier for employers to claim the exemption.'' Similarly, a women's rights legal advocacy organization asserted that ''under the 2020 Rule, OFCCP had made clear that it would almost certainly not challenge a contractor's assertion that its sex discrimination was based on a religious belief, expressing a deference to any assertion of religious motivation that further tilted the scales towards allowing sex discrimination in federal contracting.'' An LGBTQ rights advocacy organization agreed that the preamble to the 2020 rule rendered certain factors—such as being organized for a religious purpose and holding itself out as religious—''essentially meaningless'' by lowering the standards by which organizations could demonstrate that they satisfied the factors.

Many commenters, including a contractor association, an affirmative

action professionals association, and an LGBTQ rights advocacy organization, specifically criticized the 2020 rule's departure from a ''primarily religious'' inquiry, agreeing with OFCCP's rescission proposal that the 2020 rule's rationale of avoiding so-called constitutional minefields contradicted decades of Title VII case law successfully applying a ''primarily religious'' test. A contractor association agreed with OFCCP's proposal ''that the intent of the religious exemption is to be limited to those organizations whose primary purpose is religious in nature and that the language of the 2020 rule inappropriately expands the scope of the exemption to entities that are not primarily religious in character.'' Many commenters, including an international labor union, a legal professional organization, and a secular humanist advocacy organization, connected their criticism of the 2020 rule's departure from a ''primarily religious'' inquiry to their criticism of the 2020 rule's treatment of for-profit entities. A labor union commented, for example, that under the 2020 rule, ''organizations whose purpose or character is not primarily religious (*e.g.,* construction contractors, food service providers, security services) are now able to discriminate against workers without fear of penalty simply by stating that their for-profit business aims to promote their religious values.'' Several commenters, including a think tank, a national tradeswomen coalition, and a civil liberties advocacy organization, stated that there was no Title VII case in which a for-profit employer had qualified for the religious exemption.

Other commenters, however, praised the religious employer test in the 2020 rule and urged OFCCP not to rescind it. Many of these commenters believed the 2020 rule's test set forth ''eminently clear and workable standards,'' as one religious advocacy organization put it. Commenters including a religious advocacy organization pointed to the 2020 rule's examples as helpful illustrations of the test's application and asked OFCCP to address them. In the view of several commenters, including a religious advocacy organization, a religious university, and members of the U.S. House of Representatives, the 2020 rule's test was broad, but appropriately so.

Several commenters, including two religious advocacy organizations and an individual attorney, believed that the 2020 rule test was sufficiently rooted in key elements of Title VII case law, particularly in that it incorporated some of the elements from one or more *World Vision* opinions. In the view of one civil liberties litigation organization, the 2020 rule's '' 'purpose and character' test'' was appropriately based on *World Vision* in that ''it avoids subjectivity inherent in other tests.'' That commenter disagreed that the 2020 rule departed from Title VII case law because, it asserted, ''[t]here is no coherent line of 'Title VII case law' from which departure can be measured.''

Other commenters, including a religious advocacy organization and a civil liberties litigation organization, acknowledged that the religious employer test in the 2020 rule may have departed somewhat from Title VII case law, but they supported the departure because the multifactor *LeBoon* analysis, in their view, relies on ''constitutionally suspect factors.'' Commenters including religious advocacy organizations, a group of four religious associations and religious legal organizations, and two individual attorneys agreed with the 2020 rule's preamble that it was appropriate to reject the ''primarily religious'' inquiry because it raised constitutional difficulties. In support of this point, these commenters cited cases including *McClure* v. *Salvation Army,* 460 F.2d 553 (5th Cir. 1972), an early invocation of what is now recognized as the First Amendment ministerial exception to preclude application of Title VII's nondiscrimination requirements ''to the employment relationship between a church and its ministers,'' *id.* at 554, as well as non–Title VII cases such as *New York* v. *Cathedral Academy,* 434 U.S. 125 (1977), in which the Court invalidated a state law that authorized reimbursement to ''sectarian'' schools for expenses they incurred performing state-mandated services ''because it will of necessity either have the primary effect of aiding religion'' or, if an audit were to be conducted ''to assure that state funds are not given for sectarian activities,'' would ''result in excessive state involvement in religious affairs,'' *id.* at 131, 133, and *Colorado Christian University* v. *Weaver,* 534 F.3d 1245 (10th Cir. 2008), invalidating a state scholarship-funding law because it ''expressly discriminates among religions, allowing aid to 'sectarian' but not 'pervasively sectarian' institutions, and . . . does so on the basis of criteria that entail intrusive governmental judgments regarding matters of religious belief and practice,'' *id.* at 1256.[4]

A group of four religious associations and religious legal organizations asserted that the ''religious question'' doctrine prohibits the use of a ''primarily religious'' inquiry to determine which contractors are entitled to the religious exemption. The commenters asserted that this position was supported by cases including *Thomas* v. *Review Board,* 450 U.S. 707 (1981), in which the Supreme Court held that when reviewing a state's denial of unemployment compensation benefits to a claimant who left his job because of religious objections, a court's ''narrow function . . . is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion,'' *id.* at 716. The commenters also pointed to *Our Lady of Guadalupe School* v. *Morissey-Berru,* 140 S. Ct. 2049 (2020), in which the Supreme Court held that the First Amendment ministerial exception barred the employment discrimination claims of two Catholic elementary school teachers, *id.* at 2066, as well as *National Labor Relations Board* v. *Catholic Bishop of Chicago,* 440 U.S. 490 (1979), in which the Court held that the National Labor Relations Board (NLRB) did not have jurisdiction over lay teachers at two groups of Catholic high schools because exercise of such jurisdiction by the Board would give rise to ''serious First Amendment questions'' and the Court did not find, either in the text of the National Labor Relations Act (NLRA) or its legislative history, a ''clear expression of an affirmative intention of Congress that teachers in church-operated schools should be covered by the Act,'' *id.* at 504.

A few commenters, including religious higher education associations and religious universities, suggested that OFCCP could avoid what they viewed as the constitutional difficulties of a ''primarily religious'' inquiry by instead using the test for religiously affiliated educational institutions under the NLRA established by the D.C. Circuit in *University of Great Falls* v. *NLRB,* 278 F.3d 1335 (D.C. Cir. 2002), and adopted by the NLRB in *Bethany College,* 369 NLRB No. 98, 2020 WL 3127965 (June 10, 2020). Under this three-factor test, the NLRB lacks

[4] A religious advocacy organization asserted that ''it would be arbitrary and capricious for OFCCP to not wait for further guidance from the Supreme Court's upcoming *Carson* v. *Makin*'' decision, based on the commenter's understanding that the opinion ''will decide whether, and if so, how, a bureaucratic body can divine an organization's level of religiosity for funding purposes.'' The Court issued its decision in *Carson* on June 21, 2022, holding that a state's requirement that schools receiving otherwise generally available tuition assistance payments be ''nonsectarian'' violated the Free Exercise Clause. 142 S. Ct. 1987, 2002 (2022). The Court was not presented with, and did not address, the issues that the commenter raised.

jurisdiction over an educational institution if it ''(1) holds itself out to the public as a religious institution (*i.e.,* as providing a 'religious educational environment'); (2) is nonprofit; and (3) is religiously affiliated.'' *Duquesne Univ. of the Holy Spirit* v. *NLRB,* 947 F.3d 824, 832 (D.C. Cir. 2020). The preamble to the 2020 rule asserted that the factors it adopted for its religious employer test were similar to the test used in the NLRA context. 85 FR 79334. According to one religious organization, this line of precedent under the NLRA is relevant because it ''makes clear that it is not the place of government to determine whether an organization has religion as its 'primary' or 'central' purpose.''

Some commenters, including an individual attorney and a religious advocacy organization, stated that OFCCP should not use the ''primarily religious'' language because it does not appear in either the Title VII religious exemption or the Executive Order 11246 religious exemption. Individual attorneys and two religious organizations also asserted that not all courts have adopted the ''primarily religious'' language, citing *Hall* v. *Baptist Memorial Health Care Corp.,* 215 F.3d 618, 624 (6th Cir. 2000), and *Killinger* v. *Samford University,* 113 F.3d 196, 198–99 (11th Cir. 1997). Some of these commenters observed that the EEOC's 2021 Compliance Manual on Religious Discrimination states that ''engaging in secular activities does not disqualify an employer'' from qualifying for the religious exemption. EEOC, Compliance Manual on Religious Discrimination, sec. 12–1.C.1. Commenters also criticized the ''primarily religious'' inquiry because, in their view, it is of limited utility. One commenter, an individual attorney, acknowledged that the ''primarily religious'' inquiry ''derive[s] from the case law'' but argued that it ''unduly narrows the right of religious contractors to make employment decisions on the basis of religion.''

A few commenters, including an organization of religious employers and a religious advocacy organization, believed that OFCCP's proposal implied that for-profit organizations could not qualify for the Executive Order 11246 religious exemption. Some of these commenters noted that for-profit status is not mentioned in the text of Title VII or Executive Order 11246 and asserted that OFCCP thus should not limit the exemption to nonprofits. An individual attorney pointed to a statement in the EEOC's Compliance Manual that ''Title VII case law has not definitively addressed whether a for-profit corporation that satisfies the other factors can constitute a religious corporation under Title VII.'' EEOC, Compliance Manual on Religious Discrimination, sec. 12–1.C.1. A religious advocacy organization agreed with the 2020 rule's preamble that *Burwell* v. *Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014), ''demonstrates that for-profit corporations can exercise religion and supports that, in some circumstances, such for-profit organizations may be sufficiently religious to qualify for religious exemptions under Title VII and E.O. 11246.''

OFCCP has carefully considered the comments received on this aspect of its proposal. OFCCP recognizes that many of the commenters opposing rescission viewed the 2020 rule's religious employer test as providing helpful clarity. However, OFCCP believes—and numerous commenters agreed—that the test the 2020 rule adopted created uncertainty and confusion rather than providing clarity because it departed from Title VII precedent. Moreover, even if a contractor obtained an exemption under the 2020 rule that it would not have received under OFCCP's prior approach, the contractor could still be potentially liable for discrimination under Title VII on the same facts. There is little practical benefit to gaining a broader exemption under one standard while being liable for discrimination under another. OFCCP concludes that, rather than fostering clarity, adopting a new test that no court had ever applied promoted confusion and departed from governing Title VII precedent.

Regarding commenters' requests that OFCCP address the examples provided in the text of the 2020 rule, OFCCP notes that those examples were provided to illustrate the application of the 2020 rule's test. That test is expressly limited to consideration of only four factors (whether a potential or actual contractor is organized for a religious purpose, holds itself out to the public as carrying out a religious purpose, engages in activity consistent with and in furtherance of that religious purpose, and either is nonprofit or presents other strong evidence that its purpose is substantially religious). To address the 2020 rule's examples following the typical approach followed in Title VII case law, which OFCCP believes is the correct approach, OFCCP would need information as to all of the relevant factors—(1) whether the entity is for-profit or not-for-profit; (2) whether the entity produces a secular product; (3) whether the entity's pertinent documents, such as its articles of incorporation, state a religious purpose; (4) whether the entity is associated with (owned by, affiliated with, or financially supported by) a formally religious entity, such as a church or synagogue; (5) whether there is a formally religious entity that participates in its management, such as by having representatives on its board of trustees; (6) whether it holds itself out to the public as secular or sectarian; (7) whether it regularly includes forms of worship, such as prayer, in its activities; (8) if it is an educational institution, whether its curriculum includes religious instruction; and (9) whether its membership is composed of coreligionists—to make the determination whether the example employers' purpose and character were primarily religious. *See, e.g., LeBoon,* 503 F.3d at 226. The 2020 rule examples, however, included information relevant only to the four factors contained in the 2020 rule's test. *See* 85 FR 79334.

Moreover, OFCCP agrees with the many commenters who stated that the 2020 rule did not provide clarity. As stated in a comment submitted by a state tradeswomen organization, a national labor union LGBTQ constituency group, and a national labor union (plaintiffs in one of the cases challenging the 2020 rule): ''Claiming that adopting an entirely new standard would resolve any uncertainty in the application of the religious exemption is irrational.'' A group of state attorneys general commented that, ''as a practical matter, the 2020 Rule subjects federal contractors to different sets of competing legal requirements. If these divergent standards persist, they will likely result in confusion, misunderstanding, and litigation.'' OFCCP agrees that the 2020 rule created a troubling lack of clarity for employers, which could have pursued a course of action based on exemption under the 2020 rule, only to then find themselves subject to a meritorious Title VII discrimination action.

Furthermore, as commenters including an LGBTQ rights advocacy organization pointed out, ''[t]he 2020 Rule left [employees] with profound uncertainty about whether their employer could newly claim the exemption.'' OFCCP agrees with these commenters that the 2020 rule introduced significant uncertainty for employees of Federal contractors, including those who may have started their employment with an understanding that they were fully protected from the discrimination prohibited by Executive Order 11246 but may now be concerned about

diminished protections because their employers may now claim the religious exemption under the 2020 rule.

OFCCP also recognizes that some commenters disagreed with its proposal to return to applying the religious exemption only to those contractors whose purpose and character are primarily religious, in accordance with the typical approach in Title VII case law. With regard specifically to commenters' assertions that a ''primarily religious'' inquiry raises constitutional concerns, OFCCP has carefully considered the issue, including reviewing the case law cited by commenters. As a threshold matter, although the 2020 rule's preamble asserted that the test avoided constitutional difficulties by using ''objective'' criteria—a claim echoed by some commenters—OFCCP notes that the test actually included factors that require subjective ''religious characterizations'' but simply defer to contractors' views of those factors. *See* 85 FR 79334. Moreover, OFCCP believes it is significant that most courts and the EEOC, as discussed next, have not viewed the constitutional concerns that motivated the adoption of the 2020 rule's test as preventing use of the traditional ''primarily religious'' inquiry.[5] Commenters generally supported their points in this area by citing to non-Title VII case law (*e.g., Thomas* v. *Review Board, Colorado Christian University* v. *Weaver, University of Great Falls v. NLRB*), none of which addresses the well-established Title VII religious employer test, and employment discrimination cases in which courts applied the First Amendment ministerial exception (*Our Lady of Guadalupe School* v. *Morissey-Berru, McClure v. Salvation Army*). However, none of these cases supports the conclusion that serious First Amendment questions arise by following Title VII precedent to evaluate whether contractors' purpose and character are primarily religious.

OFCCP also disagrees that this aspect of its rescission proposal is inconsistent with the EEOC's 2021 Compliance Manual, which provides expressly that the Title VII religious exemption ''applies only to those organizations whose 'purpose and character are primarily religious.' '' EEOC, Compliance Manual on Religious Discrimination, sec. 12–1.C.1 (quoting *Garcia* v. *Salvation Army,* 918 F.3d 997, 1003 (9th Cir. 2019)). EEOC's guidance then states that courts consider and weigh '' 'the religious and secular characteristics' of the entity,'' quoting *Hall,* 215 F.3d at 624 (one of the cases some commenters asserted did not endorse the ''primarily religious'' inquiry), and citing, among other cases, *Killinger,* 113 F.3d at 198–99 (the other case some commenters asserted did not endorse the ''primarily religious'' inquiry). The guidance explains that ''[c]ourts have articulated different factors to determine whether an entity is a religious organization'' and then proceeds to list the exact same nine *LeBoon* factors that OFCCP laid out in its proposal and repeats above, as well as to cite the same cases OFCCP cited in support of the approach, including *Hall* and *Killinger.* EEOC, Compliance Manual on Religious Discrimination, sec. 12–1.C.1; *see also, e.g., Bear Creek Bible Church* v. *EEOC,* 571 F. Supp. 3d 571, 591 (N.D. Tex. Nov. 22, 2021) (noting that ''[a]t least ten courts'' have adopted these nine factors), *appeal pending,* No. 22–10145 (5th Cir.).

In this respect, then, EEOC's guidance is consistent with both OFCCP's proposal and comments from numerous commenters observing that there is a substantial body of case law in which courts—including the Ninth Circuit post–*World Vision*—have applied the traditional Title VII test to identify employers with primarily religious purpose and character without infringing on employers' religious liberties or assessing the validity of doctrinal questions. *See, e.g., Garcia,* 918 F.3d 997; *LeBoon,* 503 F.3d 217; *Hall,* 215 F.3d 618; *Killinger,* 113 F.3d 196. Only in a parenthetical description in a footnote does EEOC's guidance mention Judge O'Scannlain's ''constitutional minefield'' concern (*i.e.,* that ''several of the *LeBoon* factors could be constitutionally troublesome if applied to this case,'' *World Vision,* 633 F.3d at 730 (O'Scannlain, J. concurring)). EEOC, Compliance Manual on Religious Discrimination, sec. 12–1.C.1 n.59. OFCCP does not believe it is necessary to abandon the ''primarily religious'' inquiry, which courts have long applied while avoiding any constitutional minefields.

OFCCP also believes the comments criticizing the rescission proposal as it relates to for-profit contractors are misplaced. For example, nothing in OFCCP's proposal is inconsistent with the statement in EEOC's guidance ''that engaging in secular activities does not disqualify an employer from being a 'religious organization' within the meaning of the Title VII statutory exemption.'' *Id.* sec. 12–1.C.1. As noted above, both OFCCP's approach and EEOC's guidance require that a qualifying employer have a *primarily* religious purpose and character. Further, OFCCP agrees with the EEOC that ''Title VII case law has not definitively addressed whether a for-profit corporation that satisfies the other factors can constitute a religious corporation under Title VII.'' *Id.* As explained in OFCCP's proposal, Title VII case law gives weight to an entity's nonprofit status as one factor in a multifactor analysis but generally does not treat it as an absolute prerequisite. *See, e.g., LeBoon,* 503 F.3d at 226; *Hall,* 215 F.3d at 624; *Killinger,* 113 F.3d at 198–99. In fact, Judge O'Scannlain's concurring opinion in *World Vision* was unusual in that it would have explicitly limited the religious exemption to nonprofit entities. *See World Vision,* 633 F.3d at 734 (O'Scannlain, J., concurring). As Judge O'Scannlain explained, when the Supreme Court upheld the Title VII religious exemption against constitutional challenge in 1987, it ''expressly left open the question of whether a for-profit entity could ever qualify for a Title VII exemption.'' *Id.* at n.13 (citing *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints* v. *Amos,* 483 U.S. 327, 349 (1987) (O'Connor, J., concurring)).

Having considered all relevant comments, OFCCP believes that the 2020 rule's adoption of an unprecedented religious employer test was unwarranted. Despite the 2020 rule's stated desire to provide clarity, the standard that the 2020 rule adopted departed from Title VII case law and principles, creating a lack of clarity as to the applicable legal standards. With this rescission, OFCCP will return to its previous approach, which makes the Executive Order 11246 religious exemption available to employers whose purpose and character are primarily religious, using the multi-factor *LeBoon* inquiry. OFCCP will consider the applicability of the religious exemption to the facts of each case in accordance with Title VII case law. This will provide contractors and potential contractors with the clarity of a single religious employer test under both Executive Order 11246 and Title VII.

2. Exemption of Unlawful Employment Actions

Under both Title VII and Executive Order 11246, qualifying religious

[5] Courts have occasionally declined to apply Title VII to claims of sex discrimination where doing so ''would involve the court in evaluating violations of Church doctrine,'' such as by requiring the court ''to compare the relative severity of violations of religious doctrine.'' *Curay-Cramer* v. *Ursuline Academy of Wilmington, Delaware, Inc.,* 450 F.3d 130, 141–42 (3d Cir. 2006). As discussed in the text, however, courts and administrators have been able to avoid inquiry into such doctrinal questions in determining whether a contractor's purpose and character are primarily religious.

organizations are permitted to make decisions ''with respect to the employment of individuals of a particular religion.'' The 2020 rule's definition of ''particular religion'' authorizes the contractor to require, as a condition of employment, the applicant's or employee's ''acceptance of or adherence to sincere religious tenets as understood by the employer.'' 85 FR 79371 (codified at 41 CFR 60–1.3). As OFCCP explained in its rescission proposal, the weight of Title VII case law reflects that qualifying religious employers generally may make decisions about whether to employ individuals based on acceptance of and adherence to religious tenets, but only as long as those decisions do not violate the other nondiscrimination provisions of Title VII, apart from the prohibition on religious discrimination. *See, e.g., Kennedy* v. *St. Joseph's Ministries, Inc.,* 657 F.3d 189, 190–92 (4th Cir. 2011) (stating that Title VII's religious exemption does not exempt religious organizations from complying with prohibitions on race, sex, or national origin discrimination, but holding that a Catholic nursing center's termination of a nursing assistant based on her non-Catholic religious attire was permissibly based on a preference for persons of a particular religion rather than on one of Title VII's other protected bases); *Cline* v. *Catholic Diocese of Toledo,* 206 F.3d 651, 658 (6th Cir. 2000) (''[W]hile Title VII exempts religious organizations for 'discrimination based on religion,' it does not exempt them 'with respect to all discrimination . . . . [ ] Title VII still applies . . . to a religious institution charged with sex discrimination.'') (quoting *Boyd* v. *Harding Acad. of Memphis, Inc.,* 88 F.3d 410, 413 (6th Cir. 1996)); *DeMarco* v. *Holy Cross High Sch.,* 4 F.3d 166, 173 (2d Cir. 1993) (''[R]eligious institutions that otherwise qualify as 'employer[s]' are subject to Title VII provisions relating to discrimination based on race, gender and national origin.''); *Little* v. *Wuerl,* 929 F.2d 944, 946–48 (3d Cir. 1991) (stating that Title VII bars, for example, race and sex discrimination against non-minister employees, but holding that a Catholic school's decision not to rehire a Protestant teacher based on her remarriage without validation by the Catholic Church was permissibly based on the employee's religion).

There is nothing in the 2020 rule that *expressly* contradicts this understanding. Indeed, the preamble to the 2020 rule stated that ''OFCCP ultimately does not need to answer'' the allegedly ''open'' question about whether Executive Order 11246 would permit a qualifying organization to take adverse action against an employee who fails to comply with the employer's religious tenets when the tenets themselves implicate another form of prohibited discrimination—such as the prohibitions on discrimination on the basis of race, sex, or sexual orientation, and the prohibition on retaliation for an employee's assertion of his or her rights. 85 FR 79350. Instead, the 2020 rule relied on RFRA to guide its approach toward such cases. *See id.* at 79349–56.

OFCCP nevertheless expressed concern in its rescission proposal that the 2020 rule preamble's suggestion that qualifying religious organizations might be exempt from Executive Order 11246's nondiscrimination requirements where their tenets implicate other protected grounds is in serious tension with the text of the religious exemption itself, which permits the contractor to discriminate on the basis of religion in favor of ''individuals of a particular religion'' while expressly not exempting or excusing the contractor from the other requirements of Executive Order 11246. Sec. 204(c), E.O. 11246. OFCCP further explained in its proposal that this aspect of the 2020 preamble was also contrary to well-established Title VII case law, as cited above; with Congress's intent when it amended the Title VII religious exemption in 1972, *see* 118 Cong. Rec. 7167 (1972) (Senate Managers' section-by-section analysis presented by Sen. Williams) (''The limited exemption from coverage in this section for religious corporations, associations, educational institutions or societies has been broadened to allow such entities to employ individuals of a particular religion in all their activities. . . . *Such organizations remain subject to the provisions of Title VII with regard to race, color, sex or national origin.*'') (emphasis added); and with an opinion of the Department of Justice's Office of Legal Counsel issued shortly before President Bush added the religious exemption to Executive Order 11246, *see* Memorandum for William P. Marshall, Deputy Counsel to the President, from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Coreligionists Exemption in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), to Religious Organizations that Would Directly Receive Substance Abuse and Mental Health Services Administration Funds Pursuant to Section 704 of H.R. 4923, the ''Community Renewal and New Markets Act of 2000*'', at 30–32, 31 n.62 (Oct. 12, 2000), *https://www.justice.gov/olc/page/file/936211/download.*

Commenters who supported rescission overwhelmingly agreed that the 2020 preamble raised a serious risk that the rule would be implemented to permit contractors to discriminate against individuals based on protected classes other than a preference for persons of a particular religion. Commenters stated that this outcome could result not only from the discussion in the preamble but also from the rule of construction in § 60–1.5(e) (discussed further below) and the application of the 2020 rule's definitions of ''religion,'' ''particular religion, and ''sincere.''[6]

Commenters criticized the preamble's suggestion on both legal and policy grounds. A civil liberties organization, for example, noted that under Title VII, ''a religious employer's religious motivation for discriminatory conduct does not convert unlawful discrimination into permissible religious discrimination.'' Although many commenters acknowledged that some Title VII case law permits qualifying religious employers to fire or refuse to hire individuals for failure to adhere to certain religious tenets, they emphasized that that case law does not sanction such employment actions when such tenets themselves involve discrimination on the basis of a protected characteristic other than religion or where the employer applies such tenets in a way that discriminates on the basis of such other protected characteristics. For example, an organization that advocates separation of church and state observed that under Title VII a qualifying religious employer may lawfully require its employees to adhere to a particular religious code of conduct, but '''Title VII requires that this code of conduct be applied equally' to all employees regardless of sex'' (quoting *Boyd,* 88 F.3d at 414).

Numerous commenters expressed concern that these aspects of the 2020 preamble and rule would increase prohibited discrimination against workers, which is a concern that OFCCP shares. A civil liberties organization stated that ''religious contractors may claim, based on their religious beliefs, that it is permissible to fire a transgender woman for transitioning, or they may claim the right to reject a male applicant because he is married to a

[6] This rescission removes all of the 2020 rule's definitions from the regulations. With regard to ''sincere,'' OFCCP notes that the definition is being removed because the term does not appear in the regulations except in the 2020 rule's definitions of ''Religious corporation, association, educational institution, or society'' and ''Particular religion.'' OFCCP is not removing the definition of ''sincere'' because it questions any organization's sincerity.

man or a woman applicant because she is an unmarried mother.''

Some commenters further stated that such effects could disproportionately impact workers of color who may ''experience discrimination at the intersection of their race and gender, as well as other identities,'' and who therefore ''face greater barriers and fewer economic opportunities,'' in the words of a civil rights legal advocacy organization.

With regard specifically to LGBTQ individuals, a religious organization and several other commenters cited a Williams Institute study that found widespread employment discrimination against LGBT individuals based on survey data collected in May 2021. Some of these commenters, including the Williams Institute itself, emphasized the study's finding that 57 percent of the LGBT individuals who experienced harassment or other forms of discrimination in the workplace ''reported that their employer or co-workers did or said something to indicate that the treatment that they experienced was motivated by religious beliefs'' (citing Brad Sears et al., Williams Inst., LGBT People's Experiences of Workplace Discrimination and Harassment 14 (2021), *https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf*). As an LGBTQ rights advocacy organization observed, ''[a]n employee who is fired for being in a same-sex marriage is equally harmed whether the employer did so based on religious belief about marriage or a non-religious bias.''

With regard to women, a tradeswomen advocacy organization asserted that ''[w]omen workers have been subjected to a range of discrimination based on sex, justified by claims of religious beliefs.'' It continued:

> Women workers have been fired for their decisions about whether and how to start a family, including becoming pregnant outside of marriage or becoming pregnant while in LGBTQ relationship, using in vitro fertilization to start a family, or having an abortion.
>
> Some employers may refuse to employ women altogether based on a religious belief that women, or mothers, should not work outside the home. For instance, a religious school failed to renew a pregnant employee's contract because of a belief that mothers should stay at home with young children.
>
> Women workers also have been discriminated against in terms of pay and benefits and working conditions because of religious beliefs about the appropriate role of women in society. For example, a religious school denied women health insurance by providing it only to the ''head of household,'' defined to be married men and single persons, based on its belief that a woman cannot be the ''head of household.'' Some individuals hold religious beliefs dictating that women should not be alone with men to whom they are not married, which could unlawfully impede women's advancement and access to mentorship, training opportunities and senior leadership positions in the workplace.

Referring to the assertion in the 2020 rule's preamble that nondiscrimination obligations ''that pertain to matters of marriage and sexual intimacy'' may impose substantial burdens on religious contractors, a women's rights legal advocacy organization observed that all of the cases cited in direct support of that assertion ''involved a woman who was fired from her job because of an employer's objection to her pregnancy or intimate relationship. This is a telling indication of the kinds of harms federal contract employees may be subjected to if the 2020 Rule is not rescinded.''

Some commenters also pointed to the facts of *Herx* v. *Diocese of Ft. Wayne-South Bend, Inc.,* 48 F. Supp. 3d 1168 (N.D. Ind. 2014), to illustrate the harms they believed employers might inflict on women based on the suggestions in the 2020 preamble and rule that contractors can insist upon adherence to religious tenets even where such tenets themselves involve a form of discrimination on the basis of sex. *Herx* involved a language arts teacher's claim that a Catholic elementary school's application of the church's ban on in vitro fertilization discriminated against women because only women undergo the procedure. In dismissing the school's appeal of an order denying summary judgment, the Seventh Circuit observed that ''[t]he district court has not ordered a religious question submitted to the jury for decision'' and confirmed that the jury would be instructed ''not to weigh or evaluate the Church's doctrine regarding in vitro fertilization.'' *Herx,* 772 F.3d 1085, 1091 (7th Cir. 2014). The jury ultimately found that the school had discriminated against the plaintiff on the basis of sex by firing her based on her in vitro fertilization, to which the school objected based on religious grounds. *Herx,* No. 1:12–CV–122 RLM, 2015 WL 1013783, at *1 (N.D. Ind. Mar. 9, 2015). The resulting jury award, as modified by the court, quantified the harms that employment discrimination imposed on the plaintiff: more than $22,916 lost in income, $22,853 lost in health insurance benefits, and $7,500 lost in tuition for her son, as well as $299,999 to fairly compensate her for the mental and emotional pain and suffering she experienced as a result of her discriminatory job loss. *Id* at *8. A women's rights legal advocacy organization commented that ''Ms. Herx's story underscores the harm that stems from this discrimination, as she felt she was forced to choose between starting a family and preserving her economic security.'' And a civil liberties organization asserted that the plaintiff ''is far from the only employee to be fired because her employer expressed religious objections to her pregnancy.''

However, other commenters, opposing rescission, commented that they approved of the 2020 rule's definition of ''particular religion'' and the approach described in the preamble to the 2020 rule. Comments from a religious association and a religious advocacy organization asserted that the Government's interest in equal employment opportunity simply did not extend to religious organizations' ''employment of individuals of a particular religion.''

Some of the commenters who opposed rescission, including a religious association, two religious advocacy organizations, and a religious university, asserted that the Title VII religious exemption itself allows qualifying employers in certain situations to take employment actions based on sincere religious beliefs even where such actions constitute discrimination on the basis of a protected classification other than religion. A religious advocacy organization asserted that rescission ''would allow OFCCP to recharacterize employment actions based on sincere religious tenets as unlawful discrimination in direct contradiction of the text, history, and purpose of the statutory exemption.'' Many commenters, including religious organizations, religious colleges and universities, and a group of U.S. Senators, asserted that the plain text of 42 U.S.C. 2000e–1(a)—providing that the ''title shall not apply'' to qualifying religious employers ''with respect to the employment of individuals of a particular religion''—when construed in conjunction with Title VII's definition of ''religion'' in section 2000e(j)—is properly read to provide a complete exemption to Title VII's nondiscrimination requirements in cases where qualifying religious employers insist upon employees' adherence to religious tenets in ways that would constitute discrimination on the basis of another characteristic protected by Title VII. Some of the same commenters, as well as others including a religious organization and individual attorneys, explicitly advocated a similar

interpretation of the Executive Order 11246 religious exemption. A few commenters acknowledged the legislative history of the Title VII religious exemption, discussed previously,[7] but dismissed it.

Several commenters opposing rescission, including an organization of religious employers, two individual attorneys, and a religious association, asserted that OFCCP's proposal was inconsistent with the EEOC's 2021 Compliance Manual on this point. These commenters typically cited a sentence from the guidance stating that Title VII's religious exemptions ''allow a qualifying religious organization to assert as a defense to a Title VII claim of discrimination or retaliation that it made the challenged employment decision on the basis of religion.'' EEOC, Compliance Manual on Religious Discrimination, sec. 12–1.C.1. Several U.S. Senators asserted that *Bostock* v. *Clayton County,* 140 S. Ct. 1731 (2020), ''further counsel[s] that the religious exemption does not just apply to claims of religious discrimination, but to the full scope of discrimination claims under Title VII.''

Some commenters opposing rescission raised constitutional concerns about OFCCP's proposal. Commenters including religious higher education institutions and associations cautioned that OFCCP's proposed rescission could lead to ''greater church-state entanglement regarding employment decisions based on sincerely held religious beliefs.'' A religious advocacy organization commented that ''no OFCCP bureaucrat can be lawfully empowered to determine what it truly means to be Catholic or any other 'particular' religion without violating the Free Exercise and Establishment Clauses.'' A few commenters also mentioned the First Amendment's ''ministerial exception'' in this context. An individual attorney, for example, asserted that ''the Proposal attempts to limit the employment decisions of religious contractors to decisions concerning 'ministerial employees'—which the Constitution itself protects—and essentially asserts that decisions based on sincere religious beliefs and tenets are immaterial.'' A religious advocacy organization insisted that ''[r]eligious organizations that exercise religious exemptions are not engaged in invidious discrimination. A Catholic church that only 'hires' men as priests and women as nuns is not a den of bigotry as the OFCCP Proposal would suggest. It's a Catholic church.''

After careful consideration of all these comments, OFCCP concludes that rescission is appropriate. The combination of (i) the 2020 preamble's discussion of Title VII; (ii) the 2020 rule's adoption of a definition of ''particular religion'' derived from 42 U.S.C. 2000e(j); and (iii) the 2020 rule's rule of construction that this subpart be construed ''in favor of a broad protection of religious exercise, to the maximum extent permitted by [law],'' 41 CFR 60–1.5(e), could well be understood by contractors and contracting agencies to provide qualifying religious organizations a right to insist upon adherence to the employer's religious tenets in a way that would result in discrimination that Executive Order 11246 prohibits, which would thereby not only deviate from the Presidential directive but also decrease procurement efficiency. As one contractor association explained, the 2020 rule and preamble ''created uncertainty and implicitly sanctioned discrimination on other characteristics when based on a sincerely held religious belief.'' A state tradeswomen organization, a national labor union LGBTQ constituency group, and a national labor union likewise commented:

> [T]he 2020 Rule gave no consideration to providing clarity for employees of contractors who might invoke the religion exemption. Instead, the Rule left them with profound uncertainty about whether their employer could newly claim the exemption and whether they could be subject to new, previously prohibited discrimination, a matter of significant consequence for those employees.

OFCCP emphasizes that, absent strong evidence of insincerity, OFCCP would accept a religious organization's own assertions regarding doctrinal questions. However, OFCCP believes it is important to clarify that it is not appropriate to construe the Executive Order 11246 religious exemption to permit a qualifying religious organization to discriminate against employees on the basis of any protected characteristics other than religion. Executive Order 11246 itself expressly states that the exemption does not exempt or excuse the contractor in question ''from complying with the other requirements contained in this Order.'' Sec. 204(c). And when President Bush promulgated the religious exemption and section 204(c) in 2002, he did so in order to incorporate established Title VII doctrine that clearly precluded the broader reading of the religious exemption that some commenters espoused. Indeed, just two years before that amendment to Executive Order 11246, the Department of Justice had specifically described that case law and explained that it faithfully reflected congressional intent. *See* Memorandum for William P. Marshall, Deputy Counsel to the President, from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Coreligionists Exemption in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), to Religious Organizations that Would Directly Receive Substance Abuse and Mental Health Services Administration Funds Pursuant to Section 704 of H.R. 4923, the* ''*Community Renewal and New Markets Act of 2000*'', at 30–32, 31 n.62 (Oct. 12, 2000), *https://www.justice.gov/olc/page/file/936211/download.*

Even in the preamble to the 2020 rule, OFCCP repeatedly stated, as it had in the preceding notice of proposed rulemaking (NPRM), ''that the religious exemption does not permit discrimination on the basis of other protected categories.'' 85 FR 79329; *see also id.* at 79347. The preamble, however, in conjunction with the provisions of the 2020 rule identified above, argued that it was unclear how to reconcile this basic, uncontroverted principle with the fact that the Title VII exemption also allows qualifying organizations to insist that employees comply with the employer's sincere religious tenets—tenets that may themselves incorporate a form of discrimination that Title VII otherwise forbids: ''The question posed here . . . is the interaction of those two principles[—][s]pecifically, the outcome when a religion organization's action is based on and motivated by the employee's adherence to religious tenets yet implicates another category protected by E.O. 11246.'' *Id.* at 79349. The 2020 preamble ultimately decided not to answer this question, *id.* at 79350, but it insisted that courts had ''left the question open,'' *id.* at 79349.

That was incorrect. As OFCCP explained in its proposal to rescind the 2020 rule, 86 FR 62119–20, at the time President Bush amended Executive Order 11246, and indeed until very recently, courts had uniformly held that a qualifying employer in such a case may not insist upon adherence to tenets that violate another ground of discrimination that Title VII prohibits. The 2020 preamble stated that some

[7] 118 Cong. Rec. 7167 (1972) (Senate Managers' section-by-section analysis presented by Sen. Williams) (''The limited exemption from coverage in this section for religious corporations, associations, educational institutions or societies has been broadened to allow such entities to employ individuals of a particular religion in all their activities. . . . *Such organizations remain subject to the provisions of Title VII with regard to race, color, sex or national origin.*'') (emphasis added).

courts ''have indicated that the religious exemption may be preeminent in such a situation,'' 85 FR 79350, but neither of the cases cited issued such a holding—or even an indication to that effect. And as the Department of Justice has explained, Congress's intent was to the contrary. *See* Memorandum for William P. Marshall, Deputy Counsel to the President, from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Coreligionists Exemption in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), to Religious Organizations that Would Directly Receive Substance Abuse and Mental Health Services Administration Funds Pursuant to Section 704 of H.R. 4923, the ''Community Renewal and New Markets Act of 2000''*, at 30–31 (Oct. 12, 2000), *https://www.justice.gov/olc/page/file/936211/download; see also DeMarco* v. *Holy Cross High Sch.,* 4 F.3d 166, 173 (2d Cir. 1993) (''As several courts have noted, the legislative history of Title VII makes clear that Congress formulated the limited exemptions for religious institutions to discrimination based on religion with the understanding that provisions relating to non-religious discrimination would apply to such institutions.'') (citing *Martin* v. *United Way of Erie,* 829 F.2d 445, 449 (3d Cir. 1987) and *Rayburn,* 772 F.2d at 1166).

The principal counterargument offered by some commenters is that, notwithstanding Congress's intent and the holdings of many courts, the plain language of Title VII—and, by extension, Executive Order 11246—affords qualifying employers a right to insist on employees' adherence to religious tenets even where that will result in another form of discrimination that Title VII otherwise forbids. This argument is predicated on two textual provisions in Title VII: (i) the religious exemption itself, 42 U.S.C. 2000e–1(a), which states ''[t]his subchapter'' (*i.e.,* Title VII) ''shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular *religion* to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities'' (emphasis added); and (ii) the definition of ''religion'' that appears in 42 U.SC. 2000e(j), which provides that for purposes of Title VII ''[t]he term 'religion' includes *all aspects of religious observance and practice,* as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business'' (emphasis added).

Two judges in recent months have suggested, as did several commenters, that in light of these two provisions, ''when the [qualifying employer's] decision is founded on religious beliefs, then all of Title VII drops out.'' *Starkey* v. *Roman Catholic Archdiocese of Indianapolis, Inc.,* 41 F.4th 931, 946 (7th Cir. 2022) (Easterbrook, J., concurring); *see also Bear Creek Bible Church* v. *EEOC,* 571 F. Supp. 3d 571, 590–91 (N.D. Tex. 2021) (''Read plainly then, Title VII does not apply to religious employers when they employ individuals based on religious observance, practice, or belief. . . . The plain text of this exemption . . . is not limited to religious discrimination claims; rather, it also exempts religious employers from other forms of discrimination under Title VII, so long as the employment decision was rooted in religious belief.'').[8]

After careful consideration, OFCCP has concluded that that is neither a common nor a compelling understanding of Title VII's religious exemption that should govern the interpretation of the cognate exemption in Executive Order 11246.

Most importantly, this recent reading by two judges does not reflect the dominant view of the courts that have considered the question over the course of many years or the view of the Department of Justice just two years before Executive Order 13279 was promulgated.

Moreover, this textual argument misidentifies the source of the conclusion of some courts that a qualifying organization not only may generally insist upon its employees' membership in a particular religious denomination but also ''employ only persons whose beliefs and conduct are consistent with the employer's religious precepts.'' *Little,* 929 F.2d at 951. Indeed, in the case where that proposition was first accepted, the court expressly *rejected* the argument that the definition of ''religion'' in section 2000e(j) bears upon the scope of the religious exemption in section 2000e–1(a). The section 2000e(j) definition of ''religion,'' the court explained, was designed ''to broaden the prohibition against discrimination'' on the basis of religion for the benefit *of employees*—''so that religious practice as well as religious belief and affiliation would be protected.'' *Id.* at 950. The function of section 2000e(j), in fact, is to require employers under certain circumstances to *accommodate* employees' religion, including their ''observance and practice'' thereof, even where the employer is not expressly discriminating on the basis of religion. As the Supreme Court has explained, ''[t]he intent and effect of this definition was to make it an unlawful employment practice under [section 703(a)(1) of Title VII, 42 U.S.C. 2000e–2(a)(1)], for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees.'' *Trans World Airlines, Inc.* v. *Hardison,* 432 U.S. 63, 74 (1977); *see also Ansonia Bd. of Educ.* v. *Philbrook,* 479 U.S. 60, 63 n.1 (1986) (''The reasonable accommodation duty was incorporated into the statute, somewhat awkwardly, in the definition of religion.''); *EEOC* v. *Abercrombie & Fitch Stores, Inc.,* 575 U.S. 768, 775 (2015) (by virtue of the definition, ''religious practice is one of the protected characteristics that cannot be accorded disparate treatment and must be accommodated''). The section 2000e(j) definition has not historically been understood by courts to bear upon what it means for an employee to be ''of a particular religion'' for purposes of the section 2000e–1(a) religious exemption.[9] *See Little,* 929 F.2d at 950 (''There appears to be no legislative history to indicate that Congress considered the effect of this definition on the scope of the exemptions for religious organizations.'').

According to the court of appeals that first recognized it, a qualifying employer's right to insist on employee adherence to religious ''tenets'' or ''precepts'' derives not from that or any other textual command but instead from implications in the 1972 legislative history of the exemption, which ''suggest[ ] that the sponsors of the broadened exception were solicitous of religious organizations' desire to create communities faithful to their religious principles.'' *Id.* It was that legislative history that ''persuaded'' the court of appeals in *Little* ''that Congress intended the explicit exemptions to Title VII to enable religious

[8] In neither of these cases was the judge's reasoning the basis for rejecting a Title VII discrimination claim. The court in *Bear Creek* offered its analysis as a basis for denying standing to a plaintiff that tried to bring a RFRA claim. 571 F. Supp. 3d at 609. (As noted above, the case is currently on appeal to the United States Court of Appeals for the Fifth Circuit. No. 22–10145 (5th Cir. Feb. 14, 2022).) And the majority of the court in *Starkey* ruled in favor of the religious employer on constitutional grounds and therefore did not discuss the Title VII exemption. 41 F.4th at 942.

[9] The definition of ''religion'' is being removed from the regulations in part to avoid this confusion.

organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices, whether or not every individual plays a direct role in the organization's 'religious activities.' '' *Id.* at 951. (The court in *Little* did not address whether the religious exemption applies when the religious tenet on which the challenged employment action was based directly implicates another of Title VII's protected classes.)

The reading urged by commenters and recently suggested by two judges also would lead to results that are inconsistent with the 1972 Congress's intent and President Bush's 2002 Executive order. For example, if a qualifying religious organization had a religious tenet prohibiting interracial marriage, that reading would permit the qualifying organization to refuse to employ an applicant with a spouse of a different race. An organization whose tenets provide that a husband is the head of a household and should provide for his family but that a woman's place is in the home could refuse to hire women or could offer higher benefits to male employees. *But see EEOC* v. *Fremont Christian School,* 781 F.2d 1362 (9th Cir. 1986). An organization with a tenet prohibiting congregants from seeking civil relief against religious authorities could dismiss an employee who had brought an EEOC claim for sex discrimination, in violation of the Title VII ban on retaliation. *But see EEOC* v. *Pacific Press Pub. Ass'n,* 676 F.2d 1272 (9th Cir. 1982).[10] There is no basis for concluding that that is what President Bush intended when he incorporated the Title VII exemption into Executive Order 11246.

This reading would also be inconsistent with President Obama's amendment of Executive Order 11246, which generally prohibits contractors from discriminating against applicants and employees on the bases of sexual orientation and gender identity, even when they cite a sincere religious reason for doing so.

Not only would these results not be permissible under the longstanding judicial and executive branch readings of Title VII but in the context of government contracting they would also undermine efficiency and economy—something OFCCP recognized in the preamble to the 2020 rule. *See* 85 FR 79364 (''OFCCP continues to believe that discrimination by federal contractors generally has a negative impact on the economy and efficiency of government contracting.''). Indeed, the 2020 rule did *not* amend the regulations to expressly permit contractors to invoke the Executive Order 11246 religious exemption to insist upon adherence to religious tenets in a way that would result in forms of prohibited discrimination other than discrimination in favor of coreligionists. 85 FR 79350.[11] OFCCP declines the suggestion of several commenters that it should do so now—an amendment that would be inconsistent with both congressional and Presidential intent.

OFCCP recognizes, as it did in its rescission proposal, that the Constitution might impose limits on the application of Executive Order 11246. For example, as explained in the proposal, in assessing an employer's assertion of the religious exemption, courts and agencies must be careful not to interrogate the plausibility of the employer's description of its religious purposes, functions, and tenets. *See, e.g., Curay-Cramer,* 450 F.3d at 141; *Miss. Coll.,* 626 F.2d at 485; *Little,* 929 F.2d at 948. OFCCP is fully able to exercise that caution, where constitutionally required, on a case-by-case basis, without unduly broadening the religious exemption. *See, e.g., Curay-Cramer,* 450 F.3d at 142 (''Whether the proffered comparable conduct is sufficiently similar to avoid raising substantial constitutional questions must be judged on a case-by-case basis.'').

OFCCP also recognizes that the religion clauses of the First Amendment require a ''ministerial exception'' from certain nondiscrimination laws, including Title VII, for positions of particular religious significance in certain religious organizations. *See Our Lady of Guadalupe Sch.* v. *Morrissey-Berru,* 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171 (2012). As OFCCP explained in its rescission proposal, where the ministerial exception applies, ''judicial intervention into disputes between the [religious organization] and the [employee] threatens the [religious organization's] independence in a way that the First Amendment does not allow.'' *Our Lady of Guadalupe Sch.,* 140 S. Ct. at 2069. There is not yet any case law assessing whether and to what extent the ministerial exemption might apply in the context of a government contract (particularly with respect to employees who are engaged in secular activities required by the contract), but OFCCP acknowledges that if the ministerial exception does apply, it would supersede the prohibitions of Executive Order 11246.

OFCCP also acknowledges, as it did in the proposal, that RFRA ''might supersede Title VII's commands in appropriate cases,'' *Bostock,* 140 S. Ct. at 1754, although OFCCP also observes that RFRA's legislative history indicated that ''[n]othing in this bill shall be construed as affecting Title VII of the Civil Rights Act of 1964,'' H.R. Rep. No. 103–88, at 9 (1993).

Finally, OFCCP does not agree that the EEOC's 2021 Compliance Manual on Religious Discrimination compels a different conclusion. The EEOC's 2021 Compliance Manual correctly states that ''[r]eligious organizations are subject to the Title VII prohibitions against discrimination on the basis of race, color, sex, national origin . . . , and may not engage in related retaliation,'' and in support of that proposition it cites cases including *Kennedy* v. *St. Joseph's Ministries, Inc.,* 657 F.3d 189, 192 (4th Cir. 2011) (holding that the exemption ''does not exempt religious organizations from Title VII's provisions barring discrimination on the basis of race, gender, or national origin''); *Boyd* v. *Harding Academy of Memphis, Inc.,* 88 F.3d 410, 413 (6th Cir. 1996) (stating that the exemption ''does not . . . exempt religious educational institutions with respect to all discrimination''); *DeMarco* v. *Holy Cross High School,* 4 F.3d 166, 173 (2d Cir. 1993) (stating that ''religious institutions that otherwise qualify as 'employer[s]' are subject to Title VII provisions relating to discrimination based on race, gender and national origin''); and *Rayburn* v. *General Conference of Seventh-day Adventists,* 772 F.2d 1164, 1166 (4th Cir. 1985) (''While the language of § 702 makes clear that religious institutions may base relevant hiring decisions upon religious preferences, Title VII does not confer upon religious organizations a license to make those same decisions on the basis of race, sex, or national origin.''). All of the cases cited are consistent with OFCCP's view expressed in this preamble. OFCCP recognizes that the EEOC's 2021 Compliance Manual also states that a qualifying religious organization can ''assert as a defense to a Title VII claim of discrimination or retaliation that it made the challenged

[10] More recently, the Ninth Circuit held that if the original claim was for *religious* discrimination that is not prohibited because of the religious organization exemption, it is not prohibited retaliation for a qualifying religious organization to fire the employee for bringing *that* claim ''because the practice 'opposed' is not 'unlawful.' '' *Garcia* v. *Salvation Army,* 918 F.3d 997, 1006 (9th Cir. 2019); *see also id.* at 1004–05 n.11 (distinguishing its opinion in *Pacific Press* on that ground).

[11] Instead, the preamble to the 2020 rule explained that such claims would be assessed under RFRA. *See* 85 FR 79349–56. We discuss below the 2020 preamble's approach to RFRA.

employment decision on the basis of religion.'' EEOC, Compliance Manual on Religious Discrimination, sec. 12–1.C.1. In OFCCP's view, however, the cases cited in the EEOC's 2021 Compliance Manual do not support the proposition that asserting such a defense exempts the organization from the Title VII prohibitions against discrimination on the basis of race, color, sex, and national origin. Nor does the EEOC's 2021 Compliance Manual address the exemption in Executive Order 11246, which is properly understood to incorporate the established judicial construction of the Title VII exemption reflected in many cases, including those cited in the EEOC's 2021 Compliance Manual. For the reasons explained above, the exemption in Executive Order 11246 should be construed consistent with those judicial rulings.

3. Inappropriately Broad Rule of Construction

The 2020 rule added a rule of construction at 41 CFR 60–1.5(e) requiring that subpart A of 41 CFR part 60–1 be construed ''in favor of a broad protection of religious exercise, to the maximum extent permitted by the U.S. Constitution and law, including [RFRA].'' *See* 85 FR 79372. OFCCP proposed to remove this provision.

A legal professional association, a coalition of organizations opposing religious discrimination, and a reproductive rights advocacy organization, among others, asserted that the rule's mandate to interpret the Executive Order 11246 religious exemption as broadly as law would allow is contrary to Title VII precedent that establishes the proper construction of the Executive Order 11246 religious exemption.

A religious organization, by contrast, urged retention of that rule of construction on the ground that it ''reflected the very best of American traditions in that it gave religious exercise the special, indeed paramount, protection that constitutional text and history counsel.'' A comment from two religious higher education associations and two religious universities stated that ''[t]he OFCCP proposal to rescind appears to be an attempt to restrict the protections provided by Congress under RFRA.'' Another commenter that opposed rescission, a religious advocacy organization, asserted that if OFCCP does not incorporate RFRA's protections into the regulations themselves, OFCCP will substantially burden religious organizations by forcing them to choose between participating in a Federal contract and ''abandoning their faith.''

A civil liberties litigation organization asserted that when an agency ''promulgates regulations concerning religious entities or beliefs, it must'' not only ''consider RFRA'' but also ''create appropriate exemptions to ensure religious beliefs are not unduly burdened,'' citing *Little Sisters of the Poor* v. *Pennsylvania,* 140 S. Ct. 2367, 2384 (2020). Another civil liberties organization asserted that a case-by-case approach ''inserts additional uncertainty in the government contracting process,'' thereby undermining economy and efficiency in procurement. Similarly, a religious university called the case-by-case approach ''cumbersome,'' predicting that it ''would require dedication of additional resources to carefully consider the mission of each religious entity'' and ''would doubtless result in disputes and litigation.''

Having reviewed these comments, OFCCP finds that removal of the rule of construction is appropriate and consistent with law. A rule that would require the Executive Order 11246 religious exemption to be construed as broadly as the law allows would be inconsistent with the Presidential intent that that exemption should be construed consistent with the Title VII exemption on which it is based, and would be inconsistent with the broader objective of Executive Order 11246 to ensure economy and efficiency in government contracts.

Contrary to the assumption of some commenters, the absence of any reference to RFRA in OFCCP's regulations does not mean that OFCCP will not apply RFRA. To the contrary, by its terms RFRA presumptively applies to the application of all Federal law, including Executive Order 11246 and its implementing regulations.

Nor does the law require that the regulations themselves contain certain categorical or bright-line religious exemptions—something that most Federal regulations do not do and, notably, something that the 2020 rule itself did not do. It is sufficient that OFCCP will comply with the law: OFCCP will apply the religious exemption of Executive Order 11246 and RFRA on a case-by-case basis, where applicable—a time-tested practice that allows OFCCP sufficient flexibility to weigh governmental, claimant, and third-party burdens and interests and that ensures that exemptions are applied consistent with RFRA and Executive Order 11246. Attention to third-party harms, in particular, enables OFCCP to ensure that any exemptions do not extend beyond what the Establishment Clause allows. *See Cutter,* 544 U.S. at 722; *Texas Monthly, Inc.* v. *Bullock,* 489 U.S. 1, 18 n.8 (1989) (Brennan, J., plurality op.); *Estate of Thornton* v. *Caldor, Inc.,* 472 U.S. 703, 709–10 (1985).[12]

OFCCP acknowledges commenters' concerns that the case-by-case approach to exemptions requires agency resources, but OFCCP believes that an individualized, fact-specific approach is an appropriate use of agency resources because it enables OFCCP to meet its legal obligations to evaluate a particular contractor's assertion that its religious exercise is substantially burdened by enforcement of an aspect of Executive Order 11246, as well as to assess OFCCP's possible compelling interests and narrow tailoring with specific regard to application of the burden to that contractor. *See* 42 U.S.C. 2000bb–1(b).

4. Inappropriately Categorical Approach to RFRA Analysis

As explained in OFCCP's rescission proposal, the preamble to the 2020 rule expressed views about RFRA's application that were both questionable and not pertinent to the proper construction of Executive Order 11246 or to the text of the 2020 rule itself.

RFRA provides that when application of a Federal Government rule or other law would substantially burden a person's exercise of religion, the Government must afford that person an exemption to the rule unless it can demonstrate that applying the burden to that person furthers a compelling governmental interest and is the least restrictive means of doing so. 42 U.S.C. 2000bb–1(b). Prior to the 2020 rule, recognizing that ''claims under RFRA are inherently individualized and fact specific,'' OFCCP's express policy was to consider RFRA claims, if they ever arose, based on the facts of the particular case, and to refrain from applying any regulatory requirement that would violate RFRA. Discrimination on the Basis of Sex, Final Rule, 81 FR 39119; *see also* 85 FR 79353; OFCCP Frequently Asked Questions: Religious Employers and Religious Exemption, *https://*

[12] Contrary to at least one commenter's suggestion, *Little Sisters of the Poor* does not require agencies to adopt regulatory religious exemptions—something that agencies do not do in the vast majority of rulemakings, even though RFRA applies to all Federal law. The Court there held only that, ''in the context of these cases [proceeding from the Supreme Court's decision in *Hobby Lobby*], it was appropriate for the Departments to consider RFRA.'' 140 S. Ct. at 2383; *see also* 80 FR 41324 (explaining that extending a religious exemption to closely held corporations ''complies with and goes beyond what is required by RFRA and Hobby Lobby'').

www.dol.gov/agencies/ofccp/faqs/religious-employers-exemption.

The preamble to the 2020 rule, however, announced—apparently as a categorical matter for purposes of assessing future RFRA claims—that OFCCP ''has less than a compelling interest in enforcing E.O. 11246 when a religious organization takes employment action solely on the basis of sincerely held religious tenets that also implicate a protected classification, other than race.'' 85 FR 79354. As discussed above in section III.A.2, the preamble repeatedly mentioned marriage and sexual intimacy as likely subjects of such religious beliefs requiring accommodation, *see id.* at 79349, 79352, 79364, which commenters rightly viewed as indicating that protection from discrimination on the bases of sex, sexual orientation, and gender identity in particular would be compromised under this analysis.[13]

OFCCP explained in its rescission proposal that the categorical approach to RFRA reflected in the preamble to the 2020 rule is inappropriate both because it would extend exemptions more broadly than RFRA requires and because it fails to allow sufficient flexibility to weigh competing governmental and third-party interests against the interests of individuals asserting religious exemptions. *Cf., e.g., Cutter* v. *Wilkinson,* 544 U.S. 709, 720 (2005) (''Properly applying [the Religious Land Use and Institutionalized Persons Act, to which Congress carried over from RFRA the ''compelling governmental interest''/''least restrictive means'' standard], courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries . . . .'').

Many commenters agreed with OFCCP's assessment that the 2020 rule preamble's categorical approach to RFRA was unsupported. These commenters, including a contractor association, LGBTQ rights advocacy organizations, reproductive rights advocacy organizations, and a women's rights advocacy organization, agreed that a case-by-case analysis of RFRA claims is appropriate.

Citing both policy and legal grounds, several commenters agreed that the 2020 preamble's categorical approach to RFRA was problematic in part because it ''prevents the government from considering the harms that an exemption under RFRA may cause,'' as stated by an organization that advocates separation of church and state. In addition, as discussed above in section III.A.2, a wide range of commenters noted that the First Amendment requires the Government to consider burdens that granting an exemption or accommodation would impose on third parties. *See Cutter,* 544 U.S. at 722; *Texas Monthly, Inc.* v. *Bullock,* 489 U.S. 1, 18 n. 8 (1989) (Brennan, J., plurality op.); *Estate of Thornton* v. *Caldor, Inc.,* 472 U.S. 703, 709–10 (1985).

Commenters also criticized the position taken in the 2020 rule's preamble that the agency's compelling interest in enforcing Executive Order 11246 categorically would not extend to religious contractors' employment actions based on sincerely held religious beliefs that implicate protected characteristics other than race. Commenters including a civil rights legal advocacy organization, an LGBTQ rights advocacy organization, and an organization that advocates separation of church and state agreed with OFCCP's proposal that treating protected classes differently conflicts with the text of the Executive Order 11246 religious exemption, as well as with Title VII case law.

Other commenters, however, also approved specifically of the 2020 preamble's discussion of the extent to which OFCCP has a compelling interest in enforcing Executive Order 11246. A comment from religious higher education associations and religious universities asserted that the Government ''has no compelling interest in restricting a religious institution from employing adherents to its religion, including those who adhere to 'all aspects of religious observance and practice, as well as belief,' as contemplated by Title VII.'' And a religious advocacy organization agreed with the 2020 rule that *Bob Jones University* v. *United States,* 461 U.S. 574 (1983), provides ''support for treating race discrimination as a special case.''

Having reviewed all relevant comments, OFCCP reiterates its view that the categorical approach to RFRA recommended in the 2020 preamble would be inappropriate. The question of whether a particular requirement of a Government contract would substantially burden the religious exercise of an employer would necessarily be very fact- and context-specific. Significantly, in the context of contracting, entities are free not to bid on a contract where they would prefer not to adhere to its conditions—a common occurrence. Moreover, it is beyond dispute that the Government's interests in preventing and remedying the harms of discrimination, and in ensuring equal employment opportunity, are ''weighty.'' *Fulton* v. *City of Philadelphia,* 141 S. Ct. 1868, 1882 (2021). And the Government's interest in the economy and efficiency of government contracts—and therefore its interest in ensuring that skilled employees are not excluded from the workforce with respect to such contracts—is the same, regardless of whether an employer wishes to exclude certain employees on the basis of race or any other protected characteristic.

5. Insufficient Substantiation of the Need for the 2020 Rule

OFCCP explained in its rescission proposal that it had applied the religious exemption in Executive Order 11246 for 17 years prior to 2020 without needing to codify its scope and application in regulatory language beyond that contained in 41 CFR 60–1.5(a)(5). During that time, OFCCP's policy with respect to the religious exemption was to apply Title VII case law as it developed, with reference to relevant religious liberty authorities where appropriate. As recognized even in the preamble to the 2020 rule, comparatively few contractors and subcontractors are affected by the religious exemption. *See* 85 FR 79367 (''[T]his rule will have no effect on the overwhelming majority of federal contractors.''). Given the relatively low number of contractors requesting religious exemptions, a case-by-case approach is not only preferable for the reasons addressed in the previous sections but also entirely workable and practical, as OFCCP's 17 years of prior experience attest.

Numerous commenters who supported OFCCP's rescission proposal agreed that the 2020 rule was unnecessary and, moreover, asserted that the agency did not adequately establish the need for the 2020 rule in proposing or finalizing it. Many of these commenters, including a women's rights legal advocacy organization, an LGBTQ rights advocacy organizations, a think tank, and a civil liberties advocacy organization, noted that the preambles to the religious exemption NPRM and the final 2020 rule asserted that the rule was necessary to expand access to Federal contracting for religious entities reluctant to contract because the scope of the religious exemption was unclear, *see, e.g.,* 85 FR 79328, 79370, but the preambles failed to provide evidence to substantiate that claim.

[13] By contrast, the present Administration has committed to a policy of fully enforcing laws prohibiting discrimination based on sexual orientation and gender identity and protecting religious freedom. *See, e.g.,* sec. 1, E.O. 14015, 86 FR 10007 (Feb. 14, 2021); sec. 1, E.O. 13988, 86 FR 7023 (Jan. 25, 2021).

For example, as stated in a comment from a state tradeswomen organization, a national labor union LGBTQ constituency group, and a national labor union, the 2020 rule preamble did ''not identify any organizations that lost contracting opportunities because of the nondiscrimination requirements lifted by the 2020 Rule, or any that previously desired to apply for federal contracts, but declined to do so because of those nondiscrimination requirements'' or because of the purported lack of clarity regarding the application of those requirements. A group of state attorneys general similarly stated that the 2020 rule did not ''present evidence that religious organizations avoided applying for contracts before the Rule, basing its assertions that they may have been 'reluctant to participate as federal contractors' on three unidentified commenters, who are not themselves organizations that have been reluctant.'' A think tank asserted that the 2020 rule's ''vague statement that it received 'feedback' from 'some organizations' is . . . insufficient to establish any need for this dramatic shift in position, particularly in light of the tremendous harms articulated above.''

Commenters who opposed rescission, however, asserted that the 2020 rule was needed. Many of these commenters agreed that religious entities were only a fraction of Federal contractors but asserted, as a religious college put it, that ''[i]t is precisely *because* religious institutions are comparatively few that their constitutional rights and interests should be articulated and affirmed in this executive order.'' Many commenters who opposed rescission expressed concern that rescinding the 2020 rule would deter the full participation of religious organizations in contracting. One religious university stated that, in its view, ''the reason there are comparatively few federal religious contractors and subcontractors is because of the ambiguity and associated risks [particularly the ''penalties involved in being accused of impermissible discrimination''] that existed in the interpretation of religious exemptions for federal contractors prior to the 2020 rule.'' The university asserted that ''the increased level of certainty as to the interpretation of its constitutionally protected religious exemption offered by the 2020 Rule actually opened the door for [the university] to consider pursuing a federal contract.'' Several commenters asserted that religious organizations provide valuable services and therefore should not be discouraged from participating in Federal contracting. A few commenters, including U.S. Senators and a religious advocacy organization, asserted that the supplies and services provided by religious contractors, such as hospitals, were particularly important to the country and the economy during the Covid–19 pandemic.

Although the great majority of commenters opposing rescission did not assert that they themselves held Federal contracts, several religious colleges and universities submitted comments stating that they held Federal contracts and broadly asserted that such institutions rely on the religious exemption. For example, one religious university commented: ''Religious institutions need the exemption in order to become federal contractors and provide important educational opportunities to their students.'' Although it provided no specifics, the commenter continued that ''[r]eligious institutions have in fact relied on the exemption provided under Title VII, and rescinding the 2020 rule would raise uncertainty about their ability to do so in the future.'' A comment from religious higher education associations and religious universities asserted that ''sponsored research on wide-ranging subjects has been conducted by religious higher education institutions for the Department of Agriculture, Department of Defense, Department of Energy, Department of Interior, NASA [National Aeronautics and Space Administration], National Institutes of Health, U.S. Fish and Wildlife Service, and others.'' Another commenter identified itself as a religious university that had ''successfully performed under federal contracts in various academic and scientific areas.''

One commenter, Brigham Young University (BYU), specifically commented that it was a Federal contractor that had invoked the religious exemption during past compliance evaluations. Attached to BYU's comment on the proposal were letters sent by its counsel to an OFCCP regional office on March 24, 2016, and June 18, 2010. OFCCP has confirmed that BYU has invoked the religious exemption. OFCCP's records reflect that, on at least two occasions, BYU was selected for a compliance review during OFCCP's neutral scheduling process. BYU responded to OFCCP's scheduling letter by asserting that it was exempt from Executive Order 11246 and requesting that the compliance review be administratively closed. OFCCP reviewed BYU's response and determined that BYU was entitled to Executive Order 11246 religious exemptions under two provisions, one as a religious entity pursuant to the exemption at issue here and also as a religious educational institution.[14] OFCCP explained, however, that the religious exemption did not provide a total exemption from evaluation, emphasizing the proviso in 41 CFR 60–1.5(a)(5) that ''[s]uch contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.'' OFCCP conducted a desk audit of the documentation submitted by BYU, and OFCCP ultimately closed the review with a Notice of Compliance to BYU.

In its recission proposal, OFCCP stated that it had no record of any request for a religious exemption. *See* 86 FR 62118 n.3. OFCCP corrects this statement to confirm that, during the 20 years that the religious exemption has been included in Executive Order 11246, at least one contractor has invoked the religious exemption during a compliance review.

OFCCP disagrees with a religious advocacy organization's assertion that OFCCP's rescission proposal assumes ''the participation of religious organizations in the federal procurement system is unimportant.'' On the contrary, OFCCP acknowledges that Executive Order 13279 established the importance to Federal procurement of religious organizations, in part through ''the removal of barriers to faith-based organizations participating in procurements beneficial to the government,'' as a religious litigation organization put it. OFCCP also fully recognizes the importance of the Executive Order 11246 religious exemption for religious contractors. However, as discussed in the sections above, OFCCP believes that the 2020 rule impermissibly disregarded Executive Order 13279's intent to incorporate the scope and application of the Title VII religious exemption into Executive Order 11246.

Also, while acknowledging that one commenter asserted that the 2020 rule ''opened the door'' for it ''to consider pursuing a federal contract,'' the comments that OFCCP received from existing religious contractors establish the importance of Executive Order 11246's religious exemption as delineated in Title VII case law, not as broadened in the 2020 rule. BYU's experience during OFCCP compliance reviews prior to the 2020 rule shows

[14] Title VII's exemption for religious educational institutions, which allows qualifying institutions ''to hire and employ employees of a particular religion,'' was imported into regulations implementing Executive Order 11246 in 1978. *See* 43 FR 49240, 49243 (Oct. 20, 1978) (now codified at 41 CFR 60–1.5(a)(6)); *cf.* 42 U.S.C. 2000e–2(e)(2).

that it was able to assert the religious exemption while complying with the other Executive Order 11246 obligations it agreed to as a Federal contractor. And another religious university commented that it had ''successfully performed under federal contracts in various academic and scientific areas.''

B. Effects of Rescission

OFCCP's rescission proposal stated that, if the 2020 rule were rescinded, OFCCP would return to its policy and practice of interpreting and applying the religious exemption in section 204(c) of Executive Order 11246, as codified in OFCCP's regulations at 41 CFR 60–1.5(a)(5), in accordance with Title VII principles and case law. OFCCP stated that it would abide by relevant religious liberty obligations and would consider any RFRA claims raised by contractors on a case-by-case basis and refrain from applying any regulatory requirement to a case in which it would violate RFRA.

Many commenters who opposed rescission believed that rescinding the 2020 rule would have negative effects. These commenters believed that rescission would undermine employers' religious freedom by revoking key religious liberty protections for their employment decisions. Some commenters, including several religious universities and a religious advocacy organization, asserted that OFCCP's rescission proposal did not adequately account for the constitutional protections for religious employers, which they stated extend further than the ministerial exception. Several of these commenters asserted that rescission of the 2020 rule would impermissibly force religious entities to choose between maintaining their faith and participating in Federal contracts. Many of these commenters asserted that OFCCP was without authority to limit religious freedom protections. Commenters including U.S. Senators and a religious advocacy organization cited cases including *Fulton* v. *City of Philadelphia,* 141 S. Ct. 1868 (2021); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 137 S. Ct. 2012 (2017); and *Thomas* v. *Review Board,* 450 U.S. 707 (1981), to support their assertion that faith-based organizations cannot be forced to choose between exercising religion and participating in Government programs.

Many commenters who opposed rescission also asserted that rescinding the 2020 rule, which they viewed as providing clarity and predictability to the regulated community, would lead to confusion and uncertainty. A religious university, for example, asserted that OFCCP's rescission proposal would remove helpful regulations and ''leave nothing in their place'' to provide ''guidance . . . as to the meaning and scope of the religious exemption.'' A few commenters expressed concern that OFCCP, in the absence of regulations to guide and constrain its authority, would simply indulge its ''policy preferences,'' such as by ''target[ing] religious groups and individuals that do not comply with their agenda,'' in the words of a religious organization. A religious advocacy organization asserted that, despite the administration's ''claims to promote diversity,'' rescission of the 2020 rule would entail ''simultaneously shunning and singling-out religious organizations and companies who represent Americans from incredibly diverse races, ethnic groups, backgrounds, and socioeconomic status.'' On a more neutral note, U.S. Senators commented that ''[i]t remains a basic principle of public policy and good governance that federal contractors deserve to understand at the outset of the contract how the terms of such contract will be interpreted and enforced.''

OFCCP appreciates contractors' and potential contractors' desire for clarity and certainty regarding the scope and application of the religious exemption. OFCCP does not agree that leaving the 2020 rule in place would achieve clarity and certainty for all stakeholders. As discussed above and as asserted by many other commenters, the 2020 rule's departure from Title VII case law and principles actually increased confusion among contractors and created uncertainty for workers about their protections from discrimination. OFCCP's rescission of the entire 2020 rule is necessary to achieve consistency with the text of Executive Order 11246 and with Title VII case law and principles, as discussed above in response to comments. As many commenters thus agreed, with rescission of the entire 2020 rule, religious contractors will no longer be subject to different exemption standards under Executive Order 11246 and Title VII, and workers can avail themselves of consistent protections. Furthermore, OFCCP is committed to promoting religious liberty, and there is simply no basis for any concern that OFCCP intends to target, shun, or otherwise be hostile to religious contractors. OFCCP fully intends to continue respecting contractors' religious liberty interests as well as the interests of other stakeholders, including the employees of religious contractors.

OFCCP also notes that commenters who opposed rescission, although they predicted that rescission would have negative effects, did not claim serious reliance interests that would be harmed by rescission. This may be because, as a religious advocacy organization commented, the 2020 rule has not been in place long enough ''to affect the universe of potential contractors who submit their bids in cycles.'' Further, as noted in a comment submitted by a state tradeswomen organization, a national labor union LGBTQ constituency group, and a national labor union, the 2020 rule was challenged in court within a few weeks of its effective date, and the Department shortly thereafter confirmed in a public filing that it intended to propose rescission of the 2020 rule. Defs.' Unopposed Mot. for Stay, *Or. Tradeswomen, Inc.* v. *U.S. Dep't of Labor,* No. 21–cv–00089 (D. Or. filed Jan. 21. 2021), ECF No. 15. By contrast, as asserted by a group of state attorneys general, the 2020 rule harmed the reliance interests of employees of Federal contractors ''that will newly claim the exemption,'' given that those employees depend ''on the protections of E.O. 11,246 to shield them from their employer imposing its religious tenets in the workplace.'' OFCCP believes that rescission of the 2020 rule will create more certainty for employees.

OFCCP also carefully considered commenters' concerns that rescinding the 2020 rule would impermissibly undermine employers' religious freedom. At the outset, OFCCP reiterates that rescission will simply return the agency to its longstanding approach to the religious exemption, which entails following Title VII principles and case law—that is, interpreting and applying the religious exemption in accordance with precedents in which courts have not impermissibly undermined employers' religious freedom. OFCCP has also reviewed the cases that commenters cited in support of their concerns about employers' religious liberty, and OFCCP believes that rescinding the 2020 rule is consistent with those decisions.

As discussed above, OFCCP and some commenters view rescission as consistent with *Fulton,* which emphasized the inadequacy of a categorical approach to religious exemptions by noting that the relevant question ''is not whether the [government] has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to [the particular religious claimant].'' 141 S. Ct. at 1881. With regard to *Trinity Lutheran,* a labor union commented that the Court's decision there ''simply affirmed that the Free Exercise clause ensures religious institutions are

protected from 'unequal treatment' and prohibits targeting the religious for 'special disabilities.' It does not condone a broad, religiously predicated exemption to nondiscrimination laws . . . .'' And a women's rights legal advocacy organization commented that ''the Court's narrow decision'' in *Masterpiece Cakeshop* v. *Colorado Civil Rights Comm'n,* 138 S. Ct. 1719 (2018), involving a baker asserting that compliance with a general nondiscrimination law would cause him to violate his religious beliefs, did not find that the baker was entitled to a religious exemption; instead, it ''found that statements made during a hearing suggested some government actors had hostility to the baker's beliefs, concluding that this hostility toward religion as manifested in the particular hearing process violated the baker's rights, not the law itself.''

OFCCP agrees that these cases bar Government from expressing hostility toward religious institutions and require that religious institutions be treated on an equal basis with secular institutions in certain contexts. *See, e.g., Masterpiece Cakeshop,* 138 S. Ct. at 1729 (invalidating a state civil rights commission's cease and desist order issued to a bakery that refused to sell a wedding cake to a same-sex couple because the commission's treatment of the case ''has some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection''); *Trinity Lutheran,* 137 S. Ct. at 2021 (invalidating a state's policy of denying grants to religiously affiliated applicants because it ''expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character''). These cases do not, however, support retention of the 2020 rule. There is no basis for any assertion that the present administration seeks to ''impose regulations that are hostile to the religious beliefs of affected citizens,'' *Masterpiece Cakeshop,* 138 S. Ct. at 1721–22, or that OFCCP's approach following rescission will ''single out the religious for disfavored treatment,'' *Trinity Lutheran,* 137 S. Ct. at 2020. On the contrary, with this rescission, OFCCP seeks to consider religious objections with neutrality, neither favoring nor disfavoring religion, consistent with the Court's direction in these cases. *See, e.g., Masterpiece Cakeshop,* 138 S. Ct. at 1722 (observing that, under the correct approach, the ''State's interest could have been weighed against Phillips' sincere religious objections in a way consistent with the requisite religious neutrality that must be strictly observed'').

In addition, several commenters who supported rescission asserted that cases addressing religious liberty in the context of public benefits were not directly relevant in the context of Federal contracts, particularly in determining the proper scope and application of religious exemptions.[15] In general, OFCCP agrees that procurement contracts are distinct as an area in which the Government has considerable discretion to impose conditions. *See, e.g., Perkins* v. *Lukens Steel Co.,* 310 U.S. 113, 127–28 (1940) (''Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases.''); *Martin Marietta Materials, Inc.* v. *Kansas Dep't of Transp.,* 810 F.3d 1161, 1178 (10th Cir. 2016) (citing *Perkins*); John Cibinic Jr. et al., Formation of Government Contracts 409 (4th ed. 2011) (relying on *Perkins* for the proposition that ''[i]t has long been recognized that the government has broad discretion in determining those firms with which it will enter into contractual agreements'').

Finally, OFCCP agrees with the numerous commenters who asserted that rescission would be consistent with the policy goal of promoting equal employment opportunity, which in turn enhances economy and efficiency in Federal contracting. A member of the U.S. House of Representatives, for example, asserted that the 2020 rule ''undermined [OFCCP's] mission by issuing a deeply flawed rule that significantly weakened anti-discrimination protections for employees who work on taxpayer-funded federal contracts.'' An international labor union commented that, given the negative effects of workplace discrimination on employee productivity and turnover, ''OFCCP, the federal agency whose mission is to 'protect workers, promote diversity, and enforce the law,' should be working to enhance protections for vulnerable worker populations, not broadening permissible discrimination in the workplace.'' A national labor union commented that ''[c]ontractors that exclude entire classes of otherwise qualified workers from employment or treat such workers unequally based on irrelevant individual characteristics likely will underperform relative to contractors that do not discriminate.'' In support, the commenter cited studies showing, among other findings, ''that employers' unfair employment practices cost employers $64 billion per year in direct costs from unwanted employee turnover, not counting other hard-to-measure effects like reputational damage, which could further inhibit an employer's ability to attract qualified employees.''[16] And an organization that advocates separation of church and state commented that rescission of the 2020 rule ''would reverse the Trump administration's harmful expansion of the exemption, restore longstanding policy that actually provides equal employment opportunity for workers, and promote economy and efficiency in contracting.''

With this rescission, nothing in the 2020 rule or its preamble may be relied on as a statement of OFCCP's interpretation or application of the Executive Order 11246 religious exemption or relevant religious liberty authorities. OFCCP remains committed to protecting religious freedom in accordance with applicable law and will continue to provide compliance assistance on the religious exemption, including issuing frequently asked questions, conducting webinars, and providing other compliance assistance requested by stakeholders.

IV. Regulatory Procedures

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

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) determines whether a regulatory action is significant and, therefore, subject to the requirements of Executive Order 12866 and OMB review. Section 3(f) of

[15] Notably, *Masterpiece Cakeshop* recognized that, ''while those religious and philosophical objections [to same-sex marriage] are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.'' 138 S. Ct. at 1727.

[16] Among other studies, the commenter cited the following: Brad Sears & Christy Mallory, Williams Inst., Economic Motives for Adopting LGBT-Related Workplace Policies, Williams Institute (2011), *https://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf;* Level Playing Field Inst., The Corporate Leavers Survey 2007: The Cost of Employee Turnover Due Solely to Unfairness in the Workplace (2007), *https://www.smash.org/wp-content/uploads/2015/05/corporate-leavers-survey.pdf#targetText=Level%20Playing%20Field%20Institute's%20Corporate,women%20and%20gays%20and%20lesbians;* Allison Scott, et al., Ford Found. and Kapor Ctr. for Soc. Impact, Tech Leavers Study: A First-of-Its-Kind Analysis of Why People Voluntarily Left Jobs in Tech (2017), *https://mk0kaporcenter5ld71a.kinstacdn.com/wp-content/uploads/2017/08/TechLeavers2017.pdf.*

Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. This rescission has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f)(1) of Executive Order 12866. The Office of Management and Budget has reviewed the rescission. Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA designated this rescission as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Executive Order 13563 directs agencies to adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

1. The Need for the Rescission

As discussed in the preamble, OFCCP received numerous comments addressing the need for the rescission. Commenters who supported the rescission believed the 2020 rule impermissibly expanded the religious exemption, departed from established legal principles and OFCCP's longstanding policy and practice, increased confusion about the scope and application of the religious exemption, weakened nondiscrimination protections for employees of Federal contractors, and failed to account for the harm to employees who would face discrimination under the amended provisions.

For example, a civil liberties organization stated, ''By allowing federal contractors to discriminate against employees who do not abide by the employer's religious beliefs, employees who follow dominant religious beliefs will have an economic advantage over employees who are secular, who follow a less popular religion, or who interpret a dominant religion differently than their employer.'' An LGBTQ rights advocacy organization noted the 2020 rule permitted increased discrimination against workers and, thus, ''leads to increased and extensive costs for those workers, their families, and society, including lost wages and benefits, negative impacts on mental and physical health and related out-of-pocket healthcare expenses, and costs associated with job searches.'' A civil rights legal advocacy organization noted the confusion and inconsistencies caused by the 2020 rule, stating, ''[T]he discrepancies between the [2020] rule, OFCCP enforcement, EEOC enforcement, and federal court enforcement could result in federal contractors relying upon the OFCCP interpretation only to be later found liable for discrimination under Title VII.''

As described in more detail below, OFCCP also received comments objecting to the rescission. Commenters who opposed the rescission supported the 2020 rule, stating that it provided helpful, clear standards, which they believed encouraged religious organizations to become Federal contractors while protecting employers' religious liberties. Some of these commenters also believed that rescinding the 2020 rule would unduly narrow the religious exemption.

After considering the comments received, OFCCP has concluded that the standards established in the 2020 rule were not warranted to the extent that they departed, without adequate justification, from applicable legal precedents and created uncertainty in the applicable legal standards. Rather than provide clarity, the 2020 rule increased confusion because of its divergence from courts' and the EEOC's approach to the Title VII religious exemption. Further, rescinding the 2020 rule will not unduly narrow the religious exemption but will simply return to OFCCP's past practice of applying Title VII principles and case law. The 2020 rule also reduced discrimination protections for employees of Federal contractors, which was contrary not only to relevant legal authorities but also to OFCCP's policy goal of promoting equal employment opportunity.

For these reasons, OFCCP is finalizing this rescission to enable the agency to properly apply and enforce Executive Order 11246 by returning to its policy and practice of interpreting and applying the religious exemption contained in section 204(c) of Executive Order 11246 to the facts and circumstances of each situation consistent with Title VII principles and case law.

2. Costs

OFCCP received comments from religious advocacy organizations and individuals disagreeing with the agency's assessment that the proposed rescission would not impose any new costs. The commenters stated that rescinding the 2020 rule would result in religious contractors dealing with a less clear standard, less certainty, and increased difficulty in determining whether they qualify for an exemption. For example, an organization of religious employers stated, ''The Proposal's contradictions of and inconsistencies with Title VII, EEOC Guidance, and Sections 202 and 204 of E.O. 11246, will decrease consistency and stability for religious contractors, resulting in self-exclusion of some qualified and talented contractors solely on the basis of their sincere religious beliefs.'' A religious advocacy organization stated, ''The Proposal ignores the costs on religious organizations in determining whether they qualify for the exemption under its opaque standard, the costs of not being able to make employment decisions based on religion, and the costs associated with losing current and prospective federal contractors which may produce goods and services more efficiently, effectively, or at a lower price for the federal government.'' Other commenters asserted that religious contractors would be deterred from participating in government contracting and lose all of its benefits. For example, a religious association stated, ''[T]here is a cost to the federal government and the American people with excluding qualified religious organizations from federal contracts based not on their ability to do the work required by the government contract, but solely on their desire to make employment decisions based on their sincere religious beliefs and tenets.''

OFCCP carefully reviewed the comments received on the proposal's potential costs to religious organizations. In response, OFCCP emphasizes that the language of the

Executive Order 11246 religious exemption, as well as the original regulation implementing the religious exemption at 41 CFR 60–1.5(a)(5), remains unchanged. In rescinding the 2020 rule, OFCCP will simply return to its longstanding approach, in effect from the addition of the religious exemption until January 2021, of aligning the Executive Order 11246 religious exemption with Title VII case law as applied to the facts and circumstances of each situation. Indeed, all contractors that are covered by Title VII have been required to be in compliance with Title VII throughout the period during which the 2020 rule was in effect, so there should be no additional compliance costs involved. In addition, OFCCP notes that none of the commenters who asserted that the proposal would impose costs on religious organizations and the Government provided additional information or data to support their claims.

For these reasons, OFCCP maintains that the rescission does not include any quantifiable costs because it returns to the agency's prior policy and practice; adds no new compliance requirements for contractors; and the 2020 rule did not result in cost savings attributable to reduced risk of noncompliance and potential legal costs. The rescission removes the definitions of ''particular religion,'' ''religion,'' ''religious corporation, association, educational institution, or society,'' and ''sincere'' from 41 CFR 60–1.3; removes paragraphs (a) and (b) from 41 CFR 60–1.3; and removes paragraphs (e) and (f) from 41 CFR 60–1.5.

3. Benefits

Executive Order 13563 recognizes that some rules have benefits that are difficult to quantify or monetize but are nevertheless important, and states that agencies may consider such benefits. OFCCP received a number of comments on the benefits of rescinding the 2020 rule. For example, a civil liberties advocacy organization stated that the discrimination permitted by the 2020 rule creates intangible costs by ''reducing equity, fairness, and personal freedom; impeding the ability of workers to make deeply personal decisions regarding expression of their gender identity or sexual orientation, relationships and families, or regarding medical treatment; eroding protections for employees' personal privacy regarding protected characteristics; and decreasing the dignity and rights of stigmatized minorities.'' A civil rights legal advocacy organization commented that female and LGBTQ workers of color ''face greater barriers and fewer economic opportunities'' as a result of multiple intersecting forms of workplace discrimination. A national labor union further noted, ''Discrimination leads to higher unemployment rates and lower wages among impacted workers, as well as lower investment in their education and training, resulting in lower overall economic performance for the country.'' Similarly, a group of state attorneys general asserted that ''the 2020 Rule's likely effect of increased employment discrimination over time will have negative effects on businesses overall, including in lost revenue, recruitment, retention, and employee productivity.''

Commenters including a religious organization agreed with OFCCP that the rescission will promote economy and efficiency in Federal procurement by preventing the arbitrary exclusion of qualified and talented employees on the basis of characteristics that have nothing to do with their ability to do work on Government contracts. The rescission will also ensure that taxpayer funds are not used to discriminate and that Federal contractors provide equal employment opportunity. Finally, the rescission will provide clarity and consistency for contractors and would-be contractors that are religious corporations, associations, educational institutions, and societies through a single religious employer test: those with a primarily religious purpose and character, that are eligible for the Title VII religious exemption, are also eligible for the Executive Order 11246 religious exemption.

B. Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' Pub. L. 96–354, section 2(b). The RFA requires agencies to consider the impact of a regulatory action on a wide range of small entities, including small businesses, nonprofit organizations, and small governmental jurisdictions.

Agencies must review whether a regulatory action would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the regulatory action would, then the agency must prepare a regulatory flexibility analysis as described in the RFA. *See id.* However, if the agency determines that the regulatory action would not be expected to have a significant economic impact on a substantial number of small entities, then the head of the agency may so certify and the RFA does not require a regulatory flexibility analysis. *See* 5 U.S.C. 605. The certification must provide the factual basis for this determination.

The rescission will not have a significant economic impact on a substantial number of small entities because it will not impose any new costs. Accordingly, OFCCP certifies that the rescission will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 requires that OFCCP consider the impact of paperwork and other information collection burdens imposed on the public. *See* 44 U.S.C. 3507(d). An agency may not collect or sponsor the collection of information or impose an information collection requirement unless the information collection instrument displays a currently valid OMB control number. *See* 5 CFR 1320.5(b)(1).

OFCCP has determined that no new requirement for information collection is associated with this rescission. Consequently, this rescission does not require review by OMB under the authority of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this rescission does not include any Federal mandate that will result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

E. Executive Order 13132 (Federalism)

OFCCP has reviewed this rescission in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' The rescission will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rescission does not have tribal implications under Executive Order

13175 that would require a tribal summary impact statement. The rescission 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.''

List of Subjects in 41 CFR Part 60–1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Labor, Reporting and recordkeeping requirements.

Jenny R. Yang,

Director, Office of Federal Contract Compliance Programs.

For the reasons set forth in the preamble, OFCCP amends 41 CFR part 60–1 as follows:

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258 and E.O. 13672, 79 FR 42971.

§ 60–1.3 [Amended]

■ 2. Amend § 60–1.3 by removing the following:

■ a. Definitions of ''Particular religion,'' ''Religion,'' ''Religious corporation, association, educational institution, or society,'' and ''Sincere.''

■ b. Paragraphs (a) and (b).

§ 60–1.5 [Amended]

■ 3. Amend § 60–1.5 by removing paragraphs (e) and (f).

[FR Doc. 2023–04150 Filed 2–28–23; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2022–0020]

RIN 0750–AL61

Defense Federal Acquisition Regulation Supplement: Employment Transparency Regarding Individuals Who Perform Work in the People's Republic of China (DFARS Case 2022–D010)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2022 that requires a disclosure from entities that employ one or more individuals who will perform work in the People's Republic of China.

DATES: Effective March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 87 FR 52339 on August 25, 2022, to implement section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.). Section 855 requires offerors, when submitting a bid or proposal for a covered contract, to disclose their use of workforce and facilities in the People's Republic of China, if they employ one or more individuals who will perform work in the People's Republic of China, unless a national security waiver has been granted. A recurring disclosure is also required for fiscal years 2023 and 2024, for contractors that are covered entities and are a party to one or more covered contracts in each fiscal year, to disclose if the contractor employs one or more individuals who perform work in the People's Republic of China on any such contract. One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. No changes were made to the rule as a result of the comment. A discussion of the public comment, which stated support for the rule, is provided as follows:

Comment: The respondent supported the disclosure requirement in the interim rule, stating that an outright ban for contracts exceeding the $5 million threshold would be inappropriate and would not allow a follow-on investigation to reach a determination that protects our national security interests while minimizing the effects on businesses and individuals.

Response: DoD acknowledges the support for the rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

The requirements of section 855 of the NDAA for FY 2022 apply to covered contracts valued in excess of $5 million, excluding contracts for commercial products or commercial services. Therefore, DoD is not applying the rule to contracts at or below the SAT or to contracts for the acquisition of commercial services or commercial products, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. 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.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule is required to implement section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 (Pub. L. 117–81, 10 U.S.C. 4651 note prec.). The objective of the rule is to implement section 855 of the NDAA for FY 2022 to require offerors, when submitting a proposal for a covered contract, to disclose their use of workforce and facilities in the People's Republic of China if they employ one or more individuals who will perform work in the People's Republic of China, unless a national security waiver has been granted. A national security waiver may be granted if a determination is made that such disclosure would not be in the interest of national security. Recurring disclosures are required following contract award for contractors that are covered entities for fiscal years 2023 and 2024. The initial and recurring disclosures must include the total number of individuals who will perform work in the People's Republic of China on the covered contracts and a description of the physical presence of the facility, including the street address, where work on the covered contract will be performed.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Federal Procurement Data System (FPDS) data was analyzed for fiscal years 2019, 2020, and 2021, purchases of supplies or end products and services for which the place of manufacture, place of performance, or country of the product's origin is China; with a value above $5 million; and excluding commercial services, commercial products, and commercially available off-the-shelf (COTS) items. The FPDS data revealed no awards that met these criteria.

In addition, a data analysis was performed on the North Atlantic Treaty Organization (NATO) Commercial and Government Entity (NCAGE) codes from the NATO Support and Procurement Agency (NSPA) for entities located in the People's Republic of China, including Hong Kong. This review revealed a total of 5,143 entities. There were 4,706 entities in the People's Republic of China with NCAGE codes, and 437 entities in Hong Kong with NCAGE codes. This list of NCAGE codes was compared to any People's Republic of China or Hong Kong NCAGE codes from the FPDS data results for a list of contract awards in fiscal years 2019, 2020 and 2021. Similarly, there were no contract awards to any unique entities or small business entities meeting the criteria.

There are projected reporting or recordkeeping requirements, and there may be costs to ensure compliance. The contractor's postaward disclosure is required for fiscal years 2023 and 2024, to disclose if a contractor that is a covered entity employs one or more individuals who perform work in the People's Republic of China on a covered contract. The disclosure must include the total number of individuals who will perform work in the People's Republic of China on the contract and a description of the exact street location of the physical presence in China where the work on the contract will be performed.

There are no known alternate approaches to the rule that would meet the objectives of the statute.

VII. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0750–0005, entitled Defense Federal Acquisition Regulation Supplement (DFARS), Disclosure of Employment of Individuals Who Work in the People's Republic of China.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

■ Accordingly, the interim rule implementing 48 CFR parts 212, 225, and 252, which was published at 87 FR 52339 on August 25, 2022, is adopted as final without change.

[FR Doc. 2023–04029 Filed 2–28–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 232, and 252

[Docket DARS–2023–0004]

RIN 0750–AL27

Defense Federal Acquisition Regulation Supplement: Prompt Payment of Contractors (DFARS Case 2021–D008)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause and the associated prescription that are no longer necessary.

DATES: Effective March 16, 2023.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements section 815 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), which strengthened the requirement that DoD establish a goal to pay small business contractors within 15 days of receipt of an invoice. In particular, section 815(1) of the NDAA for FY 2021 amended 10 U.S.C. 2307(a)(2)(A) (now located in 10 U.S.C. 3801) by striking the language ''if a specific payment date is not established by contract.'' Section 815(2) of the NDAA for FY 2021 amended 10 U.S.C. 2307(a)(2)(B) by striking the language ''if the prime contractor agrees'' and replacing it with the language ''if the prime contractor agrees or proposes.'' Section 814 of the NDAA for FY 2022 (Pub. L. 117–81) rescinded section 815(2) of the NDAA for FY 2021.

In related Federal Acquisition Regulation (FAR) Case 2020–007, DoD, GSA, and NASA published a proposed rule at 86 FR 53923 on September 29, 2021, to implement a policy that provides for accelerated payments to contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. This change to the FAR implements section 873 of the NDAA for FY 2020 (Pub. L. 116–92). Section 873 requires agencies to establish an accelerated payment date for small business prime contractors, to the fullest

extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. Section 873 also requires that, to the fullest extent permitted by law, the head of an agency establish an accelerated payment date for prime contractors that subcontract with small businesses, with a goal of 15 days after receipt of a proper invoice, if—

(1) A specific payment date is not established by contract; and

(2) The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor.

FAR Case 2020–007 implements portions of 10 U.S.C. 2307 (now located in 10 U.S.C. 3801–3808) stating requirements regarding accelerated payments applicable only to DoD. The FAR case implements section 815(1) of the NDAA for FY 2021 by excluding from DoD contracts the condition reflected in the language ''a specific payment date is not established by contract.'' Therefore, separate implementation of section 815(1) in the DFARS is not required.

DFARS Case 2021–D008 now rescinds portions of the DFARS that FAR Case 2020–007 renders moot. In particular, DFARS clause 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, prohibits the contractor requiring any further consideration from or charging fees to the small business subcontractor in exchange for making accelerated payments. DFARS 232.009–2 prescribes inclusion of the clause at DFARS 252.232–7017 in solicitations and contracts, including those using FAR part 12 procedures for the acquisition of commercial products and commercial services, that include the clause at FAR 52.232–40, Providing Accelerated Payments to Small Business Subcontractors. FAR Case 2020–007 amends FAR clause 52.232–40 to include the same information as DFARS clause 252. 232–7017, so the DFARS clause is duplicative and no longer necessary. Therefore, it can be removed from the DFARS along with the prescription at 232.009–2.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule merely removes an obsolete clause and the associated prescription from the DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf Items), and for Commercial Services

This rule only removes obsolete DFARS clause 252.232–7017, Accelerating Payments to Small Business Subcontractors—Prohibition on Fees and Consideration, and the associated prescription. This rule does not create any new solicitation provisions or contract clauses that apply to contracts at or below the simplified acquisition threshold, for commercial products, including commercially available off-the-shelf items, or for commercial services.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 232, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 232, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 232, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

212.301 [Amended]

■ 2. Amend section 212.301 by removing paragraph (f)(xiv)(G).

PART 232—CONTRACT FINANCING

■ 3. Revise sections 232.009 and 232.009–1 to read as follows:

232.009 Providing accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern.

232.009–1 General.

10 U.S.C. 3801(b) requires DoD to provide accelerated payments to small business contractors and subcontractors, to the fullest extent permitted by law, with a goal of 15 days.

232.009–2 [Removed]

■ 4. Remove section 232.009–2.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.232–7017 [Removed and Reserved]

■ 5. Remove and reserve section 252.232–7017.

[FR Doc. 2023–04028 Filed 2–28–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

[Docket DARS–2022–0025]

RIN 0750–AL20

Defense Federal Acquisition Regulation Supplement: Quick-Closeout Procedures Threshold (DFARS Case 2021–D001)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a recommendation from the Government Accountability Office regarding quick-closeout procedures.

DATES: Effective March 1, 2023.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 65505 on October 28, 2022, to amend the DFARS to update the quick-closeout procedures and expand contracts eligible for quick-closeout. There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items, and Commercial Services

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. 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.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule revises the DFARS to implement changes to the indirect cost rate quick-closeout procedures. Government Accountability Office Report 17–738, Federal Contracting: Additional Management Attention and Action Needed to Close Contracts and Reduce Audit Backlog, published September 2017 recommended that DoD develop a means for Department-wide oversight into both components' progress in meeting goals on closing contracts and the status of contracts eligible for closeout. The Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel) was established pursuant to section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) to deliver recommendations that could transform the defense acquisition system to meet the threats and demands of the 21st century. Additionally, the Section 809 Panel recommended authorizing the settlement of final overhead rates when it is in the best interest of the Government and closing complete contracts regardless of dollar value or the percentage of unsettled direct and indirect costs allocable to the contracts (recommendation 58).

This rule states that the amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order will be considered relatively insignificant when the total unsettled direct costs or indirect costs to be allocated do not exceed $2 million. Additionally, DCMA administrative contracting officers may negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed in advance of the determination of final direct costs and indirect rates set forth in FAR 42.705 regardless of the dollar value or percentage of unsettled direct or indirect costs allocable to the contract.

There were no public comments submitted in response to the proposed rule.

This rule will likely affect small entities that have been or will be awarded contracts, task orders, and delivery orders valued over $2 million. Data was obtained from the Procurement Business Intelligence Service (PBIS) for contracts that were awarded in fiscal years 2019 through 2021 and eligible for quick-closeout procedures, were valued at more than $2 million, and contained one of the following FAR clauses:

- 52.216–7, Allowable Cost and Payment (including Alternates I, II, IV);
- 52.216–17, Incentive Price Revision—Successive Targets (including Alternate I);
- 52.242–3, Penalties for Unallowable Costs; and
- 52.242–4, Certification of Final Indirect Costs.

Data from PBIS revealed DoD awarded contracts to an average of 832 small businesses per year in fiscal years 2019 through 2021. Therefore, this rule may apply to approximately 832 unique small entities.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact on small entities because this rule is not expected to have a significant impact on small entities.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements that

require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 242

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR 242 is amended as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR 242 continues to read as follows:

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

■ 2. Add section 242.708 to read as follows:

242.708 Quick-closeout procedure.

(a) Defense Contract Management Agency administrative contracting officers are authorized to negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed in advance of the determination of final direct costs and indirect rates set forth in FAR 42.705, regardless of the dollar value or percentage of unsettled direct or indirect costs allocable to the contract, task order, or delivery order.

(2) In lieu of the thresholds at FAR 42.708(a)(2)(i) and (ii), the amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order do not exceed $2 million, regardless of the total contract, task order, or delivery order amount.

[FR Doc. 2023–04027 Filed 2–28–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230217–0046]

RIN 0648–BL48

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 30; 2023–24 Biennial Specifications and Management Measures; Correcting Amendment

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS is correcting the 2023–2024 harvest specifications and management measures for groundfish caught in the U.S. exclusive economic zone seaward of Washington, Oregon, and California published on December 16, 2022. These corrections are necessary so the regulations accurately implement the intent of the Pacific Fishery Management Council.

DATES: This correction is effective March 1, 2023. As of March 1, 2023, the revision to § 660.360(c)(2)(i)(D) in amendatory instruction 18, of the final rule published December 11, 2020, at 85 FR 79880, is withdrawn.

ADDRESSES: This rule is accessible at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/action/amendment-30-pacific-coast-groundfish-fishery-management-plan-2023-2024-harvest* and the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

FOR FURTHER INFORMATION CONTACT: Brian Hooper, Fishery Management Specialist, at 206–526–6117 or *brian.hooper@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish seaward of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for 2 year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2023–2024 biennium for most species managed under the PCGFMP on December 16, 2022 (87 FR 77007). That final rule was effective January 1, 2023. After publication of the final rule, NMFS noted the need for corrections to accurately implement the intent of the Council.

Corrections

The final rule inadvertently omitted clarifications regarding declaration codes for non-bottom contact hook and line gear for groundfish (*e.g.,* troll, jig gear, rod and reel gear) (declaration code 35), open access non-bottom contact stationary vertical jig gear (declaration code 36) and open access non-bottom contact troll gear (declaration code 37). The final rule implementing requirements for a Federal non-trawl logbook (87 FR 59724, October 3, 2022) revised and added declaration codes to ensure codes better aligned with the gear profiles described in the electronic non-trawl logbook application. The final rule implementing harvest specifications and management measures for the 2023–2024 biennium (87 FR 77007, December 16, 2022) allowed for vessels in the directed open access fishery targeting groundfish to operate inside the non-trawl Rockfish Conservation Area (NT–RCA) from 46°16′ N lat. to the U.S./Mexico border with non-bottom contact hook-and-line gear only. The final rule inadvertently did not add clarifying language to the declaration codes to indicate which codes could be used to fish inside the NT–RCA. This correcting amendment revises § 660.13(d)(4)(iv)(A)(27) through (29) to clarify that declaration code 35 may be used only outside the NT–RCA, and declaration codes 36 and 37 may be used inside and outside of the NT–RCA. After the final rule was published, NMFS received questions on which declaration code applies when fishing inside or outside the NT–RCA. This non-substantive clarification is consistent with the intent described in the preamble of the final rule. It provides needed clarity around the requirements for non-trawl RCA access implemented in the final rule.

On page 77016 of the final rule, paragraph (o)(219) mistakenly re-published the existing text at that time instead of revised text. On page 77020 of the final rule, paragraph (q)(4) also mistakenly re-published the existing

text at that time instead of revised text. The need for the intended revisions was described on page 77013 of the final rule in the section ''Changes from the Proposed Rule'' and would move two boundary line waypoints from locations outside the Exclusive Economic Zone (EEZ) to inside the EEZ. However, the revisions were mistakenly omitted in the regulatory text. This correcting amendment revises § 660.71(o)(219) and § 660.74(q)(4), consistent with the final rule.

On page 77020 of the final rule, paragraph (p)(7) inadvertently omitted an ''and'' at the end of the subparagraph, as is the convention in these regulations. Adding ''and'' to the end of this paragraph is an administrative change for clarity. This correcting amendment adds the word ''and'' to § 660.74(p)(7).

The final rule mistakenly omitted lingcod south of 40°10′ N lat. from the list of Individual Fishing Quota species allocated through the biennial specifications and management measures process. This correcting amendment revises the list at § 660.140 (c)(3)(iv) to include lingcod south of 40°10′ N lat. consistent with the intentions described in the preamble of the final rule and Section 6.3.2 of the PCGFMP, and alphabetizes the list for clarity.

This correcting amendment revises Table 1c and Table 2c to § 660, subpart C to address formatting errors and increase clarity for the public regarding the allocations for sablefish north of 36° N lat.

At its June 2022 meeting, the Council adopted a management measure allowing directed open access fishery vessels to fish inside and outside of the non-trawl RCA on the same trip but those vessels can only carry one type of legal non-bottom contact hook-and-line gear on-board the vessel when fishing occurs in the NT–RCA; no other gear type may be on deck vessel or stowed. These provisions were adopted by the Council based on recommendations from the Groundfish Management Team (GMT) in its June 2022 Report (Agenda Item f.6.a, Supplemental GMT Report 3). The section of the GMT report on this management measure refers to a June 2022 NMFS report (Agenda Item f.6.a, NMFS Report 1) which describes the management measure exactly as it is being implemented in this correcting amendment. Therefore, it was the clear intent of the Council to adopt this management measure as it is being implemented in this rule. The preamble to the proposed rule (87 FR 62676, October 14, 2022), in Section III.J, specifically discusses the management measure that the Council adopted as being part of the regulations implemented through the proposed rule. However, NMFS inadvertently omitted these provisions from the proposed regulatory text and therefore the management measure was mistakenly not included in the final rule. This correcting amendment, which adds these provisions at § 660.330(b)(3), is necessary to ensure the regulations are consistent with the intent of the Council and the expectation of the public.

The final rule defined legal non-bottom contact hook-and-line gear to include stationary vertical jig gear ''attached to the vessel.'' This management measure was adopted by the Council based on recommendations from the GMT in its June 2022 Report (Agenda Item f.6.a, Supplemental GMT Report 3). The section of the GMT report on this management measure refers to a June 2022 NMFS report (Agenda Item f.6.a, NMFS Report 1) which includes the phrase ''attached to the vessel.'' However, the intent of the Council, as described in the June 2022 NMFS report and an April 2022 NMFS Report (Agenda Item F.4.a, Supplemental NMFS Report 1), was to allow the use of stationary jig gear inside the non-trawl RCA in gear configurations that had been tested through the Emley-Platt Exempted Fishing Permit, which included vessels fishing with stationary jig gear, not just jig gear attached to the vessel (stationary jig gear includes both gear attached to the vessel and gear fished by hand). After the publication of the final rule, fishermen raised concerns and confusion over whether this phrase could be interpreted as only allowing fishing with gear physically attached to the vessel and not allowing fishing with gear fished from the vessel but unattached. NMFS and NMFS Office of Law Enforcement reviewed the concerns of the fishermen and agree that this provision mistakenly would exclude jigging from a hand-held rod inside the non-trawl RCA. By including the phrase ''attached to the vessel'', the final rule inadvertently imposed a restriction that was not intended by the Council. This phrase unintentionally adds a restriction that was not anticipated by the public, is causing confusion by fishery participants, and raises questions for how to enforce the provision. In order to correct this error, this correcting amendment corrects the definition at § 660.330(b)(3) by removing the phrase ''attached to the vessel.'' The final rule mistakenly deleted recreational fishery regulations seaward of California for the Rockfish, Cabezon, and Greenling (RCG) complex from the CFR due to a technical error in the amendatory instruction. The mistaken amendatory instruction revised paragraph (c)(3)(ii) but inadvertently deleted all the subparagraphs within (c)(3)(ii), including the revised subparagraphs that were included in the final rule. This correcting amendment reinstates all subparagraphs within § 660.360 (c)(3)(ii), including those that were revised in the final rule, to make the regulations for the RCG complex consistent with those published in the proposed rule and recommended by the Council.

Classification

NMFS is issuing this rule pursuant to 304(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The NMFS Assistant Administrator for Fisheries (AA) has determined that this final rule is consistent with the PCGFMP and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to public interest in clear and accurate regulations. This action corrects inadvertent errors and makes necessary clarifications for to the December 16, 2022 final rule (87 FR 77007). Expeditious correction of the errors and clarification is necessary to prevent confusion among participants in the fishery, as the fishery has already begun. In addition, notice and comment is unnecessary because this notice makes only minor changes to correct inadvertent errors and make minor clarifications related to the December 16, 2022 final rule (87 FR 77007). These corrections will not affect the results of analyses conducted to support management decisions in the Pacific Coast groundfish fishery. These corrections are consistent with the Council's intent for regulations, and the public expects the regulations to be written as in the correction. No change in operating practices in the fishery is required.

Similarly, the AA has determined good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). The changes in this action should be effective immediately to prevent further confusion among participants in the fishery. This notice makes only minor corrections to the final rule which was effective January 1, 2023. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries and Fishing.

Dated: February 21, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 660 is corrected by making the following amendments:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.13, revise paragraphs (d)(4)(iv)(A)(*27*) through (*29*) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(4) * * *

(iv) * * *

(A) * * *

(*27*) Open access non-bottom contact hook and line gear for groundfish (*e.g.,* troll, jig gear, rod & reel gear) (outside the non-trawl RCA only) (declaration code 35);

(*28*) Open access non-bottom contact stationary vertical jig gear (allowed inside or outside the non-trawl RCA) (declaration code 36);

(*29*) Open access non-bottom contact troll gear (allowed inside or outside the non-trawl RCA) (declaration code 37);

* * * * *

■ 3. In § 660.71, revise paragraph (o)(219) as follows:

§ 660.71 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.

* * * * *

(o) * * *

* * * * *

(219) 32°33.33′ N lat., 117°16.45′ W long.;

* * * * *

■ 4. In § 660.74, revise paragraphs (p)(7) and (q)(4) to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(p) * * *

* * * * *

(7) 33°25.79′ N lat., 118°02.25′ W long.; and

* * * * *

(q) * * *

* * * * *

(4) 32°37.14′ N lat., 117°44.94′ W long.;

* * * * *

■ 5. Revise Table 1c to part 660, subpart C, to read as follows:

TABLE 1c. TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2023

[Weight in metric tons]

Year	ACL	Set-asides		Recreational estimate	EFP	Commercial HG	Limited entry HG		Open access HG	
		Tribal [a]	Research				Percent	mt	Percent	mt [b]
2023	8,486	849	30.7	6	1	7,600	90.6	6,885	9.4	714
Year	LE all	Limited entry trawl [c]				Limited entry fixed gear [d]				
		All trawl	At-sea whiting	Shorebased IFQ		All FG	Primary		DTL	
2023	6,885	3,994	100	3,893.5		2,892	2,458		434	

[a] The tribal allocation is further reduced by 1.7 percent for discard mortality resulting in 834.6 mt in 2023.
[b] The open access HG is taken by the incidental OA fishery and the directed OA fishery.
[c] The trawl allocation is 58 percent of the limited entry HG.
[d] The limited entry fixed gear allocation is 42 percent of the limited entry HG.

■ 6. Revise Table 2c to Part 660, Subpart C, to read as follows:

TABLE 2c. TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N. LAT. ALLOCATIONS, 2024 AND BEYOND

[Weights in metric tons]

Year	ACL	Set-asides		Recreational estimate	EFP	Commercial HG	Limited entry HG		Open access HG	
		Tribal [a]	Research				Percent	mt	Percent	mt [b]
2024	7,780	778	30.7	6	1	6,964	90.6	6,309	9.4	665
Year	LE all	Limited entry trawl [c]				Limited entry fixed gear [d]				
		All trawl	At-sea whiting	Shorebased IFQ		All FG	Primary		DTL	
2024	6,309	3,659	100	3,559		2,650	2,252		397	

[a] The tribal allocation is further reduced by 1.7 percent for discard mortality resulting in 764.8 mt in 2024.
[b] The open access HG is taken by the incidental OA fishery and the directed OA fishery.
[c] The trawl allocation is 58 percent of the limited entry HG.
[d] The limited entry fixed gear allocation is 42 percent of the limited entry HG.

■ 7. In § 660.140, revise paragraph (c)(3)(iv) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(c) * * *

(3) * * *

(iv) The remaining IFQ species (bocaccio, canary rockfish, cowcod, darkblotched rockfish, lingcod S of 40°10′ N lat., minor shelf rockfish N of 40°10′ N lat., minor shelf rockfish S of 40°10′ N lat., and minor slope rockfish S of 40°10′ N lat., POP, widow rockfish, and yelloweye rockfish) are allocated through the biennial specifications and management measures process minus any set-asides for the mothership and C/P sectors for that species.

* * * * *

■ 8. In § 660.330, revise paragraph (b)(3) introductory text to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(b) * * *

(3) *Non-trawl RCA gear.* Inside the non-trawl RCA, only legal non-bottom contact hook-and-line gear configurations may be used for target fishing for groundfish by vessels that participate in the directed open access sector as defined at § 660.11. On a fishing trip where any fishing will occur inside the non-trawl RCA, only one type of legal non-bottom contact gear may be carried on board, and no other fishing gear of any type may be carried on board or stowed during that trip. The vessel may fish inside and outside the non-trawl RCA on the same fishing trip, provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE. Legal non-bottom contact hook-and-line gear means stationary vertical jig gear not anchored to the bottom, and groundfish troll gear, subject to the specifications in paragraphs (b)(3)(i) and (ii) of this section.

* * * * *

■ 9. In § 660.360, revise paragraph (c)(3)(ii) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(3) * * *

(ii) *RCG complex.* The California rockfish, cabezon, greenling complex (RCG Complex) includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin''.

(A) *Seasons.* When recreational fishing for the RCG complex is open, it is permitted only outside of the recreational RCAs described in paragraph (c)(3)(i) of this section.

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (North Management Area), recreational fishing for the RCG complex is open from May 15 through October 15 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14, and October 16 through December 31).

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex is open from May 15 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14).

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG complex is open from May 15 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14).

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for the RCG complex is open from May 1 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through April 30).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex is open from April 1 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through March 31).

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for the RCG complex. The bag limit is 10 RCG Complex fish per day coastwide, with a sub-bag limit of 4 fish for vermilion rockfish, 1 fish for quillback rockfish, and 1 fish for copper rockfish. These sub-bag limits count towards the bag limit for the RCG Complex and are not in addition to that limit. Retention of yelloweye rockfish, bronzespotted rockfish, and cowcod is prohibited. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the value of days in the fishing trip.

(C) *Size limits.* The following size limits apply: cabezon may be no smaller than 15 in (38 cm) total length; and kelp and other greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery.

* * * * *

[FR Doc. 2023–03889 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC693]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2023 total allowable catch (TAC) of Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 26, 2023, through 1200 hours, A.l.t., June 10, 2023.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2023 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 1,963 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) and inseason adjustment (87 FR 80088, December 29, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2023 Pacific cod TAC

apportioned to vessels using pot gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,953 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 23, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: February 24, 2023.

Kelly Denit,

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

[FR Doc. 2023–04176 Filed 2–24–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 40
Wednesday, March 1, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 410

[Docket No. 95–051P]

RIN 0583–AC72

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 130

[Docket No. FDA–1995–N–0062 (formerly 1995N–0294)]

RIN 0910–AC54

Food Standards; General Principles and Food Standards Modernization; Withdrawal of Proposed Rule

AGENCY: Food Safety and Inspection Service, USDA, and Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) and the Food Safety and Inspection Service (FSIS) (jointly, we) are announcing the withdrawal of the proposed rule entitled ''General Principles and Food Standards Modernization,'' which published in the **Federal Register** of May 20, 2005. FDA and FSIS are taking this action in response to comments received in 2005 and in 2020 after FDA reopened the comment period for the proposed rule.

DATES: The proposed rule published May 20, 2005 (70 FR 29214) is withdrawn as of March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer Shemansky, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371; Deirdre Jurand, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378; or Rachel Edelstein, Office of Policy and Program Development, Food Safety and Inspection Service, 1400 Independence Ave. SW, Washington, DC 20250, (202) 205–0495.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 2005 (70 FR 29214), FDA and FSIS jointly issued a proposed rule entitled ''Food Standards; General Principles and Food Standards Modernization'' as a first step in instituting a process to modernize FDA definitions and standards of identity (and standards of quality and fill of container) consistent with section 401 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 341) and FSIS' definitions and standards of identity or composition under the Federal Meat Inspection Act and the Poultry Products Inspection Act (21 U.S.C. 607(c) and 457(b)). The proposed rule included general principles that FDA and FSIS intended to consider when determining whether to establish, revise, or eliminate a food standard. FSIS and FDA received more than 30 comments on the proposal.

FDA held public meetings in July 2018 on the Nutrition Innovation Strategy (83 FR 30180), and in September 2019 on Horizontal Approaches to Food Standards of Identity Modernization (84 FR 45497). Given how much time had passed since the proposed rule's publication, stakeholders recommended that FDA reopen the proposed rule's comment period to allow the public the opportunity to provide data and other information on changes that have occurred in manufacturing, food technology, market trends, and nutrition science that FDA should consider when determining next steps for the proposed rule. In response, FDA reopened the comment period for FDA-specific aspects of the proposed rule, including the 13 general principles, in the **Federal Register** of February 21, 2020 (85 FR 10107). Many comments in response to the reopening suggested that the general principles be revised and consolidated to make the principles easier to understand and implement. We agree with the comments, and so FDA and FSIS are withdrawing the proposed rule to reconsider how best to approach general principles and food standards modernization to ensure any future revised general principles are consistent with the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the FD&C Act.

Robert M. Califf,
Commissioner of Food and Drugs.
Theresa Nintemann,
Deputy Administrator, FSIS.

[FR Doc. 2023–04114 Filed 2–28–23; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1233; Airspace Docket No. 22–AEA–14

Amendment of Class D and Class E Airspace, and Revocation of Class E Airspace; Quantico, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, remove Class E airspace designated as an extension to a Class D surface area, establish a Class D airspace extension, and amend Class E airspace extending upward from 700 feet above the surface at Quantico MCAF (Turner Field), Quantico, VA, as an airspace evaluation determined an update is necessary. In addition, this action would remove the Brooke Very High-Frequency Omnidirectional Range Collocated Tactical Air (VORTAC) from the Class E airspace extending upward from 700 feet above the surface in the legal description, remove the extension to the south, and increases the radius of the Class E airspace. This action would also update the airport's geographic coordinates and replace the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the descriptions.

DATES: Comments must be received on or before April 17, 2023.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–

1233; Airspace Docket No. 22–AEA–14 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class D airspace and Class E airspace for Quantico MCAF (Turner Field), Quantico, VA, as well as update the geographic coordinates of the airport and out-of-date terms. An airspace evaluation determined that this action is necessary to support IFR operations in the area and will enhance the safety and management of controlled airspace within the National Airspace.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–1233; Airspace Docket No. 22–AEA–14) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1233; Airspace Docket No. 22–AEA–14.'' The postcard will be dated/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Incorporation by Reference

Class D airspace and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class D airspace for Quantico MCAF (Turner Field), Quantico, VA. The Class D airspace would be amended by establishing an extension of airspace extending from the 4-mile radius of the airfield and within a 5.4-mile radius of the airfield extending clockwise from the 168° bearing to the 209° bearing from the airfield. The geographical coordinates of the airfield would be updated to coincide with the FAA's database and replace the terms Notice to Airmen with Notice to Air Missions and Airport/Facility Directory with Chart Supplement in the description.

Also, this action would remove Class E airspace designated as an extension to a Class D surface area for Quantico MCAF (Turner Field), Quantico, VA, as the extensions will be included in the Class D description.

The Class E airspace extending upward from 700 feet above the surface would be amended by increasing the radius to 7.7-miles (previously 6.3-miles), removing the extension to the south, and removing the BROOKE VORTAC from Class E airspace header and Class E airspace legal description, as it is unnecessary in describing the airspace. Also, the geographical coordinates of the airfield would be updated to coincide with the FAA's database.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA VA D Quantico, VA [Amended]

Quantico MCAF (Turner Field), VA
(Lat. 38°30′13″ N, long. 77°18′18″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Quantico MCAF (Turner Field) and within a 5.4-mile radius of the airfield extending clockwise from the 168° bearing to the 209° bearing from the airfield. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D or E Surface Area.

* * * * *

AEA VA E4 Quantico, VA [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA VA E5 Quantico, VA [Amended]

Quantico MCAF (Turner Field), VA
(Lat. 38°30′13″ N, long. 77°18′18″ W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Quantico MCAF (Turner Field).

Issued in College Park, Georgia, on February 23, 2023.

Lisa E. Burrows,

Manager, Airspace & Procedures Team North, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–04063 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0444; Airspace Docket No. 22–ASO–16]

RIN 2120–AA66

Amendment of VOR Federal Airways V–71 and V–245, Revocation of VOR Federal Airways V–554 and V–570, and Establishment of RNAV Routes T–471, T–473, and T–474 in the Vicinity of Natchez, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–71 and V–245, revoke VOR Federal airways V–554 and V–570, and establish Area Navigation (RNAV) routes T–471, T–473, and T–474. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Natchez, MS (HEZ), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Natchez VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before April 17, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0444 and Airspace Docket No. 22–ASO–16 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

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

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the enroute structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically

invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) and United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning to decommission the Natchez, MS, VOR in October 2023. The Natchez VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Natchez, MS, VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The VOR Federal airways affected by the Natchez VOR decommissioning are V–71, V–245, V–554, and V–570. With the planned decommissioning of the Natchez VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, the FAA proposes to shorten V–71 and V–245 and revoke V–554 and V–570.

To address the proposed modifications and revocations to the affected Air Traffic Service (ATS) routes, instrument flight rules (IFR) traffic could use portions of adjacent VOR Federal airways, including V–9, V–18, and V–212, or receive air traffic control (ATC) radar vectors to fly around or through the affected area. In addition, the FAA proposes new RNAV routes T–471, T–473, or T–474 that pilots equipped with RNAV capabilities could use to navigate point to point using the existing NAVAIDs and fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent airways or ATC services listed previously.

The FAA proposes to establish RNAV routes T–471, T–473, and T–474 to provide mitigations to the proposed VOR Federal airway amendments due to the planned Natchez VOR decommissioning. RNAV route T–471 would mitigate the proposed removal of the V–71 airway segment, RNAV route T–473 would mitigate portions of the proposed revocations of V–554 and V–570, and RNAV route T–474 would mitigate the proposed removal of the V–245 airway segment. The new T-routes would reduce ATC sector workload and complexity, reduce pilot-to-controller communication, provide RNAV equipped aircraft an ATS route alternative, and support the FAA's NextGen efforts to modernize the NAS navigation system from a ground-based system to a satellite-based system.

The Proposal

The FAA is proposing to amend 14 CFR part 71 by amending VOR Federal airways V–71 and V–245, revoking V–554 and V–570, and establishing RNAV routes T–471, T–473, and T–474. The ATS route amendments, revocations, and establishments are due to the planned decommissioning of the Natchez, MS, VOR. The proposed ATS route actions are described below.

V–71: V–71 currently extends between the Fighting Tiger, LA, VOR/Tactical Air Navigation (VORTAC) and the Topeka, KS, VORTAC; between the Lincoln, NE, VORTAC and the O'Neill, NE, VORTAC; and between the Pierre, SD, VORTAC and the Williston, ND, VOR/DME. The FAA proposes to remove the airway segment overlying the Natchez, MS, VOR/DME between the Fighting Tiger VORTAC and the Monroe, LA, VORTAC. As amended, the airway would extend between the Monroe VORTAC and the Topeka VORTAC, between the Lincoln VORTAC and the O'Neill VORTAC, and between the Pierre VORTAC and the Williston VOR/DME.

V–245: V–245 currently extends between the Alexandria, LA, VORTAC and the Bigbee, MS, VORTAC. The FAA proposes to remove the airway segment overlying the Natchez, MS, VOR/DME between the Alexandria VORTAC and the Magnolia, MS, VORTAC. As amended, the airway would extend between the Magnolia VORTAC and the Bigbee VORTAC.

V–554: V–554 currently extends between the Natchez, MS, VOR/DME and the Monroe, LA, VORTAC. The FAA proposes to remove the airway in its entirety.

V–570: V–570 currently extends between the Alexandria, LA, VORTAC and the McComb, MS, VORTAC. The FAA proposes to remove the airway in its entirety.

T–471: T–471 is a new RNAV route proposed to extend between the RCOLA, LA, waypoint (WP), located near the Fighting Tiger, LA, VORTAC, and the Monroe, LA, VORTAC. The proposed T–471 would provide mitigation for the proposed removal of the V–71 airway segment between the

Fighting Tiger VORTAC and the Monroe VORTAC. This new route would provide RNAV routing from the Baton Rouge, LA, area northwestward to the Monroe, LA, area. The full T–471 route description is listed in the amendments to part 71 as set forth below.

T–473: T–473 is a new RNAV route proposed to extend between the ICEKI, MS, WP and the Monroe, LA, VORTAC. The proposed T–473 would provide mitigation for the proposed revocation of V–570 between the Mc Comb VORTAC and the Natchez VOR/DME and for the proposed revocation of V–554 between the Natchez VOR/DME and Monroe VORTAC. This new route would provide RNAV routing from the McComb, MS, area northwestward to the Monroe, LA, area. The full T–473 route description is listed in the amendments to part 71 as set forth below.

T–474: T–474 is a new RNAV route proposed to extend between the Alexandria, LA, VORTAC and the Magnolia, MS, VORTAC. The proposed T–474 would provide mitigation to the proposed removal of the V–245 airway segment between the Alexandria VORTAC and the Magnolia VORTAC. This new T-route would provide RNAV routing from the Alexandria, LA, area northeastward to the Magnolia, MS, area. The full T–474 route description is listed in the amendments to part 71 as set forth below.

All NAVAID radials listed in the V–71 description below are unchanged and stated in degrees True north.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–71 [Amended]

From Monroe, LA; El Dorado, AR; Hot Springs, AR; INT Hot Springs 358° and Harrison, AR, 176° radials; Harrison; Springfield, MO; Butler, MO; to Topeka, KS. From Lincoln, NE; Columbus, NE; to O'Neill, NE. From Pierre, SD; Bismarck, ND; to Williston, ND.

* * * * *

V–245 [Amended]

From Magnolia, MS; to Bigbee, MS.

* * * * *

V–554 [Removed]

* * * * *

V–570 [Removed]

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–471 RCOLA, LA TO MONROE, LA (MLU) [NEW]

RCOLA, LA	WP	(Lat. 30°29′06.52″ N, long. 091°17′37.96″ W)
NTCHZ, MS	WP	(Lat. 31°37′05.81″ N, long. 091°17′58.18″ W)
Monroe, LA (MLU)	VORTAC	(Lat. 32°31′00.77″ N, long. 092°02′09.65″ W)

* * * * * * *

T–473 ICEKI, MS TO MONROE, LA (MLU) [NEW]

ICEKI, MS	WP	(Lat. 31°18′16.12″ N, long. 090°15′28.85″ W)
NTCHZ, MS	WP	(Lat. 31°37′05.81″ N, long. 091°17′58.18″ W)
TULLO, LA	WP	(Lat. 31°58′47.77″ N, long. 091°48′24.56″ W)
Monroe, LA (MLU)	VORTAC	(Lat. 32°31′00.77″ N, long. 092°02′09.65″ W)

* * * * * * *

T–474 ALEXANDRIA, LA (AEX) TO MAGNOLIA, MS (MHZ) [NEW]

Alexandria, LA (AEX)	VORTAC	(Lat. 31°15′24.23″ N, long. 092°30′03.50″ W)
NTCHZ, MS	WP	(Lat. 31°37′05.81″ N, long. 091°17′58.18″ W)
Magnolia, MS (MHZ)	VORTAC	(Lat. 32°26′02.65″ N, long. 090°05′59.18″ W)

* * * * *

Issued in Washington, DC, on February 22, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–04042 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1304, and 1306

[Docket No. DEA–407]

RIN 1117–AB40

Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 and Drug Enforcement Administration's (DEA) implementing regulations, after a patient and a practitioner have had an in-person medical evaluation, that practitioner may use telehealth to prescribe that patient any prescription for a controlled medication that the practitioner deems medically necessary. The Ryan Haight Act and DEA's implementing regulations do not apply to other forms of telemedicine, telehealth, or telepsychiatry that are not otherwise addressed in the Controlled Substances Act. This proposed rule applies only in limited circumstances when the prescribing practitioner wishes to prescribe controlled medications via the practice of telemedicine and has not otherwise conducted an in-person medical evaluation prior to the issuance of the prescription.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before March 31, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Management and Budget on or before March 31, 2023.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–407'' on all correspondence, including any attachments.

Electronic Comments: The Drug Enforcement Administration encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov/* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

Paper Comments: Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

Paperwork Reduction Act Comments: All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to RIN 1117–AB40/Docket No. DEA–407.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received, including attachments and other supporting materials, are considered part of the public record. They will be made available by the Drug Enforcement Administration (''DEA'') for public inspection online at *https://www.regulations.gov/*. The Freedom of Information Act applies to all comments received. Confidential information or personal identifying information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

Comments with confidential information, which should not be made available for public inspection, should be submitted as written/paper submissions. Two written/paper copies should be submitted. One copy will include the confidential information with a heading or cover sheet that states ''CONTAINS CONFIDENTIAL INFORMATION.'' DEA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy should have the claimed confidential information redacted/blacked out. DEA will make this copy available for public inspection online at *https://www.regulations.gov/*. Other information, such as name and contact information, that should not be made available, may be included on the cover sheet but not in the body of the comment, and must be clearly identified as ''confidential.'' Any information clearly identified as ''confidential'' will not be disclosed except as required by law.

I. Executive Summary

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (''Ryan Haight Act'') [1] amended the Controlled Substances Act (''CSA'') in part by adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. While the Ryan Haight Act amended the CSA to generally require that the dispensing of controlled substances by means of the internet be predicated on a valid prescription involving at least one in-person medical evaluation, it also established seven distinct categories [2] of telemedicine pursuant to which a practitioner may prescribe controlled medications for a patient despite never having evaluated that patient in person, provided that, among other things, such practice is in accordance with applicable Federal and State laws.[3] Notably, the Ryan Haight Act does not limit a practitioner's ability to prescribe controlled medications for a patient after there has been at least one in-person medical evaluation. This

[1] Public Law 110–425 (2008). Because the Ryan Haight Act amended the CSA, references in this document will generally be to the CSA, except where additional specificity will improve clarity.

[2] The seven categories are: (1) Treatment in a hospital or clinic; (2) Treatment in the physical presence of a DEA-registered practitioner; (3) Treatment by Indian Health Service or Tribal practitioners; (4) Treatment during a public health emergency as declared by the Secretary of Health and Human Services; (5) Treatment by a practitioner who has obtained a ''special registration''; (6) Treatment by Department of Veterans Affairs practitioners during a medical emergency; and (7) Other circumstances specified by regulation. 21 CFR 1300.04(i)(1)–(7).

[3] 21 U.S.C. 802(54)(A)–(G).

rulemaking would authorize telemedicine pursuant to 21 U.S.C. 802(54)(G) in those instances where (1) the prescribing practitioner has not conducted an in-person medical evaluation with the patient; (2) the prescription was issued pursuant to a telemedicine encounter and (3) the telemedicine encounter results in a prescription for controlled medications. The regulatory requirements proposed in this rulemaking would only apply to practitioners who issue prescriptions pursuant to telemedicine encounters authorized under 802(54)(G). These regulatory requirements would not apply to telemedicine practiced pursuant to (A)–(F). Similarly, as described below, the Ryan Haight Act and DEA's implementing regulations do not apply to other forms of telemedicine, telehealth, or telepsychiatry that are not otherwise defined in the CSA.

The Ryan Haight Act intended to address the threat to public health and safety caused by physicians who prescribed controlled medications via the internet without establishing a valid doctor-patient relationship through such fundamental steps as performing an in-person medical evaluation of a patient. Prior to the enactment of the Ryan Haight Act, the internet was being exploited to facilitate the unlawful distribution of controlled substances through rogue websites. These rogue websites fueled the misuse of controlled prescription medications, such as hydrocodone and oxycodone, thereby contributing to increased drug poisonings and other harmful health, social, and economic consequences.

The Ryan Haight Act was named for a California high school student who died in 2001 from a drug poisoning resulting from a controlled prescription medication he obtained from a rogue online pharmacy. That rogue online pharmacy allowed customers, like Ryan and others, to obtain controlled medications without an in-person medical evaluation by the prescriber. In Ryan's case, and in many others, the ''[e]ase of access to the internet, combined with lack of medical supervision, . . . led to tragic consequences in the online purchase of prescriptions for controlled substances.'' [4]

The Ryan Haight Act also authorizes the Administrator, in conjunction with the Secretary of Health and Human Services (''Secretary''), to promulgate rules that would allow practitioners to treat patients via telemedicine without having had an in-person evaluation in certain circumstances, including where such telemedicine practice is in accordance with applicable Federal and State laws, uses an approved telecommunications system, and is ''conducted under . . . circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.'' [5] Pursuant to this authority, and in concert with the Department of Health and Human Services (''HHS''), DEA and HHS are hereby proposing to amend 21 CFR parts 1300, 1304, and 1306 to specify the circumstances under which practitioners may prescribe controlled medications, pursuant to 21 U.S.C. 802(54)(G), to patients whom the practitioner has never evaluated in person, including that (1) such prescriptions be in accordance with applicable Federal and State [6] laws; and (2) such practitioners possess an active DEA dispensing registration issued pursuant to 21 CFR 1301.13(e)(1)(iv) in the State in which the practitioner is located (unless exempted).

DEA proposes to require practitioners to keep detailed records regarding prescriptions issued as a result of a telemedicine encounter at the registered location of their 21 CFR 1301.13(e)(1)(iv) registration, in digital or paper form that is readily accessible.[7] Under the proposed rule, a prescribing practitioner must include a notation on the face of the prescription, or within the prescription order if prescribed electronically, that the prescription has been issued via a telemedicine encounter.[8]

The proposed rule allows for the prescription of non-narcotic [9] schedule III–V controlled medications when certain circumstances are met. For example, the proposed rule allows for the prescribing of schedule III–V non-narcotic controlled medications when a practitioner, prior to issuing a prescription, reviews recent prescription drug monitoring program (''PDMP'') data, *i.e.,* data made available by the State in which the patient is located, regarding controlled medication prescriptions issued to the patient in the last year or, if less than a year of data is available, the entire available period.[10]

Though excluded from the provisions of this proposed rule that relate to the prescribing of non-narcotic schedule III–V controlled medications, the prescribing of certain narcotic medications such as buprenorphine via telemedicine for the treatment of opioid use disorder is the subject of another notice of proposed rulemaking titled ''Expansion of induction of buprenorphine via telemedicine encounter'' (RIN 1117–AB78), published elsewhere in this issue of the **Federal Register**, that would expand the circumstances under which the induction of buprenorphine for ''maintenance treatment'' [11] and ''detoxification treatment'' [12] of opioid use disorder via telemedicine can occur.

Additionally, the proposed rule generally would subject a practitioner practicing telemedicine to initially limit prescriptions for a controlled medication issued to a patient to a 30-day supply. A practitioner would be allowed to issue multiple prescriptions for the same patient, but would only be allowed to prescribe an amount less than or equal to a total quantity of a 30-day supply of the controlled medication.[13] Thereafter, to continue prescribing to that patient, within 30 days, the prescribing practitioner would be required to examine the patient in person. Alternatively, if the prescribing practitioner receives a qualifying telemedicine referral for the patient in the manner described herein, the practitioner may rely on the referring practitioner's in-person medical evaluation in order to prescribe the controlled substance via telemedicine.[14]

II. Legal Authority and Background

DEA implements and enforces the CSA and the Controlled Substances Import and Export Act, (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed

[4] S. Rep. No. 110–521, at 5 (2008).

[5] 21 U.S.C. 802(54)(G).

[6] Under the CSA, ''State'' means ''a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.'' 21 U.S.C. 802(26).

[7] *Proposed* 21 CFR 1304.04(i).

[8] *Proposed* 21 CFR 1306.05(i).

[9] Under the CSA, narcotic drugs are drugs that contain opiates, cocaine, or ecgonine, as well as certain related plant material. 21 U.S.C. 802(17). This definition includes buprenorphine, a narcotic drug that has been approved by the FDA for maintenance and detoxification treatment of opioid use disorder.

[10] *Proposed* 21 CFR 1306.31(e)(1).

[11] 21 U.S.C. 802(29).

[12] 21 U.S.C. 802(30).

[13] *Proposed* 21 CFR 1306.31(c)(2).

[14] *Proposed* 21 CFR 1300.04(k), 1306.31(d).

system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822. ''Dispense'' in the context of this rulemaking means to deliver a controlled substance to an ultimate user, which includes the prescribing of a controlled substance.[15] The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA.[16]

The Ryan Haight Act amended the CSA by, among other things, adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. The Ryan Haight Act applies only in limited circumstances where the prescribing practitioner wishes to prescribe controlled medications via the practice of telemedicine and has not otherwise conducted an in-person medical evaluation prior to the issuance of the prescription. As described below, the Ryan Haight Act and DEA's implementing regulations do not apply to other forms of telemedicine, telehealth, or telepsychiatry that are not otherwise defined in the CSA.

As indicated above, in 21 U.S.C. 829(e), the Ryan Haight Act generally requires an in-person medical evaluation prior to the prescription of controlled substances. Section 829(e), however, also provides an exception to this in-person medical evaluation requirement where the practitioner is ''engaged in the practice of telemedicine'' [17] within the meaning of the Ryan Haight Act (21 U.S.C. 802(54)). To fall within this definition of the ''practice of telemedicine,'' the practice first must be ''in accordance with applicable Federal and State laws'' and use ''a telecommunications system referred to in [42 U.S.C. 1395m(m)].'' [18] Title 42 U.S.C. 1395m(m) references, but does not define, such telecommunications systems. The Centers for Medicare & Medicaid Services (''CMS''), however, has promulgated regulations for the Medicare program implementing those provisions, and those regulations do define ''interactive telecommunications system.'' In particular, 42 CFR 410.78(a)(3) states: ''Interactive telecommunications system means, except as otherwise provided in this paragraph, multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. For services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient in their home, interactive telecommunications may include two-way, real-time audio-only communication technology if the distant site physician or practitioner is technically capable to use an interactive telecommunications system as defined in the previous sentence, but the patient is not capable of, or does not consent to, the use of video technology.'' [19]

The CSA and DEA's regulations only define the ''practice of telemedicine'' for the purpose of establishing obligations under the CSA and DEA regulations. DEA is not attempting to define what constitutes appropriate telemedicine in other contexts. Thus, the proposed rule would not determine when medications that are not controlled may be appropriately prescribed via telemedicine or the nature of appropriate remote medical treatment more generally. Moreover, as noted, this proposed rule would not create any additional regulatory requirements for other categories of telemedicine authorized by the CSA under 21 U.S.C. 802(54)(A)–(F). Rather, it would create additional circumstances under which the use of telemedicine to prescribe controlled substances is authorized by the CSA.

Again, in the foregoing and other circumstances encompassed by the Ryan Haight Act's definition of the ''practice of telemedicine,'' the Act contemplates that the practitioner will be permitted to prescribe controlled substances by means of the internet despite not having conducted an in-person medical evaluation when certain safeguards are in place to ensure that the practitioner who is engaged in the practice of telemedicine is able to conduct or participate in a *bona fide* medical evaluation of the patient at the remote location, and is otherwise prescribing for a legitimate medical purpose while acting in the usual course of professional practice.

Accordingly, as set forth in 21 U.S.C. 802(54), the Ryan Haight Act's definition of the ''practice of telemedicine'' includes seven distinct categories of telemedicine that Congress determined were appropriate to allow for the prescribing of controlled substances despite the practitioner never having evaluated the patient in person.[20] For example, to fall under the first category of the ''practice of telemedicine,'' the patient must be physically located in a DEA-registered hospital or clinic, and the remote prescribing practitioner generally must be properly registered with DEA in the State in which the patient is located.[21] To fall under the second category, the patient generally must be being treated by, and in the physical presence of, a practitioner who is registered with DEA in the State in which the patient is located.[22]

The definition of the ''practice of telemedicine'' also includes as one of its seven categories a practice ''being conducted under any other circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.'' [23] Pursuant to this authority, DEA and HHS are hereby proposing a rule specifying the circumstances under which practitioners may prescribe controlled substances to patients whom the practitioner has never evaluated in person. This rulemaking would not impose any new requirements on practitioners authorized to practice telemedicine under other statutory exceptions in 21 U.S.C. 802(54), such as Indian Health Service (''IHS'') and Tribal practitioners, who are authorized to engage in the practice of telemedicine under a different statutory paragraph,

[15] 21 U.S.C 802(10).

[16] 21 U.S.C. 871(b), 958(f).

[17] *Id.* 829(e)(3)(A).

[18] *Id.* 802(54).

[19] *See infra* for discussion of the use of audio-only technology in telemedicine under this proposed rule.

[20] The fifth such category contemplates the prescription of controlled substances via telemedicine encounters conducted by practitioners to whom the DEA Administrator has issued ''special registration[s].'' *See* 21 U.S.C. 802(54)(E). In the SUPPORT for Patients and Communities Act (SUPPORT Act), signed into law on October 24, 2018, Congress required DEA to promulgate regulations concerning such special registrations. *See id.* 831(h)(2). This instance of rulemaking, which sets forth circumstances under which telemedicine encounters may result in the prescription of controlled substances without an in-person evaluation and also provides safeguards for such prescriptions, is consistent with, and fulfills, DEA's obligations under both the Ryan Haight Act and the SUPPORT Act.

[21] *Id.* 802(54)(A). If practitioners are exempted from registration in all States under DEA regulations or are employees or contractors of the VA and meet certain conditions, they do not have to be registered.

[22] *Id.* 802(54)(B). If practitioners are exempted from registration in all States under DEA regulations or are employees or contractors of the VA and meet certain conditions, they do not have to be registered.

[23] *Id.* 802(54)(G).

802(54)(C). The proposed changes to DEA's regulations herein are consistent ''with effective controls against diversion and otherwise consistent with the public health and safety'' pursuant to 21 U.S.C. 802(54)(G).

DEA is proposing these regulatory changes in concert with HHS, and HHS was consulted in the creation of these regulatory provisions and concurs with this proposed rulemaking. HHS also has advised DEA that no additional rulemaking by HHS is necessary as it pertains to the promulgations of these provisions pursuant to 21 U.S.C. 802(54)(G).

III. Section-by-Section Discussion of Proposed Rule

This proposed rule describes the circumstances under which, pursuant to 21 U.S.C. 802(54)(G), a practitioner may prescribe controlled substances to patients whom the practitioner has not evaluated in person.

A. Part 1300: Definitions

In section 21 CFR 1300.04, DEA is proposing to add definitions for the following terms: practice of telemedicine; qualifying telemedicine referral; telemedicine encounter; telemedicine prescription; and telemedicine relationship established during the COVID–19 public health emergency. In addition, DEA proposes to amend its regulations to clarify one aspect of the definition of the practice of telemedicine, and to remove an expired paragraph that provided a temporary definition of the practice of telemedicine.

DEA proposes to amend its regulatory definition of the term ''practice of telemedicine'' to better explain, but not alter, its requirements. The current regulatory definition, 21 CFR 1300.04(i), follows the Ryan Haight Act's statutory definition, 21 U.S.C. 802(54), by requiring that the practice of telemedicine take place ''using a telecommunications system referred to in section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)).'' As noted above, 42 U.S.C. 1395m(m) references, but does not define, such telecommunications systems. CMS, however, has promulgated regulations for the Medicare program implementing those provisions that define ''interactive telecommunications system,'' 42 CFR 410.78(a)(3), and it is to this CMS definition that the Ryan Haight Act and DEA regulatory definitions of the ''practice of telemedicine'' ultimately refer.

The proposed rule would revise the DEA regulatory definition of ''practice of telemedicine'' [24] in accordance with this CMS regulation to require that telemedicine take place ''using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3).'' This would not be a substantive change to DEA's regulations, but merely a clarification of the existing requirements—updating the language in 21 CFR 1300.04 to save readers from having to cross-reference 42 U.S.C. 1395m(m) (and then ascertain what CMS regulations implement it) to determine the nature of the telecommunications systems that can be used to engage in the practice of telemedicine under DEA regulations.

That said, CMS recently revised 42 CFR 410.78(a)(3),[25] and some explanation of revised § 410.78(a)(3)—and its implications for this proposed rule—may be useful. Previously, § 410.78(a)(3) had limited an ''interactive telecommunications system'' to ''multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner.'' Revised § 410.78(a)(3) retains this requirement of both audio and video real-time communication between the patient and the distant practitioner in most circumstances: as the CMS rule revising § 410.78(a)(3) stated, ''[T]wo-way, audio/video communications technology is the appropriate, general standard for telehealth services . . . .'' [26]

CMS's revised definition of ''interactive telecommunications systems,'' however, now also includes two-way, real-time *audio-only* communication technology under certain limited circumstances, limitations that are designed to maintain audio-video equipment as the general standard and only authorize audio-only equipment when both necessary and appropriate. First, to allow the use of audio-only equipment, the medical services at issue must be ''furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder.'' CMS recognized that, for many mental health services, visualization between the patient and clinician may be less critical to provision of the service: ''[M]ental health services are different from other services because they principally involve verbal exchanges between patient and practitioner.'' [27]

CMS also responded to comments requesting that audio-only technology be permitted for a broader scope of Medicare telehealth services. CMS distinguished ''services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder'' from other services, and specified that the scope of the audio-only policy is limited to mental health disorders.[28] CMS also acknowledged that ''[T]here may be particular instances where visual cues may help a practitioner's ability to assess and treat patients with mental health disorders, especially where opioids or mental health medications are involved . . . .'' [29]

Second, to allow the use of audio-only equipment, the mental health services must be provided ''to a patient in their home.'' CMS reasoned that other sites at which a patient generally receives telehealth services are ''medical settings that are far more likely to have access to reliable broadband internet service. When a patient is located at one of these . . . sites, access to care is far less likely to be limited by access to broadband that facilitates a video connection. In contrast, access to broadband, devices, and user expertise is less likely to be available at a patient's home.'' [30] CMS, however, adopted a flexible understanding of ''home'': ''[O]ur definition of home can include temporary lodging such as hotels and homeless shelters as well as locations a short distance from the [patient's] home'' (if the patient, ''for privacy or other personal reasons, chooses to travel a short distance ways from the exact home location during a telehealth service . . . .'').[31]

Third, to allow the use of audio-only equipment, the distant site physician or practitioner must be ''technically capable'' of meeting the usual two-way, audio-video interactive communication standard. And, relatedly, the patient must ''not [be] capable of, or . . . not consent to, the use of video technology.'' In other words, ''because it is generally appropriate to require the use of two-way, real-time audio/video communications technology,'' [32] the distant practitioner engaging in telehealth must make the option of

[24] *Proposed* 21 CFR 1300.04(j).

[25] Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; and Provider and Supplier Prepayment and Post-Payment Medical Review Requirements (''CMS Rule''), 86 FR 64996, 65666 (Nov. 19, 2021).

[26] *Id.* at 65060.

[27] *Id.* at 65061.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 65060.

[31] *Id.* at 65059.

[32] *Id.* at 65062.

audio-visual communication available to the patient. The audio-only option may only be used if the patient ''is unable to use, does not wish to use, or does not have access to two-way, audio/video technology.'' [33]

Because the proposed rule's definitions of ''practice of telemedicine'' and ''telemedicine encounter'' [34] are linked to 42 CFR 410.78(a)(3)'s definition of ''interactive telecommunications system,'' they would also incorporate that definition's requirements. Accordingly, under most circumstances, a remote practitioner would have to be using both audio and video equipment permitting two-way, real-time interactive communication with a patient to be part of a ''telemedicine encounter'' in the course of the ''practice of telemedicine.'' If that practitioner, however, met all of § 410.78(a)(3)'s various requirements for using audio-only equipment (mental health services, etc.), then that practitioner could engage in the ''practice of telemedicine'' and conduct ''telemedicine encounters'' as defined in the proposed rule using audio-only equipment—so long as that practitioner also complied with the proposed rule's other requirements and doing so was medically appropriate and also complied with relevant State and Federal law.

The current regulatory definition of the ''practice of telemedicine'' requires that it be conducted ''in accordance with applicable Federal and State laws.'' [35]

Proposed paragraph (k) would define what constitutes a ''qualifying telemedicine referral'' for the purposes of this rulemaking. This definition would clarify the nature of the medical evaluation relationship that is required for the referral to enable the prescribing practitioner to issue prescriptions in excess of the 30-day limit as described in proposed § 1306.31(c)(2). This definition would require the referring practitioner to have conducted at least one medical evaluation of the patient in the physical presence of the referring practitioner, without regard to whether portions of the evaluation are conducted by other practitioners. This means that if multiple practitioners were physically present during the medical evaluation, they would all have the ability to issue a qualifying telemedicine referral under this section as long as they otherwise complied with DEA regulations. Any other referrals, such as those predicated on a telemedicine visit exclusively, would not constitute a qualifying telemedicine referral. Both the referring practitioner and the prescribing practitioner would be required to maintain records of the referral.

DEA proposes to add paragraph (n) to define the term ''telemedicine prescription'' as a prescription issued pursuant to § 1306.31 by a physician, or a ''mid-level practitioner'' as defined in 21 CFR 1300.01(b), engaging in the practice of telemedicine as defined in 21 CFR 1300.04(j).

DEA proposes to add paragraph (o) to add a definition of the term ''telemedicine relationship established during the COVID–19 public health emergency.'' Such a relationship exists if the practitioner has not conducted an in-person medical evaluation of the patient and has prescribed one or more controlled medications based on telemedicine encounters during the nationwide public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, as a result of the Coronavirus Disease 2019 and pursuant to the designation pursuant to that public health emergency on March 16, 2020, by the Secretary of Health and Human Services, with concurrence of the Acting DEA Administrator, that the telemedicine allowance under section 802(54)(D) applies to all schedule II–V controlled substances in all areas of the United States.[36] Other proposed provisions, discussed in detail below, would use this defined term to facilitate a six-month transition of doctor-patient relationships from the use of telehealth prescribing flexibilities established during the COVID–19 public health emergency to the use of the prescribing authority set forth in this proposed rule.

Finally, DEA proposes a technical amendment to remove from its regulations the ''[t]emporary definition of the practice of telemedicine'' found at 21 CFR 1300.04(j).

B. Part 1304: Records of Registrants

As the Ryan Haight Act recognized, the remote prescribing of controlled medications through the internet to patients who have not been seen in person by the prescriber presents a heightened risk of diversion. Thus, DEA is proposing to amend 21 CFR part 1304 to impose certain additional recordkeeping requirements for controlled substance prescriptions issued pursuant to telemedicine encounters.[37] These proposed requirements would significantly enhance DEA's ability to both detect and investigate the potential misuse of telemedicine to prescribe controlled substances for other than legitimate medical purposes.

In particular, proposed § 1304.03(i) would require a practitioner to maintain a written or electronic log for each prescription issued pursuant to a telemedicine encounter indicating the date the prescription was issued; the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; the address at which the practitioner, and the city and State in which the patient, is located during the telemedicine encounter; if issued through a qualifying telemedicine referral, the name and National Provider Identifier (''NPI'') of the referring practitioner, a copy of the referral and any communications shared pursuant to § 1306.31(d)(3)(i)–(iii); and all efforts to comply to access the PDMP system (and, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database). Proposed § 1304.03(j) would require practitioners to maintain copies of all qualifying telemedicine referrals they issue.

Proposed § 1304.03(k) would set requirements for maintaining records related to medical evaluations conducted by a prescribing practitioner with the patient and another DEA practitioner physically together at the other end of an audio-video link pursuant to § 1306.31(d)(2). Paragraph (1) would require an individual practitioner who participates in such a medical evaluation as the prescribing practitioner to maintain, for each such medical evaluation, the data and time of

[33] *Id.* at 65060.

[34] *Proposed* 21 CFR 1300.04().

[35] 21 CFR 1300.04(i). The CSA and DEA's regulations only define the ''practice of telemedicine'' for their own purposes. DEA is not attempting to define what constitutes appropriate telemedicine in other contexts. Thus, the proposed rule would not determine when substances that are not controlled may be appropriately prescribed via telemedicine or the nature of appropriate remote medical treatment more generally. Moreover, the proposed rule would not create any additional regulatory requirements for the other categories of telemedicine authorized by the CSA under 21 U.S.C. 802(54).

[36] *See* Xavier Becerra, Renewal of Determination That a Public Health Emergency Exists; William T. McDermott, *DEA Dear Registrant letter,* Drug Enforcement Administration (March 25, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-018)(DEA067)%20DEA%20state%20reciprocity%20(final)(Signed).pdf; see also* Thomas W. Prevoznik, *DEA Dear Registrant letter,* Drug Enforcement Administration (March 31, 2020), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf.*

[37] DEA notes that practitioners who are authorized to engage in the practice of telemedicine under other statutory authority in 21 U.S.C. 802(54), such as IHS practitioners authorized under 21 U.S.C. 802(54)(C), would not be subject to these proposed additional recordkeeping requirements.

the evaluation; the NPI of the DEA-registered healthcare worker physically present with the patient; the address at which the prescribing practitioner is located during the telemedicine encounter; and the address at which the DEA-registered healthcare worker is physically present with the patient during the medical evaluation. Likewise, paragraph (2) requires an individual practitioner who participates in such a medical evaluation as the DEA-registered healthcare worker physically present with the patient to maintain, for each such medical evaluation, the data and time of the evaluation; the address at which the prescribing practitioner is located during the telemedicine encounter; the NPI of the prescribing practitioner; and the address at which the DEA-registered healthcare worker is physically present with the patient during the medical evaluation.

Proposed 1304.04(i) would require all such records to be maintained at the registered location of the practitioner's 21 CFR 1301.13(e)(1)(iv) dispensing registration. Put differently, a practitioner using telemedicine to prescribe controlled medications may operate out of multiple locations. Thus, to avoid any confusion and ensure that DEA investigators are able to locate the records when necessary, proposed § 1304.04(i) would specify that the required records must be maintained at the registered location of the practitioner's registration under 21 CFR 1301.13(e)(1)(iv) in digital or paper form that is readily accessible.

If DEA instead were to require records to be maintained in the State(s) where telemedicine patients are located, practitioners could theoretically have to maintain telemedicine records in over 50 different locations (if they had a nationwide practice), including states in which they may not retain a physical office location. This would be burdensome for both the practitioner and DEA investigators. In particular, the consolidation of the records under this provision is necessary for DEA investigators because the detection of patterns of diversion is often contingent upon looking comprehensively at a practitioner's prescribing habits and recordkeeping. This process would become impracticable if investigators had to obtain records from 50 different locations across the country, resulting in significant administrative waste. Ensuring ready access to this information in a consolidated manner in a central location during investigations would facilitate DEA's ability to detect patterns of potential illegitimate prescribing and thus enhance its ability to prevent further diversion of controlled medications. Practically, DEA does not anticipate that the consolidation of the records would be overly burdensome for practitioners as the majority of practitioners now maintain electronic records.

Requiring this recordkeeping would also serve to reinforce the obligation of practitioners who practice telemedicine to prescribe within the limited circumstances set forth in the proposed rule. Moreover, medical records that include the name of any DEA-registered healthcare worker in the physical presence of the patient during a telemedicine encounter would be an important tool in subsequent investigations as that information is often not otherwise recorded by the prescribing practitioner. Requiring the NPI would ensure physically present DEA-registered healthcare workers are properly identified, as many States may have several practitioners with the same name. Investigations can often occur years after the telemedicine encounter, and these recordkeeping provisions would reduce the risk of investigators missing crucial information because of fading memories or faulty/incomplete records.

C. Part 1306: Prescriptions

DEA proposes to amend part 1306 by adding § 1306.05(i), which would require all telemedicine prescriptions issued pursuant to § 1306.31 to include on the face of the prescription, or within the prescription order if prescribed electronically, that the prescription was issued via a telemedicine encounter.

The proposed rule would also amend part 1306 by adding § 1306.31, which would provide a number of requirements that a practitioner would have to satisfy to issue a prescription for a controlled substance as a result of a telemedicine encounter. Consistent with the text of the Ryan Haight Act and other parts of the CSA, controlled substances only may be prescribed for legitimate medical purposes by practitioners acting in the usual course of professional practice. Proposed § 1306.31(a)(1) is one way the proposed rule fulfills that mandate.

First, proposed § 1306.31(a)(1) would make clear that telemedicine may only be used to issue a prescription if that prescription is issued pursuant to a telemedicine encounter and is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. As discussed above, the proposed rule would define ''telemedicine encounter'' as a communication between a practitioner and a patient using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3), while the practitioner is engaged in the practice of medicine as defined in proposed § 1300.04(j).[38] Thus, under proposed § 1306.31(a)(1), for a prescription to be issued to a patient using telemedicine, among other things, the prescription would need to arise out of a telemedicine communication directly between the prescribing practitioner and that patient.[39]

Proposed § 1306.31(a)(2) would require all practitioners who wish to engage in the practice of telemedicine to be located in a State, Territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico at the time the relevant telemedicine encounter occurs. In other words, a practitioner cannot use telemedicine to prescribe controlled medications while that practitioner is located outside the United States.

Proposed § 1306.31(a)(3)(i) would require that a practitioner using telemedicine to prescribe a controlled substance be authorized to prescribe that basic class of controlled substance under registrations in the State where the practitioner is located, as well as the State where the patient is located.

Proposed § 1306.31(a)(4), like proposed § 1306.05(i) described above, would require the practitioner to include on a prescription issued pursuant to a telemedicine encounter that the prescription has been issued based on a telemedicine encounter. Thus, when reviewing pharmacy prescription records, DEA investigators could readily distinguish prescriptions issued pursuant to telemedicine encounters from those issued using their dispensing registrations for non-telemedicine prescriptions—giving investigators greater ability to detect abusive patterns in the use of telemedicine.

As discussed above, and as stated in proposed § 1306.31(c)(1)(i), the proposed rule would only authorize practitioners to use telemedicine to prescribe non-narcotic controlled substances in schedules III–V. Excluding schedule II controlled substances and all narcotic controlled substances[40] is consistent with the limitations Congress placed on the use

[38] *Proposed* 1300.04(o).

[39] *Proposed* 1306.31(a)(6) also broadly requires that a practitioner comply with the requirements of State law when prescribing pursuant to a telemedicine encounter.

[40] As noted above, DEA is addressing the prescribing of certain narcotic substances via telemedicine for the treatment of opioid use disorder in a separate rulemaking.

of telemedicine. Congress directed DEA and HHS to authorize the use of telemedicine only when doing so is ''consistent with effective controls against diversion and otherwise consistent with the public health and safety'' 21 U.S.C. 802(54)(G), but permitted DEA and HHS to determine the precise circumstances that were most appropriate. Given the ongoing opioid epidemic at the time of publishing, DEA believes that allowing for the prescription of any schedule II substances or the general prescription of narcotic controlled substances [41] as a result of telemedicine encounters would pose too great a risk to the public health and safety. However, if the prescribing practitioner has received a qualifying telemedicine referral under proposed § 1300.04(k) for that patient from a referring practitioner who has conducted a medical evaluation as described in paragraph proposed § 1306.31(d)(3), the prescription may be issued for any controlled substance that they are otherwise authorized to prescribe under applicable laws and regulations.

Proposed § 1306.31(c)(2) would also combat diversion by requiring that the prescribing of controlled substances as a result of a telemedicine encounter be initially time-limited for each patient (unless conducted by VA practitioners). Practitioners could prescribe controlled medications to a patient using telemedicine only for a period of 30 days before a medical evaluation of the nature described below would be required, starting from the date of issuance of the first prescription pursuant to a telemedicine encounter. The prescribing practitioner would be permitted to issue multiple prescriptions for the patient, provided, however, that the prescriptions do not authorize the dispensing of more than a total quantity of a 30-day supply of the controlled medication. Once that prescribing period ends, if the patient does not receive a medical evaluation as described below, the practitioner would no longer be able to prescribe any controlled medication to that patient as a result of a telemedicine encounter until the medical evaluation has taken place.

To continue prescribing beyond the 30-day window, the prescribing practitioner would have to either see the patient for an in-person medical evaluation provided in § 1306.31(d)(1)—removing the prescription from the bounds of the Ryan Haight Act's telemedicine restrictions—or receive a medical evaluation under one of the schemes provided in § 1306.31(d)(2) and (d)(3). Under the scheme provided in (d)(2), the patient would not be in the physical presence of the prescribing practitioner, but the patient would have to be being treated by, and in the physical presence of, another DEA-registered practitioner. This other non-prescribing practitioner would have to be acting in the usual course of professional practice. Also, the prescribing practitioner, the DEA-registered practitioner on site with the patient, and the patient would have to participate in an audio-video conference simultaneously (*i.e.,* these individuals must participate in a two-way, simultaneous interactive communication with both audio and video for this medical evaluation even if audio-only communication had been authorized under the standard of 42 CFR 410.78(a)(3) for prior communications between the prescribing practitioner and the patient). Thus, even though the prescribing practitioner would not be conducting an in-person evaluation themselves, they could rely on the in-person evaluation of the on-site practitioner—and remotely observe this evaluation via video and audio—when determining whether to continue prescribing to the patient.

Alternatively, the requirement of a medical evaluation is satisfied when the prescribing practitioner receives a qualifying telemedicine referral from a DEA registered practitioner under § 1306.31(d)(3). Under this scheme, the patient must have received a face-to-face evaluation from a DEA registered practitioner, referred to as the referring practitioner. The referring practitioner may then issue a written qualifying telemedicine referral to the prescribing practitioner based on the diagnosis, evaluation, or treatment that was provided for the medical issue upon which the medical evaluation was predicated pursuant to paragraphs (i) and (iii). Moreover, under paragraph (ii), the referring practitioner must communicate the results of the medical evaluation which include any diagnosis, evaluation, or treatment to the prescribing practitioner, prior to the prescribing practitioner issuing a prescription. If the prescribing practitioner issues the prescription to the patient prior to receiving the information provided in (ii), this does not qualify as a medical evaluation for the purposes of § 1306.31(d) and the patient must receive a medical evaluation in the manner described in paragraph (d)(1) or (d)(2).

For example, the following scenarios illustrate procedurally how this qualifying telemedicine referral would operate:

Example 1

A patient travels to receive a medical evaluation in the presence of their family physician. The physically present practitioner conducts a medical evaluation and provides a diagnosis, an evaluation, or treatment to the patient. The physically present practitioner determines that the patient would benefit from specialized care provided by a practitioner across the country (prescribing practitioner). The physically present practitioner issues a written referral to the prescribing practitioner via an appropriately secured electronic communication, and includes in the communication the reason for the referral, a copy of the medical record, as well as a description of the diagnosis, evaluation, and treatment of the patient prior to the prescribing practitioner. The prescribing practitioner reviews this information, engages in a telemedicine encounter with the patient, and issues a prescription for a controlled medication to the patient.

Example 2

A patient who is insured with, and receives treatment from, a medical group (such as Kaiser Permanente) travels to a local medical office to receive a medical evaluation in the physical presence of a practitioner. The physically present practitioner conducts a medical evaluation and provides a diagnosis, an evaluation, or treatment to the patient. The physically present practitioner determines that the patient would benefit from specialized care provided by a practitioner in the same medical group (prescribing practitioner). The physically present practitioner issues a written referral to the prescribing practitioner via an appropriately secured electronic communication, and includes in the communication the reason for the referral, a copy of or link to the medical record, as well as a description of the diagnosis, evaluation, and treatment of the patient prior to the prescribing practitioner. The prescribing practitioner reviews this information, engages in a telemedicine encounter with the patient, and issues a prescription for a controlled medication to the patient.

In both examples, the physically present practitioner issued a qualifying telemedicine referral to the prescribing

[41] As noted above, DEA is addressing the prescribing of certain narcotic substances via telemedicine for the treatment of opioid use disorder in a separate rulemaking.

practitioner. The physically present practitioners issued a written referral, based on the medical evaluation that was conducted by the physically present practitioner, and shared all pertinent medical information as required under proposed § 1306.31(d)(3) with the prescribing practitioner. The prescription issued by the prescribing practitioner may be for any controlled medication that they are otherwise authorized to prescribe under applicable laws and regulations under proposed § 1306.31(c)(1). These examples are not intended to be exhaustive, and represent only some of the possible scenarios upon which a qualifying telemedicine referral may be issued.

Once a medical evaluation meeting the specified criteria is performed, the proposed rule would allow a practitioner to continue prescribing a controlled medication to a patient without additional evaluations, so long as doing so was consistent with legitimate medical purposes and a subsequent evaluation was not required by law.

Proposed paragraph (e) would require practitioners to review available information about past prescriptions to a particular patient. Proposed paragraph (e)(1) would require the practitioner, if employed by the Department of Veterans Affairs, to review the Department of Veterans Affairs' internal prescription database for data regarding any controlled medication prescriptions issued to the patient in the last year, or, if less than a year of data is available, in the entire available period. Proposed paragraph (e)(1) would require all practitioners prescribing pursuant to § 1306.31 to review the PDMP data for the State in which the patient is located, where available, for the last year. PDMPs have proven to be an invaluable tool in preventing diversion, allowing practitioners to identity patients whose prescription history suggests that they are seeking controlled medications for other than legitimate medical needs—either because they misuse controlled medications or may be selling them to others. Given the heightened risk of diversion in the telemedicine context, DEA believes it is appropriate to require practitioners to review PDMP data and, for VA practitioners, the VA's own centralized health information system, before issuing a telemedicine prescription.

Proposed paragraph (e)(2)(i) would require, in those circumstances where the PDMP system is non-operational, practitioners to limit their prescriptions to patients to no more than a 7-day supply until they are able to access the PDMP system again. This limit applies until the practitioners are able to access the PDMP system, complete their review of the patient's prior prescription history, and verify the nature of prescriptions when applicable. Paragraph (e)(2)(ii) would require the practitioner to gain access to the PDMP system and conduct appropriate reviews within 7 days of the telemedicine encounter, and paragraph (e)(2)(iii) would require the practitioner to record the attempts to access the PDMP and (if applicable) the Department of Veterans Affairs internal prescription database pursuant to § 1304.03(i). If the practitioner failed to obtain the PDMP (or, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database) data, the dates and times that the practitioner attempted to gain access, the reason why the practitioner was unable to gain access, and any follow-up attempts made to gain access to the system. The 7-day prescription can be refilled upon successful review of the PDMP by the practitioner, as long as the prescriptions together do not exceed a 30-day supply.

If the practitioner otherwise completes their review of the PDMP system pursuant to paragraph (e)(2)(ii), or is otherwise able to comply with all relevant requirements in paragraph (e)(1), proposed paragraph (e)(3) would authorize practitioners to prescribe ''no more than a 30-day supply across all such prescriptions'' until the practitioner has conducted the required medical evaluation. Put another way, this provision would allow the doctor to provide up to a thirty-day supply in any combination of prescriptions and prohibits the doctor from going beyond that until the medical evaluation is conducted. This supply may include dosages that are titrated up or down depending on the patient's response to the medication and the practitioner's medical judgment, however, it may not exceed a supply sufficient to treat the patient for more than 30 days.

If the prescribing practitioner does not conduct a medical evaluation as described in proposed paragraphs (d)(1) or (d)(2) within a period of 30 calendar days, the practitioner would not be authorized to issue any subsequent prescriptions to that patient under proposed paragraph (f). This requirement would not apply to a practitioner who has a telemedicine relationship established during the COVID–19 public health emergency with the patient, as defined in § 1300.04(g), or to a practitioner employed by the Department of Veterans Affairs when prescribing to a patient of the Department of Veterans Affairs health system.

Proposed § 1306.31(g) would require all prescriptions issued as a result of telemedicine encounters to be consistent with all other requirements of this part. This provision would clarify that unless otherwise specified, practitioners authorized to prescribe controlled substances in the manner described in this rulemaking would nevertheless be subject to the regulatory requirements imposed by § 1306.31 and DEA registrations generally.

D. Request for Comments

With respect to the proposed rule, DEA invites comments concerning whether any clarifications or other regulatory provisions are warranted to ensure appropriate access to care, consistent with effective controls against diversion and otherwise consistent with the public health and safety. To that end, DEA is requesting comments on whether the rule should limit the issuance of prescriptions for controlled medications to the FDA-approved indications contained in the FDA-approved labeling for those medications. DEA invites comments on the proposed practitioner recordkeeping obligations. Additionally, based on the available information, in order to balance benefits and risks to individual and public safety, DEA is proposing a 30-day maximum supply under proposed § 1306.31(c)(2) for the controlled substance being prescribed via telemedicine prior to an in-person evaluation being conducted. DEA seeks comment, including data from research and clinical practice, that provides evidence that an alternate maximum day supply would be more appropriate than the one proposed in this rulemaking. DEA also seeks comments about additional safeguards or flexibilities that should be considered with respect to this rule.

Moreover, DEA invites comments on whether the Notice of Proposed Rulemaking, entitled ''Expansion of Induction of Buprenorphine via Telemedicine Encounters'' (RIN 1117–AB78), published elsewhere in this issue of the **Federal Register**, should be combined with this rulemaking when publishing the Final Rule as both documents refer to prescribing via telemedicine pursuant to 21 U.S.C. 802(54)(G).

This rule is designed to ensure that patients do not experience lapses in care. It is also deigned to ensure continuity of care under the current telehealth flexibilities in place as a result of the COVID–19 public health emergency. The COVID–19 public

health emergency is set to expire on May 11, 2023. DEA and HHS have provided for a notice-and-comment period of 30 days so that they have an opportunity to fully review and respond to any submissions.

IV. Regulatory Analyses

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

This proposed rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review established in E.O. 12866. E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (''OMB''), as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined that it is a significant regulatory action, but not an economically significant regulatory action having an annual effect on the economy of $100 million or more, under E.O. 12866. Accordingly, this rule has been submitted to the OMB for review.

DEA expects that this proposed rule would result in a cost savings of $3,762,089 per year. Additionally, the proposed rule is estimated to decrease transfers to the federal government by $11,628 per year. Fees paid to the federal government are considered transfer payments and not costs.[42] The analysis of cost savings, costs, transfers, and benefits is provided below.

Regulatory Alternatives Considered

DEA considered four alternatives, including the selected alternative: (1) an alternative only allowing the practice of telemedicine pursuant to an application and issuance of a ''special registration'' allowing such practice; (2) an alternative only allowing the practice of telemedicine pursuant to a special registration allowing such practice and limiting special registration to the prescribing of non-narcotic controlled substances to patients located in rural areas, (3) an alternative only allowing the practice of telemedicine pursuant to a special registration allowing such practice but requiring patients to be located at a qualified originating site, and (4) the selected alternative.

First, DEA considered allowing the practice of telemedicine pursuant to an application and issuance of a ''special registration'' allowing such practice. Upon further consideration, this alternative was deemed potentially burdensome for both prospective telemedicine providers and patients. Therefore, DEA decided against this alternative.

Second, DEA considered placing an additional geographic limitation on the circumstances under which controlled substances can be prescribed pursuant to a special registration for telemedicine. Under this alternative, a telemedicine encounter that gives rise to the issuance of a prescription under a special registration for telemedicine would have to be with a patient in a rural location based on the CMS definition of ''rural area''[43] (unless the patient is being treated by the Department of Veterans Affairs (''VA'')). More specifically, under this alternative, prescriptions would have to be issued to patients who reside in such ''rural areas.'' Patients residing in rural areas were believed to face higher burdens when obtaining in-person medical evaluations and thus have a legitimate need for increased access to controlled medication prescriptions issued via telemedicine. If this alternative were implemented, the patients served would be limited to those residing in rural areas. However, upon further evaluation of the need for telemedicine and the risk of diversion, DEA decided not to propose this ''rural area'' requirement. DEA understands patients in non-rural areas can also be underserved and have a legitimate need for increased access to prescriptions issued via telemedicine. Therefore, DEA decided to include patients in non-rural areas in the proposed rulemaking.

Third, DEA considered requiring patients be located at a qualifying ''originating site'' during the relevant telemedicine encounter. Under this alternative, patients (except patients being treated by VA practitioners) would be required to be located at one of a defined set of ''originating sites'' when receiving treatment leading to a controlled substance prescription as a result of a telemedicine encounter. CMS regulations at 42 CFR 410.78(b)(3) list twelve types of locations described as ''originating sites'' for purposes of Medicare Part B payment. DEA considered including a subset of those locations as qualifying originating sites for the special registration for telemedicine. Specifically, this alternative would include the locations listed in section 410.78(b)(3)(i)–(ix): offices of physicians or practitioners,[44] critical access hospitals, rural health clinics, federally qualified health centers, hospitals, hospital-based or critical access hospital-based renal dialysis centers (including satellites), skilled nursing facilities, community mental health centers, and renal dialysis facilities.[45] The intent of this alternative was to expand the range of telemedicine treatment that practitioners may engage in under the CSA, while also mitigating,

[42] OMB Circular A–4.

[43] In its regulations, CMS defines a *rural area* as an area located outside an urban area, or a rural census tract within a Metropolitan Statistical Area as determined under the most recent version of the Goldsmith modification as determined by the Office of Rural Health Policy of the Health Resources and Services Administration. *See* 42 CFR 414.605.

[44] The term ''practitioner,'' as used in this section of CMS regulations, differs from the definition of that term given in the CSA, and includes the following: physicians, physician assistants, nurse practitioners, clinical nurse specialists, nurse-midwives, clinical psychologists, clinical social workers, registered dietitians or nutrition professionals, and certified registered nurse anesthetists. 42 CFR 410.78(b)(2). To be clear, under this alternative, these are persons whose offices would qualify as originating sites for a special registration for telemedicine, but not all of these persons would be eligible to obtain and treat patients under a special registration for telemedicine.

[45] Section 410.78 requires that in addition to qualifying as one of these types of facilities, the originating site must meet certain geographic requirements over and above the geographic restrictions that are part of the definition of some types of facilities. This alternative would not require that a facility meet these additional geographic requirements in order to qualify as an originating site under a special registration for telemedicine, but would require that it meet the restrictions imposed in the underlying definition of the facility. So, for example, to qualify as a rural health clinic and be an originating site for patients treated under a special registration for telemedicine, a facility would have to meet the requirements of 42 U.S.C. 1395x(aa)(2), but not the requirements of 21 CFR 410.78(b)(4).

to the extent practicable, the risk of diversion posed by this expansion in controlled substance prescribing. With this in mind, this alternative would stipulate that the originating site at which patients must be located during treatment must be a clinical setting, be capable of handling standard intake processing of patients, and have appropriate medical personnel available to provide support to the distant prescribing practitioner, as necessary. However, upon further consideration, this alternative was deemed too restrictive, with the potential of creating a substantial burden on prospective patients. Therefore, DEA decided against this alternative.

Finally, DEA is proposing the selected alternative, which would not limit prescriptions issued as a result of a telemedicine encounter to prescriptions issued pursuant to a special registration regime, to patients who reside in ''rural areas,'' or to patients located at a qualifying originating site. The selected (proposed) alternative is less restrictive and likely to benefit more patients. Below is a detailed analysis of the selected alternative.

Analysis of Costs, Cost Savings, Benefits, and Transfers

There are minimal costs and substantial cost savings, other benefits, and transfers associated with this proposed rulemaking. As discussed above, this proposed rule describes the circumstances under which, pursuant to 21 U.S.C. 802(54)(G), a practitioner may prescribe controlled substances to patients whom the practitioner has not evaluated in person. This rulemaking would not impose any new requirements on practitioners authorized to practice telemedicine under other statutory exceptions in 21 U.S.C. 802(54), such as IHS, who are authorized to engage in the practice of telemedicine under a different statutory paragraph, 802(54)(C).

Under this proposed rule, practitioners would be allowed to issue prescriptions via telemedicine for schedule III–V non-narcotic controlled medications to the extent otherwise authorized by their DEA registration(s).[46]

As also discussed earlier, the proposed rule specifies the circumstances under which practitioners may prescribe controlled substances, pursuant to 21 U.S.C. 802(54)(G), to patients whom the practitioner has never evaluated in person, including that:

- Such prescriptions be in accordance with applicable Federal and State laws; and
- Such practitioners possess an active DEA dispensing registration issued pursuant to 21 CFR 1301.13(e)(1)(iv) in the State in which the practitioner is located (unless exempted).

Consistent with effective controls against diversion and otherwise consistent with the public health and safety, the proposed rule also specifies requirements related to recordkeeping and prescriptions. DEA estimates that there would be no additional infrastructure cost for patients or providers associated with this proposed rule, as DEA has concluded that most patients and providers already possess or have ready access to a telecommunications system meeting the requirements of the proposed rule. In addition, there is potential for an added risk of diversion from more practitioners having the authority to prescribe schedule III–V non-narcotic controlled substances. An analysis of all costs is detailed below.

1. Recordkeeping

This proposed rule would require a practitioner to maintain a written or electronic log for each prescription issued pursuant to a telemedicine encounter indicating the date the prescription was issued; the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; the address at which the practitioner, and the city and State in which the patient, are located during the telemedicine encounter; if issued through a qualifying telemedicine referral, the name and NPI of the referring practitioner, a copy of the referral and any communications shared pursuant to § 1306.31(d)(3)(i)–(iii); and all efforts to comply to access the PDMP system (and, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database).

DEA believes that these recordkeeping requirements may result in additional recordkeeping costs; but, given that the recordkeeping required by proposed 21 CFR 1304.03(i) is not extensive and this information is expected to be readily available, DEA does not anticipate it imposes a major burden on registrants.

2. Prescriptions

First, this proposed rule would require all prescriptions issued pursuant to a telemedicine encounter to note on the face of any prescription, or within the prescription order if prescribed electronically, issued pursuant to § 1306.31 that the prescription was issued via a telemedicine encounter. DEA anticipates any added cost associated with this requirement would be minimal, as minimal additional time would be required to make this notation.

Second, as discussed above, this proposed rule would generally limit practitioners to use telemedicine to prescribe non-narcotic controlled substances in schedules III–V only for a period of 30 days, unless such a medical evaluation for the purposes of this section is conducted pursuant to § 1306.31 paragraph (d)(1), (d)(2), or (d)(3). As DEA is proposing to amend its regulations to specify circumstances under which practitioners may prescribe controlled substances, pursuant to 21 U.S.C. 802(54)(G), where there is no existing regulation, there is no cost associated with this provision.

Finally, this proposed rule would require all practitioners prescribing pursuant to § 1306.31 to review the PDMP data for the State in which the patient is located, where available, for the last year. DEA estimates many practitioners already check PDMP prior to issuing a prescription for a controlled substance for a variety of reasons, and therefore, any additional cost is minimal. However, DEA welcomes any comment on this estimate, including specific burden estimates, if any.

3. Risk of Diversion

This proposed rulemaking allows practitioners to issue prescriptions for schedule III–V non-narcotic controlled substances to the extent otherwise authorized by their DEA registration(s).[47]

Such substances are subject to diversion and misuse, and allowing practitioners an increased ability to prescribe these substances via telemedicine presents the potential for the increased diversion and misuse of these substances. DEA believes that the benefits of increased availability for treatment outweigh the dangers of a potential increase in diversion—so long as prescribers using telemedicine adhere to the safeguards inherent in the requirements of the proposed rule.

4. Other Potential Costs

DEA also examined the cost of technology for telemedicine, both capital investment and operational expenses, in order to use the proposed telemedicine authority. DEA believes

[46] As noted above, DEA is addressing the prescribing of certain narcotic substances via telemedicine for the treatment of opioid use disorder in a separate rulemaking.

[47] As noted above, DEA is addressing the prescribing of certain narcotic substances via telemedicine for the treatment of opioid use disorder in a separate rulemaking.

that these initial investments have already been made by the practitioners most likely to engage in telemedicine pursuant to 21 U.S.C. 802(54)(G), and that there would be no additional technology or infrastructure cost to these practitioners. For example, VA practitioners already make significant use of telehealth services under existing authorities. Thus, VA practitioners are already expected to have the necessary technology and broadband access in order to prescribe controlled medications utilizing telehealth services in a manner consistent with the proposed rule. Therefore, DEA believes that there are no additional technology or infrastructure costs associated with this proposed rulemaking because all stakeholders would be leveraging current resources.

5. Summary of Costs

In summary, DEA estimates any cost associated with this rule is minimal.

B. Cost Savings, Transfers, and Benefits

The following sections summarize the expected cost savings and change in transfers related to telemedicine, pursuant to 21 U.S.C. 802(54)(G), that are realized by both VA and non-VA practitioners.

1. Cost Savings for VA Practitioners

To quantify the expected cost savings, DEA used data provided by the VA regarding the number of VA health care professionals in FY2018 who have seen a patient via telehealth under existing telemedicine authorities, prescribed a controlled medication, and had not completed an in-person appointment with that patient. There were 21,046 encounters identified in FY2018 where a provider prescribed a schedule III–V controlled medication via telemedicine without having previously completed an in-person appointment under existing CSA telemedicine authorities.[48] These encounters were completed by 1,222 VA health care professionals. Because this proposed rule would authorize VA providers to prescribe schedule III–V non-narcotic controlled substances without requiring the veteran to be physically located in a VA clinic, these 21,046 appointments have the potential to be conducted in the veteran's home after promulgation of this rule. The VA provided DEA with further data on the various cost savings associated with conducting these 21,046 appointments via telehealth rather than in a VA clinic, including beneficiary travel reimbursement ($143,357); clinic staff, space, and equipment cost savings ($6,888,345).[49] The beneficiary travel reimbursement cost saving does not include the opportunity cost of the time required to travel to and from appointments at a clinic. DEA estimates this cost savings to be $492,476 annually.[50] DEA used these cost savings estimates to calculate the impact if 0–100% of those visits were conducted in the veteran's home, resulting in a cost savings of between $0 and $7,524,178 ($143,357 + $6,888,345 + $492,476) per year. DEA also considered whether or not there would be an increase in the number of patients that would be treated by VA practitioners pursuant to this proposed rule. As mentioned in the economic analysis accompanying the VA's 2018 telemedicine preemption rule,[51] when providers can use more of their appointment slots for telehealth care, it expands the accessibility of the provider's services without requiring additional clinical resources.[52] Telehealth visits are used in place of in-person visits but do not, in general, change the number of overall visits, supply, or demand. Because DEA does not have a basis to determine how many annual clinic appointments would transition to telehealth appointments after promulgation of this proposed rule, DEA chose to take the mid-point (the scenario in which 50% of the 21,046 clinic appointments become telehealth visits) of the cost savings estimated previously. Therefore, the total annual estimated cost savings is $3,762,089.

2. Transfers for VA Patients

Transfers borne by VA patients in the form of treatment co-pays are expected to be reduced. VA stated that patient co-pays would be reduced by $23,255 if the 21,046 appointments were conducted via telehealth rather than in VA clinics. Because DEA does not have a basis to determine how many annual clinic appointments would transition to telehealth appointments after promulgation of this proposed rule, DEA chose to take the mid-point (the scenario in which 50% of the 21,046 clinic appointments become telehealth visits), which results in a reduction of transfers from VA patients of $11,628.

3. Benefits of Increased Access to Telemedicine

Telemedicine has the potential to help address accessibility issues and improve access to care, including specialty care, for patients in remote and other underserved areas. More than 75 percent of all counties in the U.S. are classified as mental health shortage areas, and 50 percent do not have any mental health professionals.[53] The need to travel long distances to receive treatment is a common barrier to accessibility facing individuals in rural areas without reliable transportation options.[54] As of December 2018, there were 5,124 designated Mental Health—Health Professional Shortage Areas covering a total population of 115,383,074 people.[55] The greater range of telemedicine practice that would be possible under this proposed rule would allow practitioners to reach a greater number of patients, improving health care outcomes and reducing costs for patients throughout the country.

In addition to the benefits mentioned above, there are many benefits specifically for VA patients. A 2018 survey conducted by the VA indicated that about 14 percent of veterans with a need for mental health services self-reported living more than an hour from

[48] There is not a breakdown of whether the prescribed scheduled III–V controlled substance was a narcotic or non-narcotic. For the purposes of this analysis DEA assumes all 21,046 encounters forms the basis for cost savings.

[49] VA's Allocation Resource Center and Revenue Operations Business Information Office calculated these figures on behalf of DEA.

[50] DEA used hourly median wage data for All Occupations ($22.00) to represent the hourly opportunity cost of travel time for all patients. Bureau of Labor Statistics, *May 2021 National Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm* (last accessed January 7, 2023). Loaded for benefits, the hourly opportunity cost is $31.20 ($22.00 × 1.418). Bureau of Labor Statistics, *Employer Costs for Employee Compensation—September 2022, https://www.bls.gov/news.release/pdf/ecec.pdf* (last accessed January 7, 2023). Next, DEA estimated the miles travelled per appointment by first dividing the VA-provided travel reimbursement cost of $143,357 by the number of appointments (21,046), which results in a per-appointment travel reimbursement rate of $6.81. To convert the VA's per-appointment reimbursement rate into miles driven per appointment, $6.81 is then divided by the IRS medical mileage rate of $0.18 (*https://www.irs.gov/newsroom/standard-mileage-rates-for-2018-up-from-rates-for-2017*), resulting in 37.84 miles. DEA conservatively assumes that it would take the average patient 45 minutes (0.75 hours) to travel 37.84 miles, round-trip. Multiplying the per-hour opportunity cost of $31.20 by 0.75 results in an opportunity cost of $23.40 per appointment. This results in a total opportunity cost savings of $492,476 ($23.40 × 21,046) for patients.

[51] 83 FR 21897 (May 11, 2018).

[52] Department of Veterans Affairs, *Impact Analysis for RIN 2900–AQ06* (2018), *https://www.regulations.gov/document?D=VA-2017-VHA-0021-0083.*

[53] Substance Abuse and Mental Health Services Administration, *Rural Behavioral Health: Telehealth Challenges and Opportunities,* at 4 (2016), *https://store.samhsa.gov/system/files/sma16-4989.pdf.*

[54] *Id.*

[55] Health Resources and Services Administration, *Designated Health Professional Shortage Area Statistics, First Quarter of FY 2019 Designated HPSA Quarterly Summary* (2019), *https://ersrs.hrsa.gov/ReportServer?/HGDW_Reports/BCD_HPSA/BCD_HPSA_SCR50_Qtr_Smry_HTML&rc:Toolbar=false.*

the nearest VA facility.[56] Among all the VA users with a need for services, 10 percent reported they live more than one hour away from the nearest VA facility offering mental health services.[57] According to the survey, living a long distance from a VA facility with mental health services significantly decreased the odds of using VA mental health care over non-VA mental health care, suggesting that further expanding telemedicine options to rural veterans may improve access for those who see the distance to the nearest VA mental health facility as a barrier to choosing the VA for their care.[58] Moreover, rural veterans with mental health conditions are known to use VA services at a lower rate and to have a higher rate of unmet mental health needs than veterans living in urban communities.[59] Increasing access to care through telemedicine has the potential to address these issues.

4. Summary of Cost Savings and Transfers

In conclusion, DEA estimates that the annual cost savings of this proposed rule is $3,762,089, while annual transfer payments to the federal government are decreased by $11,628. It should be noted that this estimate of cost savings assumes that the practitioners who engage in telemedicine pursuant to 21 U.S.C. 802(54)(G) would adhere to the requirements of the proposed rule designed to reduce the risk of diversion. If such requirements were not followed, the risk of diversion would increase, and any resulting increase in diversion would drive up the societal costs associated with the misuse of controlled substances.

C. Summary of Economic Impact

As described above, DEA estimates the total annual cost savings of this proposed rule is $3,762,089. Additionally, transfers are estimated to decrease by $11,628 annually.

Executive Order 12988, Civil Justice Reform

The proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have substantial direct effects on the Tribes, on the relationship between the national government and the Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (''RFA''), has reviewed this proposed rule and by approving it certifies that it would not have a significant economic impact on a substantial number of small entities.

In accordance with the RFA, DEA evaluated the impact of this proposed rule on small entities. The proposed rule describes the circumstances under which, pursuant to 21 U.S.C. 802(54)(G), a practitioner may prescribe controlled substances to patients whom the practitioner has not evaluated in person.

A significant number of practitioners, physicians and MLPs, work in offices and institutions that meet the RFA's definition of small entities. To estimate the number of affected entities, DEA first determined the North American Industry Classification System (''NAICS'') codes that most closely represent businesses that employ practitioners that may engage in telemedicine pursuant to this regulation. Then, DEA researched economic data for those codes. The source of the economic data is the Small Business Administration (''SBA''), Office of Advocacy, and is based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses (''SUSB'').[60] The following business NAICS codes are estimated to represent businesses that employ the affected practitioners:

- 621112—Offices of Physicians, Mental Health Specialists
- 621420—Outpatient Mental Health and Substance Abuse Centers
- 622210—Psychiatric and Substance Abuse Hospitals

SUSB data contains the number of firms by size ranges for each of the NAICS codes. For the purposes of this analysis, the term ''firm'' as defined in the SUSB is used interchangeably with ''entity'' as defined in the RFA.

To estimate the number of affected entities that are small entities, DEA compared the SUSB data for the number of firms in various firm size ranges with SBA size standards for each of the representative NAICS codes. The SBA size standard is the firm size based on the number of employees or annual receipts depending on industry. The SBA size standards for NAICS codes 621112, 621420, and 622210 are annual receipts of $13.5 million, $19 million, and $47 million, respectively.

The firms in each size range below the SBA size standard are small firms. The number of firms below the SBA size standard was added to determine the total number of small firms in each NAICS code. DEA estimates that a total of 17,480 entities are affected by this proposed rule, of which 16,453 (94.1 percent) are small entities. The analysis is summarized in table 1 below.

[56] Department of Veterans Affairs, Z. Joan Wang et al., *2018 Survey of Veteran Enrollees' Health and Use of Health Care* (2019), *https://www.va.gov/healthpolicyplanning/soe2018/2018enrolleedatafindingsreport_9january2019final508compliant.pdf.*

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] SUSB's employer data contain the number of firms, number of establishments, employment, and annual payroll for employment size of firm categories by location and industry. A ''firm'' is defined as an aggregation of all establishments owned by a parent company (within a geographic location and/or industry) with some annual payroll. Table of size standards, effective December 19, 2022. *https://www.sba.gov/document/support-table-size-standards* (last visited January 7, 2023). SUSB, 2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipts Size. *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* The data table is available at *https://www2.census.gov/programs-surveys/susb/tables/2017/us_6digitnaics_rcptsize_2017.xlsx* (last visited January 7, 2023).

TABLE 1—NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES

NAICS Code	Number of firms	SBA size standard ($)	Number of small firms
621112—Offices of Physicians, Mental Health Specialists	10,561	13,500,000	10,400
621420—Outpatient Mental Health and Substance Abuse Centers	6,523	19,000,000	5,849
622210—Psychiatric and Substance Abuse Hospitals	396	47,000,000	204
Total	17,480		16,453
Percent of Total			94.1

While this proposed rule may affect a substantial number of small entities in the affected industries, as discussed in the E.O. 12866 section above, DEA estimates that the cost of this rule is minimal for all affected entities, including small entities. Therefore, DEA concludes the proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The estimated annual impact of this proposed rule is minimal. Thus, DEA has determined in accordance with the Unfunded Mandates Reform Act of 1995 (''UMRA'') (2 U.S.C. 1501 *et seq.*) that this action would not result in any federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act of 1995

This proposed rule would impose a new collection of information under the Paperwork Reduction Act (''PRA''), 44 U.S.C 3501–3521. DEA has identified the following collection(s) of information related to this proposed rule. The collections of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Copies of existing information collections approved by OMB may be obtained at *https://www.reginfo.gov/public/do/PRAMain.*

A. Collections of Information Associated With the Proposed Rule

1. *Title:* Reporting Requirements for Practitioners Conducting Telemedicine.

OMB control number: 1117–NEW.

Form numbers: N/A.

DEA is proposing this rule to describe the circumstances under which, pursuant to 21 U.S.C. 802(54)(G), a practitioner may prescribe controlled substances to patients whom the practitioner has not evaluated in person.

DEA estimates the following number of respondents and burden associated with this collection of information:

- *Number of respondents:* 31,451.
- *Frequency of response:* 12 per respondent per year.
- *Number of responses:* 377,412.
- *Burden per response:* 0.25 hours (rounded).
- *Total annual hour burden:* 94,353.

B. Request for Comments Regarding the Proposed Collections of Information

Written comments and suggestions from the public and affected entities concerning the proposed collections of information are encouraged. DEA solicits comment on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the functions of DEA, including whether the information shall have practical utility.
- The accuracy of DEA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Recommendations to enhance the quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comments refer to RIN 1117–AB40/Docket No. DEA–407. All comments must be submitted to OMB on or before March 31, 2023. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

If you need a copy of the proposed information collection instrument(s) with instructions or additional information, please contact the Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1306

Administrative practice and procedure, Drug traffic control, Prescription drugs, Reporting and recordkeeping requirements.

For the reasons set out above, the Drug Enforcement Administration proposes to amend 21 CFR parts 1300, 1304, and 1306 as follows:

PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 829, 871(b), 951, 958(f).

■ 2. Amend § 1300.04 by:

■ a. Revising the introductory text of paragraph (i).

■ b. Removing and reserving paragraph (j).

■ c. Redesignating paragraphs (k) and (l), as paragraphs (l) and (p).

■ d. Adding paragraphs (k), (m), (n), and (o).

The revisions and additions read as follows:

§ 1300.04 Definitions relating to the dispensing of controlled substances by means of the internet.

* * * * *

(i) The term *practice of telemedicine* means the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is

communicating with the patient, or health care professional who is treating the patient, using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3), which practice falls within a category listed in paragraphs (i)(1) through (7) of this section:

* * * * *

(j) [Reserved]

(k) A *qualifying telemedicine referral* means a referral to a practitioner that is predicated on a medical relationship that exists between a referring practitioner and a patient where the referring practitioner has conducted at least one medical evaluation in the physical presence of the patient, without regard to whether portions of the evaluation are conducted by other practitioners, and has made the referral for a legitimate medical purpose in the ordinary course of their professional practice. A qualifying telemedicine referral must note the name and National Provider Identifier of the practitioner to whom the patient is being referred.

* * * * *

(m) The term *telemedicine encounter* means a communication between a practitioner and a patient using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3).

(n) The term *telemedicine prescription* means a prescription issued pursuant to § 1306.31 by a physician, or a ''mid-level practitioner'' as defined in § 1300.01(b), engaging in the practice of telemedicine as defined in § 1300.04(j).

(o) An individual practitioner and a patient have a *telemedicine relationship established during the COVID–19 public health emergency* if:

(1) The practitioner has not conducted an in-person medical evaluation of the patient;

(2) The practitioner has prescribed one or more controlled substances based on telemedicine encounters during the nationwide public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, as a result of the Coronavirus Disease 2019 and pursuant to the designation pursuant to that public health emergency on March 16, 2020, by the Secretary of Health and Human Services, with concurrence of the Acting DEA Administrator, that the telemedicine allowance under section 802(54)(D) applies to all schedule II–V controlled substances in all areas of the United States; and

(3) No more than 180 days have elapsed since [EFFECTIVE DATE OF RULE] or the end of the nationwide public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, as a result of the Coronavirus Disease 2019, whichever is later.

* * * * *

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

■ 9. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(e)–(g), and 965, unless otherwise noted.

■ 10. In § 1304.03, revise paragraph (c) and add new paragraphs (i), (j), and (k), to read as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(c) Except as provided in paragraph (i) of this section and § 1304.06, a registered individual practitioner is not required to keep records of controlled substances in Schedules II, III, IV, and V that are prescribed in the lawful course of professional practice, unless such substances are prescribed in the course of maintenance or detoxification treatment of an individual.

* * * * *

(i) An individual practitioner shall maintain, for each telemedicine prescription they issue, records indicating the date the prescription was issued; the full name and address of the patient; and the drug name, strength, dosage form, quantity prescribed, and directions for use; the address at which the practitioner, and the city and State in which the patient, are located during the telemedicine encounter; if issued a qualifying telemedicine referral, the name, and National Provider Identifier of the referring practitioner, a copy of the referral and any communications shared pursuant to § 1306.31(d)(3); and all efforts to comply to access the PDMP system (and, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database).

(j) An individual practitioner shall maintain copies of all qualifying telemedicine referrals, as defined in § 1300.04(k), that they issue.

(k)(1) An individual practitioner who participates in a medical evaluation conducted pursuant to § 1306.31(d)(2) as the prescribing practitioner shall maintain, for each such medical evaluation, the data and time of the evaluation; the National Provider Identifier (NPI) of the DEA-registered healthcare worker physically present with the patient; the address at which the prescribing practitioner is located during the telemedicine encounter; and the address at which the DEA-registered healthcare worker is physically present with the patient during the medical evaluation.

(2) An individual practitioner who participates in a medical evaluation conducted pursuant to § 1306.31(d)(2) as the DEA-registered healthcare worker physically present with the patient shall maintain, for each such medical evaluation, the data and time of the evaluation; the address at which the prescribing practitioner is located during the telemedicine encounter; the National Provider Identifier (NPI) of the prescribing practitioner; and the address at which the DEA-registered healthcare worker is physically present with the patient during the medical evaluation.

* * * * *

■ 11. In § 1304.04, add paragraph (i) to read as follows:

§ 1304.04 Maintenance of records and inventories.

* * * * *

(i)(1) An individual practitioner shall maintain all records related to telemedicine prescriptions and qualifying telemedicine referrals required by this part at the registered location on the certificate of registration issued pursuant to section 303(f) of the Act (21 U.S.C. 823(g)). If the practitioner holds more than one registration issued pursuant to section 303(f) of the Act (21 U.S.C. 823(g)), the practitioner shall designate the location on one such certificate of registration at which to maintain all such records. If the individual practitioner is exempt from registration to dispense controlled substances pursuant to 21 U.S.C. 822(d), the practitioner shall maintain all records related to telemedicine prescriptions and qualifying telemedicine referrals required by this part at the location where they maintain other records related to controlled substances.

(2) If a prescribing practitioner conducts an evaluation during which the patient is treated by, and in the physical presence of, a DEA-registered practitioner (other than the prescribing practitioner) pursuant to section 1306.31(d)(2), both the prescribing practitioner and the DEA-registered practitioner shall maintain records required by this part at the registered location on the practitioners' respective certificates of registration issued pursuant to section 303(f) of the Act (21 U.S.C. 823(g)).

* * * * *

PART 1306—PRESCRIPTIONS

■ 12. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b), unless otherwise noted.

■ 13. Amend § 1306.05 by adding paragraph (i), to read as follows.

§ 1306.05 Manner of issuance of prescriptions.

* * * * *

(i) In addition to the requirements of this section, the practitioner shall note on the face of any telemedicine prescription, or within the prescription order if prescribed electronically, that the prescription has been issued based on a telemedicine encounter.

■ 14. After § 1306.27, add an undesignated center header and § 1306.31 to read as follows:

* * * * *

Other Provisions

§ 1306.31 Circumstances under which the practice of telemedicine may be conducted pursuant to 21 U.S.C. 802(54)(G).

(a) An individual practitioner may issue telemedicine prescriptions if all of the following conditions are met:

(1) The telemedicine prescription is pursuant to a telemedicine encounter and is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

(2) At the time of the telemedicine encounter that gives rise to the issuance of the telemedicine prescription, the practitioner is located in a State, Territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

(3) The practitioner is:

(i) Authorized under their registration under 21 CFR 1301.13(e)(1)(iv) to prescribe the basic class of controlled substance specified on the prescription; or

(ii) Exempt from obtaining a registration to dispense controlled substances under 21 U.S.C. 822(d).

(4) The prescription includes the information required by § 1306.05.

(b) In addition to the conditions outlined in paragraph (a), practitioners are also subject to the limitations in paragraphs (c), (d), (e), and (f) of this section when prescribing controlled substances pursuant to this section.

(c) Characteristics of telemedicine prescriptions:

(1) A telemedicine prescription may only be for a:

(i) A schedule III, IV, or V non-narcotic controlled substance; or

(ii) Any controlled substance that the practitioner is otherwise authorized to prescribe, provided that one or more of the following criteria are met:

(A) The prescribing practitioner has received a qualifying telemedicine referral as defined in § 1300.04(k) for that patient from a referring practitioner who has conducted a medical evaluation as described in paragraph (d)(3) of this section;

(B) The prescribing practitioner is employed by the Department of Veterans Affairs and the prescription is issued for a patient of the Department of Veterans Affairs health system who has received an in-person medical evaluation from a practitioner who, at the time of the examination was employed by the Department of Veterans Affairs; or

(C) The prescribing practitioner has a telemedicine relationship established during the COVID–19 public health emergency with the patient, as defined in § 1300.04(o).

(2) The prescribing practitioner may issue multiple prescriptions for the patient, provided, however, that the prescriptions do not authorize the dispensing of more than a total quantity of a 30 day supply of the controlled substance. This 30-day limitation shall not apply to prescriptions issued by a practitioner who has a telemedicine relationship established during the COVID–19 public health emergency with the patient, as defined in § 1300.04(o), or to a practitioner employed by the Department of Veterans Affairs when prescribing to a patient of the Department of Veterans Affairs health system who has received an in-person medical evaluation from a practitioner who, at the time of the examination, was employed by the Department of Veterans Affairs. The prescribing practitioner may prescribe a supply in addition to the 30 day supply if a medical evaluation is conducted pursuant to paragraph (d)(1), (2), or (3) of this section.

(d) Such a medical evaluation for the purposes of this section may be one of the following:

(1) An evaluation during which the patient is treated by, and in the physical presence of, the prescribing practitioner;

(2) An evaluation during which:

(i) The patient is treated by, and in the physical presence of, a DEA-registered practitioner (other than the prescribing practitioner);

(ii) This practitioner in the physical presence of the patient is acting in the usual course of professional practice;

(iii) The evaluation is conducted in accordance with applicable State law; and

(iv) The remote prescribing practitioner, the patient, and the DEA-registered practitioner on site with the patient participate in a real-time, audio-video conference in which both the practitioners and the patient communicate simultaneously.

(3) An evaluation during which the patient is treated by, and in the physical presence of, an individual DEA registered practitioner, or individual practitioner exempt from registration under 21 U.S.C. 822(d), who:

(i) Issued a written qualifying telemedicine referral as defined in § 1300.04(k) for the patient to the prescribing practitioner;

(ii) Communicated the results of the evaluation by sharing the relevant information in the medical record which includes, at a minimum, the diagnosis, evaluation, and treatment of the patient prior to the prescribing practitioner issuing the prescription; and

(iii) Has issued the written referral based on the diagnosis, evaluation, or treatment that occurred as a result of the medical evaluation.

(e)(1) Prior to issuing the prescription, the practitioner, including a practitioner employed by the Department of Veterans Affairs, must review and consider the prescription drug monitoring program in the State where the patient is located (if the State has such a program) for data regarding any controlled substance prescriptions issued to the patient in the last year, or, if less than one year of data is available, in the entire available period. The practitioner, if employed by the Department of Veterans Affairs, must also review the Department of Veterans Affairs internal prescription database for data regarding any controlled substance prescriptions issued to the patient in the last year, or, if less than a year of data is available, in the entire available period.

(2) If the practitioner is unable to obtain the PDMP (or, if employed by the Department of Veterans Affairs, the Department of Veterans Affairs internal prescription database) data due to the PDMP (or Department of Veterans Affairs internal prescription database) system being non-operational or otherwise inaccessible as a result of a temporary technological or electrical failure, then:

(i) The practitioner may issue the prescription for no more than a 7-day supply;

(ii) The practitioner must obtain the PDMP (and, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database) data and conduct the review described in paragraph (e)(1) of this section within 7 days of the telemedicine encounter; and

(iii) The practitioner must record the attempts to obtain the PDMP and (if

applicable) the Department of Veterans Affairs internal prescription database data. If the practitioner fails to obtain the PDMP (or, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database) data as described in paragraph (e)(1) of this section, the dates and times that the practitioner attempted to gain access, the reason why the practitioner was unable to gain access, and any follow-up attempts made to gain access to the system.

(3) Upon completing the review described in paragraph (e)(1) of this section, the practitioner may issue prescriptions authorizing the dispensing of no more than a 30-day supply across all such prescriptions, unless otherwise exempted from the 30-day supply limitation.

(f) If the prescribing practitioner does not conduct a medical evaluation meeting the requirements of clause (d)(1), (2), or (3) of this section within a period of 30 calendar days of first issuing the prescription, the practitioner may not issue any subsequent telemedicine prescriptions to that patient until such a medical evaluation has been conducted. This restriction shall not apply to a practitioner who has a telemedicine relationship established during the COVID–19 public health emergency with the patient, as defined in § 1300.04(o), or to a practitioner employed by the Department of Veterans Affairs when prescribing to a patient of the Department of Veterans Affairs health system who has received an in-person medical evaluation from a practitioner who, at the time of the examination, was employed by the Department of Veterans Affairs.

(g) Except as provided in this section, telemedicine prescriptions must be consistent with all other requirements of this part.

Signing Authority

This document of the Drug Enforcement Administration was signed on February 24, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–04248 Filed 2–27–23; 2:30 pm]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1304, 1306

[Docket No. DEA–948]

RIN 1117–AB78

Expansion of Induction of Buprenorphine via Telemedicine Encounter

AGENCY: Drug Enforcement Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) is amending its regulations, in concert with the Department of Health and Human Services (HHS), to expand the circumstances under which individual practitioners are authorized to prescribe schedule III–V narcotic drugs or combinations of such drugs that have been approved for use in continuous medical treatment (also referred to as maintenance) or withdrawal management treatment (also referred to as detoxification)—via a telemedicine encounter, including an audio-only telemedicine encounter.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before March 31, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Management and Budget on or before March 31, 2023.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–948'' on all correspondence, including any attachments.

Electronic Comments: The Drug Enforcement Administration encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov/* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

Paper Comments: Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

Paperwork Reduction Act Comments: All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to RIN 1117–AB78/Docket No. DEA–948.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received, including attachments and other supporting materials, are considered part of the public record. They will be made available by DEA for public inspection online at *https://www.regulations.gov/.* The Freedom of Information Act applies to all comments received. Confidential information or personal identifying information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

Comments with confidential information, which should not be made available for public inspection, should be submitted as written/paper submissions. Two written/paper copies should be submitted. One copy will include the confidential information with a heading or cover sheet that states ''CONTAINS CONFIDENTIAL INFORMATION.'' DEA will review this copy, including the claimed

confidential information, in its consideration of comments. The second copy should have the claimed confidential information redacted/blacked out. DEA will make this copy available for public inspection online at *https://www.regulations.gov/.* Other information, such as name and contact information, that should not be made available, may be included on the cover sheet but not in the body of the comment, and must be clearly identified as ''confidential.'' Any information clearly identified as ''confidential'' will not be disclosed.

I. Legal Authority and Background

An estimated 107,477 fatal drug poisonings occurred between September 1, 2021 and August 31, 2022, the majority of which involved illegal synthetic drugs. DEA is doing everything in its power to safely expand access to treatment to prevent further drug poisoning deaths.

DEA implements and enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act, (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822. ''Dispense'' in the context of this rulemaking means to deliver a controlled substance to an ultimate user, which includes the prescribing of a controlled substance.[1] The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA.[2]

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (The Ryan Haight Act)[3] amended the CSA by, among other things, adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. While the Ryan Haight Act amended the CSA to generally require that the dispensing of controlled substances by means of the internet be predicated on a valid prescription involving at least one in-person medical evaluation, it also established seven distinct categories of telemedicine pursuant to which a practitioner may prescribe controlled substances for a patient despite never having evaluated that patient in person, provided that, among other things, such practice is in accordance with applicable Federal and State laws.[4] Notably, the Ryan Haight Act does not limit a practitioner's ability to prescribe controlled substances for a patient after there has been an in-person medical evaluation. In other words, the Ryan Haight Act applies only when a prescribing practitioner wishes to prescribe controlled substances via the practice of telemedicine and has not otherwise conducted an in-person medical evaluation prior to the issuance of the prescription. Furthermore, as described below, the Ryan Haight Act and DEA's implementing regulations do not apply to other forms of telemedicine, telehealth, or telepsychiatry that are not otherwise defined in the CSA.

The Ryan Haight Act is intended to address the grave threat to public health and safety caused by practitioners who prescribed controlled substances via the internet without establishing a valid practitioner-patient relationship through fundamental steps such as performing an in-person medical evaluation of a patient. Prior to the enactment of the Ryan Haight Act, the internet was being exploited to facilitate the unlawful distribution of legally manufactured controlled substances through rogue websites.[5] These rogue websites facilitated the misuse of prescribed controlled substances, such as hydrocodone and oxycodone by adolescents and others, and thereby increased the number of drug poisonings and other harmful consequences caused by the misuse of these substances.[6]

As indicated above, the Ryan Haight Act generally requires an in-person medical evaluation prior to the prescription of controlled substances. Section 829(e), however, also provides an exception to this in-person medical evaluation requirement where the practitioner is ''engaged in the practice of telemedicine''[7] within the meaning of the Ryan Haight Act (21 U.S.C. 802(54)). Consistent with the Ryan Haight Act's purpose of preventing diversion of controlled substances by means of the internet, the Act's definition of ''the practice of telemedicine'' does not encompass all forms of telemedicine. Rather, as set forth in 21 U.S.C. 802(54), the Ryan Haight Act's definition of the ''practice of telemedicine'' includes seven distinct categories of telemedicine that Congress determined were appropriate to allow for the prescribing of controlled substances despite the practitioner never having evaluated the patient in person.

The CSA and DEA's regulations only define the ''practice of telemedicine'' for the purpose of establishing obligations under the CSA and DEA regulations. DEA is not attempting to define what constitutes appropriate telemedicine in other contexts. Thus, the proposed rule would not determine when substances that are not controlled may be appropriately prescribed via telemedicine or the nature of appropriate remote medical treatment more generally. Moreover, this proposed rule would not create any additional regulatory requirements for other categories of telemedicine authorized by the CSA under 21 U.S.C. 802(54). Rather, it would create additional circumstances under which the use of telemedicine to prescribe controlled substances is authorized by the CSA. For example, to fall under the last category of telemedicine, the practice is ''conducted under any other circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.''[8]

As described below, in other circumstances encompassed by the Ryan Haight Act's definition of the ''practice of telemedicine,'' the Act contemplates that the practitioner will be permitted to prescribe controlled substances by means of the internet despite not having conducted an in-person medical evaluation, provided certain safeguards are in place to ensure that the practitioner who is engaged in the practice of telemedicine is able to conduct or participate in a *bona fide* medical evaluation of the patient at the remote location and is otherwise prescribing for a legitimate medical

[1] 21 U.S.C. 802(10).

[2] 21 U.S.C. 871(b), 958(f).

[3] Public Law 110–425 (2008). Because the Ryan Haight Act amended the CSA, references in this document will generally be to the CSA.

[4] 21 U.S.C. 802(54)(A)–(G).

[5] H.R. REP. 110–869(I), 11, 2008 U.S.C.C.A.N. 2130, 2131.

[6] *Id.*

[7] *Id.* 829(e)(3)(A).

[8] *Id.* 802(54)(G).

purpose while acting in the usual course of professional practice.

To fall within this definition of the ''practice of telemedicine,'' the practice also must be ''in accordance with applicable Federal and State laws'' and use ''a telecommunications system referred to in [42 U.S.C. 1395m(m)].'' [9] Title 42 U.S.C. 1395m(m) references, but does not define, such telecommunications systems. The Centers for Medicare & Medicaid Services (CMS), however, have promulgated regulations implementing those provisions, and those regulations do define ''interactive telecommunications system.'' [10] In particular, 42 CFR 410.78(a)(3) defines an interactive telecommunications system as, in pertinent part, multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and practitioner. The same provision also provides that for treatment of a mental health disorder to a patient in their home, interactive telecommunications may include two-way, real-time audio-only communication technology if the practitioner is technically capable to use an interactive telecommunications system, but the patient is not capable of, or does not consent to, the use of video technology.

CMS recently revised 42 CFR 410.78(a)(3), to which the definition of ''practice of telemedicine'' refers, in a final rule published on November 19, 2021 (HHS CMS Rule).[11] Previously, 42 CFR 410.78(a)(3) had limited an ''interactive telecommunications system'' to ''multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner.'' Revised 42 CFR 410.78(a)(3) retains this requirement of both audio and video real-time communication between the patient and the distant practitioner in most circumstances: as the HHS CMS rule revising 42 CFR 410.78(a)(3) stated, ''[T]wo-way, audio/video communications technology is the appropriate, general standard for telehealth services . . . .'' [12]

CMS's revised definition of ''interactive telecommunications systems,'' however, now also includes two-way, real-time *audio-only* communication technology under certain limited circumstances; limitations that are designed to maintain audio-video equipment as the general standard and only authorize audio-only equipment when both necessary and appropriate. First, to allow the use of audio-only equipment, the medical services at issue must be ''furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder.''

CMS recognized that, for many mental health services, visualization between the patient and clinician may be less critical to provision of the service: ''[M]ental health services are different from other services because they principally involve verbal exchanges between patient and practitioner.'' [13] CMS also responded to comments requesting that audio-only technology be permitted for a broader scope of Medicare telehealth services. CMS distinguished ''services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder,'' from other services and specified that the scope of the audio-only policy is limited to mental health disorders.[14] CMS also acknowledged that ''[T]here may be particular instances where visual cues may help a practitioner's ability to assess and treat patients with mental health disorders, especially where opioids or mental health medications are involved . . . .'' [15]

Second, to allow the use of audio-only equipment, the mental health services must be provided ''to a patient in their home.'' CMS reasoned that other sites at which a patient generally receives telehealth services are ''medical settings that are far more likely to have access to reliable broadband internet service. When a patient is located at one of these . . . sites, access to care is far less likely to be limited by access to broadband that facilitates a video connection. In contrast, access to broadband, devices, and user expertise is less likely to be available at a patient's home.'' [16] CMS, however, adopted a flexible understanding of ''home:'' ''[O]ur definition of home can include temporary lodging such as hotels and homeless shelters as well as locations a short distance from the [patient's] home'' (if the patient, ''for privacy or other personal reasons, chooses to travel a short distance away from the exact home location during a telehealth service . . . .'').[17]

Third, to allow the use of audio-only equipment, the distant site physician or practitioner must be ''technically capable'' of meeting the usual two-way, audio-video interactive communication standard. And, relatedly, the patient must ''not [be] capable of, or . . . not consent to, the use of video technology.'' In other words, ''because it is generally appropriate to require the use of two-way, real-time audio/video communications technology,'' [18] the distant practitioner engaging in telehealth must make the option of audio-video communication available to the patient. The audio-only option may only be used if the patient ''is unable to use, does not wish to use, or does not have access to two-way, audio/video technology.'' [19]

As stated in proposed 21 CFR 1306.34(a)(2), DEA is proposing to promulgate regulations that would require practitioners to otherwise comply with relevant State and Federal law.[20] In those States where state law prohibits the prescription of a controlled substance based solely on an audio-only evaluation, the proposed regulation would not authorize the audio-only prescription of buprenorphine for opioid-use disorder (OUD). Thus, this proposed rulemaking's authorization of audio-only OUD prescribing would only apply in those States where such prescriptions are consistent with State law—it would authorize OUD buprenorphine prescribing based on an audio-video interaction in those states if doing so was otherwise consistent with State and Federal law.

DEA has consulted with representatives of the Secretary of Health and Human Services (HHS) regarding the substantive changes to the definition of ''interactive telecommunications systems'' in the HHS CMS Rule. Subsequent to the promulgation of the HHS CMS Rule, DEA is proposing to promulgate these specific conditions under which practitioners would be authorized to engage in the practice of telemedicine. The proposed changes to DEA's regulations herein, in conjunction with the changes already implemented in the

[9] *Id.* 802(54).

[10] 42 CFR 410.78(a)(3).

[11] Medicare Program; Calendar Year 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; and Provider and Supplier Prepayment and Post-Payment Medical Review Requirements (HHS CMS Rule), 86 FR 64996, 65666 (Nov. 19, 2021).

[12] *Id.* at 65060.

[13] *Id.* at 65061.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 65060.

[17] *Id.* at 65059.

[18] *Id.* at 65062.

[19] *Id.* at 65060.

[20] The CSA's definition of ''practice of telemedicine'' requires that it be ''in accordance with applicable Federal and State laws.'' 21 U.S.C. 802(54).

HHS CMS Rule, are consistent ''with effective controls against diversion and otherwise consistent with the public health and safety'' pursuant to 21 U.S.C. 802(54)(G). HHS was consulted in the creation of these regulatory provisions and concurs with this proposed rulemaking. HHS also has advised DEA that no additional rulemaking by HHS is necessary as it pertains to the promulgations of these provisions pursuant to 21 U.S.C. 802(54)(G).

II. Background

Buprenorphine Used in Treating Opioid Use Disorder

DEA is proposing to promulgate regulations which would expand the circumstances under which practitioners are authorized to prescribe any schedule III, IV, or V narcotic drug approved by the Food and Drug Administration (FDA) specifically for use in the maintenance or detoxification treatment of OUD via a telemedicine encounter, including an audio-only telemedicine encounter that meets the standard of 42 CFR 410.78(a)(3), provided certain requirements and conditions are met. The only schedule III–V narcotic drug that is currently approved by the FDA for such treatment is buprenorphine.[21] Thus, DEA is proposing to expand the situations in which practitioners are authorized to prescribe buprenorphine via telemedicine for maintenance or detoxification treatment under limited circumstances to expand access to treatment for OUD while maintaining effective controls against diversion.

Buprenorphine comes in two formulations, a sole agent or combined with naloxone, both of which are very effective medications for the treatment of OUD.[22] Commonly prescribed formulations of buprenorphine are indicated by the FDA for the treatment of OUD.[23] DEA classifies buprenorphine as a schedule III narcotic controlled substance as it has a currently accepted medical use in treatment, and has less of a potential for misuse than the other controlled substances in schedules I and II, and its misuse may lead to moderate to low physical dependence or high psychological dependence.[24] Studies have shown that buprenorphine helps to lower physical dependency on other opioids and reduces withdrawal symptoms, drug cravings, and morbidity and mortality for patients with OUD while also providing lower euphoric effects compared to other opioids.[25] Moreover, buprenorphine is a partial opioid receptor agonist, it has less of an effect on respiratory depression, has a lower risk of overdose, and produces lower euphoric effects than full agonist opioids.[26] Similar to other opioids, some patients and individuals who misuse buprenorphine may experience withdrawal upon stopping the medication. Thus, buprenorphine is an effective medication for treating OUD, especially when used as part of a complete treatment plan, but buprenorphine may also be dangerous when not used as prescribed.

Combination products containing buprenorphine and naloxone can potentially deter misuse for certain individuals. For example, Suboxone® combines buprenorphine with naloxone, an opioid antagonist which is largely inactive when the product is administered sublingually as indicated, which is intended to discourage use by injection or insufflation. Specifically, when Suboxone®, or a generic form of buprenorphine/naloxone combination product, is injected or insufflated, naloxone may cause uncomfortable side effects, including precipitated opioid withdrawal, which may deter certain forms of diversion. The issuance of Suboxone® by practitioners may be considered preferable to injectable drugs used to treat OUD, such as long-acting naltrexone or long-acting buprenorphine, as such treatment for OUD must be administered by a health care professional. Moreover, this formulation may be preferred by practitioners as patients must not be physically dependent on opioids before beginning oral or injected naltrexone, which requires a period of several days of abstinence. Inducing buprenorphine requires a shorter period of abstinence before induction to avoid precipitated withdrawal.

The Unprecedented Trafficking of Fentanyl and the Drug Poisoning Crisis

The diversion and misuse of opioids lead to drug poisonings and deaths that can be mitigated by increased access to treatment for OUD. More than one million people in the United States have died from drug poisonings between 1999 and 2021.[27] The rate of drug poisoning deaths involving synthetic opioids (including fentanyl) has substantially increased since 2013 to 2021. More recently, as stated above, an estimated 107,477 drug poisoning deaths occurred between September 1, 2021 and August 31, 2022.[28] Approximately 70% of these drug poisoning deaths involved fentanyl and other synthetic opioids.[29]

The availability of fentanyl throughout the United States has reached unprecedented heights. In 2022, DEA seized more than 50 million fake pills and 10,000 pounds of fentanyl powder equating to approximately 379 million deadly doses of fentanyl.[30] These seizures have occurred in every State in the country. This is enough fentanyl to supply a potentially lethal dose to every member of the U.S. population.

Access to buprenorphine decreases the risk of drug poisoning.[31] Moreover, increasing access to buprenorphine after a drug poisoning has also been associated with a reduced risk of death.[32] Thus, DEA believes increasing patient access to MOUD is necessary to both prevent and ameliorate the

[21] Buprenorphine is a partial mixed opioid agonist that comes in tablets, sublingual, as well as injectable formulations. It produces effects such as euphoria or respiratory depression at low to moderate doses. With buprenorphine, however, these effects are weaker than full opioid agonists such as methadone and heroin.

[22] Treatment Improvement Protocol 63 for guidance on medication for OUD. *Medications for Opioid Use Disorder, Treatment Improvement Protocol 63,* SAMHSA (2021).

[23] *Id.*

[24] 21 U.S.C. 812(b)(3)(A)–(C); 21 CFR 1308.13(e)(2)(i).

[25] *Buprenorphine,* Substance Abuse and Mental Health Services Administration, (April 19, 2022), *https://www.samhsa.gov/medication-assisted-treatment/medications-counseling-related-conditions/buprenorphine; see Medications for Opioid Use Disorder Save Lives,* National Academies of Sciences, Engineering, and Medicine. (2019) *https://nap.nationalacademies.org/catalog/25310/medications-for-opioid-use-disorder-save-lives.*

[26] A Dahan *et al., Buprenorphine induces ceiling in respiratory depression but not in analgesia,* (March 07, 2006) *https://pubmed.ncbi.nlm.nih.gov/16547090/.*

[27] *Drug Overdose Deaths,* Center for Disease Control, National Center for Injury Prevention and Control (Accessed on July 08, 2022), *https://www.cdc.gov/drugoverdose/deaths/.*

[28] Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics, Provisional Drug Overdose Death Counts, 12 Month-ending Provisional Number of Drug Overdose Deaths by Drug or Drug Class, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm.* (Accessed January 17, 2023) (Sum of Predicted Value for the Number of Drug Overdose Deaths).

[29] *Id.*

[30] *Drug Enforcement Administration Announces the Seizure of Over 379 million Deadly Doses of Fentanyl in* 2022, (January 04, 2023) *https://www.dea.gov/press-releases/2023/01/04/drug-enforcement-administration-announces-seizure-over-379-million-deadly.*

[31] Dadiomov, *et al., Buprenorphine and naloxone access in pharmacies within high overdose areas of Los Angeles during the COVID–19 pandemic,* Harm Reduction Journal. (June 29, 2022) *https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-022-00651-3.*

[32] Larochelle, *et al., Medication for Opioid Use Disorder After Nonfatal Opioid Overdose and Association With Mortality,* Annals of Internal Medicine, (August 07, 2018) *https://www.acpjournals.org/doi/10.7326/M17-3107.*

catastrophic drug poisonings that are occurring as a result of fentanyl. Importantly, a recent study found that the percentage of opioid overdose deaths involving buprenorphine did not increase in the months after prescribing flexibilities, including the remote induction and prescribing of buprenorphine for OUD treatment via telemedicine, were put in place during the COVID–19 pandemic.[33]

Diversion Risk of Buprenorphine

Buprenorphine is a critical tool in efforts to stem the drug poisoning crisis that is occurring across the country. Still, buprenorphine, when used improperly, may lead to misuse and death.[34] Self-medication for the management of symptoms may also be a motivation for non-prescribed misuse of buprenorphine.[35] Moreover, issues with availability, accessibility, and acceptability of formal buprenorphine treatment may also contribute to non-prescribed buprenorphine misuse.[36] Diversion of buprenorphine and other prescription opioids remains an issue across the country: in the past two years, DEA has seen Federal investigations of buprenorphine diversion across the country.[37] Thus safeguards are necessary to mitigate the risk of diversion.[38]

Purpose and Need for Rulemaking

DEA is proposing to promulgate regulations which would increase patient access to buprenorphine treatment for OUD with the goal of providing effective controls against diversion. Thus, DEA is proposing to promulgate regulations that would expand the circumstances under which registered practitioners would be authorized to prescribe buprenorphine for OUD via telemedicine, including an audio-only telemedicine encounter meeting the requirements of 42 CFR 410.78(a)(3), and inform these practitioners of their related obligations. DEA is also proposing to promulgate regulations that are necessary to mitigate the risk of diversion associated with this authorization.

Unmet Need To Facilitate Patient Access to Treatment for Opioid Use Disorder

The majority of individuals suffering with OUD unfortunately do not receive treatment with FDA-approved medications.[39] DEA is proposing to promulgate regulations that would address the unmet need to increase patient access to treatment for OUD. This rulemaking would enable those patients who, prior to being able to access treatment under the circumstances newly authorized, did not wish to, or did not possess the means to, be inducted for the treatment of OUD.

Until recently, there was a nationwide shortage of practitioners authorized to dispense buprenorphine.[40] Expanding the circumstances under which practitioners are authorized to prescribe via telemedicine encounters, including audio-only encounters, would increase access to treatment for those individuals with OUD who may not want to seek treatment, or are unable to seek treatment, due to various economic, geographical, sociological, and logistical reasons.

Many patients may lack the financial means to obtain in-person treatment traditionally or through audio-video telemedicine encounters. Patients who are unhoused, unemployed, or facing other challenges may find it prohibitive to afford devices capable of audio-video telemedicine encounters or consistent access to wireless internet and/or data plans adequate to support bandwidth demands of telemedicine encounters.[41] Many individuals have unstable access, or experience interruptions in access, to this technology.[42] Additionally, many rural and frontier communities do not have access to reliable broadband or wireless networks or an unwillingness to engage in telemedicine encounters directly.[43]

Expanding a registered practitioners' authority to prescribe buprenorphine for the treatment for OUD via telemedicine, including an audio-only telemedicine encounter meeting the standards of 42 CFR 410.78(a)(3), would expand access to much needed medical treatment.[44]

---

[33] Tanz, *et al. Trends and characteristics of buprenorphine-involved overdose deaths prior to and during the COVID–19 pandemic,* JAMA. (January 20, 2023) *https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2800689.*

[34] *See ex. TDH Finds Some Overdose Deaths Associated With Buprenorphine.* Tennessee Department of Health, (January 08, 2018) *https://www.tn.gov/health/news/2018/1/8/tdh-finds-some-overdose-deaths-associated-with-buprenorphine.html;* Bishop, S.D., *Buprenorphine-Related Deaths in North Carolina from 2010 to 2018.* (September, 2021) *pubmed.ncbi.nlm.nih.gov/34145443/. See*

[35] *See* Cicero *et al. Understanding the use of diverted buprenorphine,* Drug and Alcohol Dependence, (December 01, 2018) *https://www.sciencedirect.com/science/article/pii/S0376871618307245;* McDonald *et al., Assessing Motivations for Nonprescribed Buprenorphine Use Among Rural Appalachian Substance Users,* Journal of Addiction Medicine, (August 31, 2022) *https://pubmed.ncbi.nlm.nih.gov/36044288/;* Silverstein *et al., On my own terms: Motivations for self-treating opioid-use disorder with non-prescribed buprenorphine,* Drug and Alcohol Dependence, (May 01, 2020) *https://pubmed.ncbi.nlm.nih.gov/32203863/;* Butler *et al.,* How Motivations for Using Buprenorphine Products Differ From Using Opioid Analgesics: Evidence from an Observational Study of internet Discussions Among Recreational Users, JMIR public health and surveillance, (March 25, 2020) *https://pubmed.ncbi.nlm.nih.gov/32209533/.*

[36] Silverstein *et al., On my own terms: Motivations for self-treating opioid-use disorder with non-prescribed buprenorphine,* Drug and Alcohol Dependence, (May 01, 2020) *https://pubmed.ncbi.nlm.nih.gov/32203863/;* McLean *et al.,* The international journal on drug policy, (July 20, 2019) *https://pubmed.ncbi.nlm.nih.gov/31330267/.*

[37] *See, e.g., United States* v. *Kesari* (S.D. W.Va. 2021) (Charleston doctor convicted of selling buprenorphine prescriptions for cash); *United States* v. *Summers* (E.D. Pa. 2018) (Philadelphia doctor operating ''National Association for Substance Abuse Prevention & Treatment'' pleaded guilty to selling buprenorphine prescriptions to drug dealers); *United States* v. *SelfRefind* (E.D. Ky. 2014) (largest buprenorphine clinic in the U.S. paid $15 million to resolve civil allegations regarding urine-testing scams, around the same time Kentucky suspended its director's authorization to prescribe buprenorphine drugs due to reckless overprescribing).

[38] *See* Mance E Buttram et al., *Increasing rates of buprenorphine diversion in the United States, 2002 to 2019* (July, 31 2021) *https://pubmed.ncbi.nlm.nih.gov/34302707/. See* Monico, L.B. *et. al., Exploring nonprescribed use of buprenorphine in the criminal justice system through qualitative interviews among individuals recently released from incarceration.* (April, 2021), *https://pubmed.ncbi.nlm.gov/33612198* (Inmates and correctional officers have diverted buprenorphine, particularly in sublingual strip form, among inmates through illicit channels within correctional facilities as buprenorphine strips can easily be hidden and consumed without detection). *See* Richert, T. *et. al., Illicit use of methadone and buprenorphine among adolescents and young adults in Sweden.* (October 18, 2013), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853648/.* Lofwall MR, Walsh SL. *A review of buprenorphine diversion and misuse: the current evidence base and experiences from around the world.* J Addict Med. (September 01, 2015) *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4177012/.* (showing that individuals may use diverted buprenorphine for the purposes of mitigating withdrawal symptoms in between use of illicit opioids).

[39] *Only one in Four People Needing Treatment for Opioid Use Disorder Received Medication,* Columbia University School of Public Health, (March 23, 2022), *https://www.publichealth.columbia.edu/public-health-now/news/only-one-four-people-needing-treatment-opioid-use-disorder-received-medication.*

[40] Conway, Kevin P et al. *Rural and urban differences in undersupply of buprenorphine provider availability in the United States, 2018,* Addiction science & clinical practice (January 31, 2022), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8802270/.*

[41] DeLaCruz et al., *Telemental Health for the Homeless Population: Lessons Learned when Leveraging Care,* (December, 08 2022) *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9734763/.*

[42] *Id.*

[43] *Id.*

[44] Under the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act, practitioners are generally obligated to ensure effective communication and provide patients with disabilities with equal access to services. *See, e.g.,* 28 CFR 35.130(a); 28 CFR 35.130(b)(1); 28 CFR 35.160; 28 CFR 36.202(b); 28 CFR 36.303(c); 45 CFR 84.4; 45 CFR 84.52. While audio-only telemedicine may be appropriate for some patients, it may not satisfy practitioners' ADA and section 504 obligations in all cases, particularly when patients

Recent studies have revealed that, in some populations, upward of 94 percent of the unhoused community had a cell phone, while a limited amount owned or had access to computers, tablets, or internet access.[45] Not only would this rulemaking make it easier for patients to obtain treatment, many practitioners have shown a willingness to treat patients using an audio-only telecommunications system. An online survey showed that practitioners who engaged in the practice of telemedicine and prescribed buprenorphine considered telephonic means to be ''more accessible.'' [46]

Increased Access Must Be Consistent With Effective Controls Against Diversion and Public Health and Safety

In concert with the goal of expanding patient access to MOUD,[47] however, DEA must address diversion risks associated with the expanding access to narcotics over the phone. As established above, the diversion of buprenorphine is dangerous and may lead to misuse and sometimes fatal drug poisonings. Additionally, DEA must draft regulations which are consistent with public health and safety. Thus, DEA is proposing to promulgate regulations to require a thorough review of Prescription Drug Monitoring Program (PDMP) data prior to prescribing, a medical evaluation of the patient meeting certain conditions within 30 days, as well as comprehensive recordkeeping requirements.

Prescription Drug Monitoring Program Review

DEA is promulgating regulations that would require a practitioner to review and consider PDMP data prior to prescribing buprenorphine under the authority the regulations would grant.[48] This review would allow the practitioner to make informed clinical decisions and identify and counsel the patient regarding higher risks (such as co-prescribed benzodiazepines), identify patients who may have obtained a buprenorphine or another recent prescription from another source (thereby preventing diversion), monitor for practitioners deliberately misprescribing buprenorphine, and prevent the diversion of such drugs through practitioners' lack of awareness that the patient on the other end of the line does not have an actual medical need or requires a more careful examination.[49]

Without requiring practitioners to review and consider PDMP data, different practitioners could prescribe multiple 30-day supplies, or subsequent 30-day supplies indefinitely, to patients without realizing that they are doing so. Some studies have concluded that state rules requiring review of the PDMP are among the most effective interventions for preventing opioid drug poisonings and are correlated with a reduction in the proportion of patients that engage in drug seeking behavior.[50] Thus, DEA believes it is necessary to require the review and consideration of PDMP data prior to prescribing buprenorphine so as to require due diligence on the part of the practitioner in order to effectively identify patients who have received prior prescriptions for buprenorphine or other prescriptions that might negatively interact with buprenorphine.

DEA believes a PDMP review requirement for prescribers, prior to writing a prescription, would balance the states' interest in regulating the practice of medicine with the overarching interest in mitigating the high risk of diversion for prescriptions which do not require face-to-face interaction with the prescribing physician—a balance in line with the text of 21 U.S.C. 802(54).

Requirement of Medical Evaluation in Person or in Presence of Another DEA Registrant Within 30 Days

DEA is proposing to promulgate regulations which would require the patient receiving buprenorphine under the expanded authority of these regulations to receive a medical evaluation meeting certain requirements within 30 days of being prescribed buprenorphine for the induction of OUD treatment in order to obtain an additional supply of buprenorphine.[51] In particular, under the proposed regulations, within 30 days, the patient would have to either be examined in person by the prescribing practitioner or practice, or the prescribing practitioner would have to examine the patient remotely while the patient is in the physical presence of another DEA-registered practitioner participating in an audio-video telemedicine encounter with the prescribing practitioner. Alternatively, the requirement of a medical evaluation is satisfied when the prescribing practitioner receives a qualifying telemedicine referral for medically-assisted treatment for opioid use disorder from a DEA-registered practitioner prior to issuing a prescription for controlled substances. Under this scenario, the patient has already received an in-person medical evaluation from the referring practitioner, and thus the prescribing practitioner is authorized to prescribe beyond the 30 day limit.

This requirement is necessary because the CSA generally requires each prescription for a schedule II through V controlled substance to be predicated upon at least one in-person medical evaluation. Although the proposed regulations would create an exception to this requirement, they must still maintain the CSA standard that prescriptions be tied to a medical evaluation in the physical presence of a DEA-registered practitioner. Without this provision, practitioners could theoretically prescribe buprenorphine without ever conducting a thorough medical evaluation of the patient.

Moreover, requiring these medical evaluations subsequent to telemedicine encounters facilitates common practices by which some practitioners treat OUD. The required medical evaluation can enhance treatment by enabling the practitioner to conduct tests which make sure that buprenorphine is safe and appropriate for the patient.[52] These include, but are not limited to, drug and toxicology screenings, liver enzyme tests, screenings for infectious diseases such as hepatitis, etc.[53] Additionally, practitioners are able to assess conditions which may or may not be available in audio-only or even audio-video telemedicine encounters, such as signs of opioid intoxication or withdrawal, physical signs of opioid use, as well as the medical

are deaf or have hearing loss. *See* The Department of Justice, Civil Rights Division, *The Americans With Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery* (April 05, 2022) *https://www.ada.gov/opioid_guidance.pdf.*

[45] Molfenter T, Roget N, Chaple M, et al. *Use of Telehealth in Substance Use Disorder Services During and After COVID–19: Online Survey Study.* JMIR Ment Health. (February 08, 2021) *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7895293/.*

[46] *Id.*

[47] DEA references ''Medication Assisted Treatment'' (MAT) in its regulations in 21 CFR 1301.28. For the purposes of this rulemaking, all references to MAT refer to the dispensing or prescribing of Schedule III, IV, or V narcotic controlled drugs or combinations of narcotic controlled drugs that have been approved by FDA specifically for use in maintenance or detoxification treatment.

[48] *Proposed* 21 CFR 1306.34(b)(2).

[49] *Id.* Under the proposed rule, a practitioner employed by or contracting with the Department of Veterans Affairs (VA) also would be required to review the VA internal prescription database.

[50] *See* Tamara M Haegerich et al., *Evidence for state, community and systems-level prevention strategies to address the opioid crisis,* (Sep 19, 2019), *https://pubmed.ncbi.nlm.nih.gov/31585357/.*

[51] *Proposed* 21 CFR 1306.34(b)(4).

[52] *Buprenorphine Quick Start Guide,* SAMHSA *https://www.samhsa.gov/sites/default/files/quick-start-guide.pdf.*

[53] *Id.*

consequences of opioid use.[54] Thus, this required medical evaluation can result in enhanced treatment in some circumstances.

For these reasons, and to comply with congressional directives in the Ryan Haight Act, DEA is proposing to require a medical evaluation meeting these standards in order to prescribe a supply in excess of 30 days to assist DEA in the investigation and prosecution of malicious practitioners to ensure the public health and safety of patients and to help maintain effective controls against diversion.

Recordkeeping

Comprehensive recordkeeping is necessary to provide sufficient documentation of the details of the audio-only telemedicine encounter and ensure practitioners' compliance with the provisions listed herein. Thus, DEA is requiring practitioners to keep comprehensive records establishing the nature of the encounter, the patient's proffered reason for the audio-only encounter (if the patient requests the telemedicine encounter be audio-only rather than audio-video), and all efforts to comply with PDMP checks.[55]

Prescribing Buprenorphine for the Induction of Medication for the Treatment of Opioid Use Disorder

DEA recognizes that the induction of buprenorphine via a telemedicine encounter should not constitute the entirety of a treatment protocol for OUD for many patients. As explained by SAMHSA, the use of buprenorphine should be part of a ''comprehensive management program that includes other treatment plans such as psychosocial support.'' [56] Thus, this rulemaking would be limited to the prescribing of buprenorphine simply for the treatment for OUD for patients via telemedicine encounters described in this rulemaking, and does not seek to circumvent or replace the individualized treatment protocols present in the usual course of treating an individual with OUD.[57]

Request for Comments

With respect to the proposed rule, DEA invites comments concerning whether any clarifications or other regulatory provisions are warranted to ensure appropriate access to care, consistent with effective controls against diversion and otherwise consistent with the public health and safety. DEA invites comments on the proposed practitioner recordkeeping obligations. DEA also seeks comments about additional safeguards or flexibilities that should be considered with respect to this rule. Moreover, DEA invites comments on whether the Notice of Proposed Rulemaking, entitled ''Telemedicine prescribing of controlled substances when the practitioner and the patient have not had a prior in-person medical evaluation'' (RIN 1117–AB40), published elsewhere in this issue of the **Federal Register**, should be combined with this rulemaking when publishing the Final Rule as both documents refer to prescribing via telemedicine pursuant to 21 U.S.C. 802(54)(G).

This rule is designed to ensure that patients do not experience lapses in care. It is also deigned to ensure continuity of care under the current telehealth flexibilities in place as a result of the COVID–19 public health emergency. The COVID–19 public health emergency is set to expire on May 11, 2023. DEA and HHS have provided for a notice-and-comment period of 30 days so that they have an opportunity to fully review and respond to any submissions.

III. Section-by-Section Discussion of Proposed Rule

§ 1300.04 Definitions Relating to the Dispensing of Controlled Substances by Means of the Internet

DEA is proposing to amend 21 CFR 1300.04 to add definitions of ''prescription drug monitoring program'' and ''telemedicine encounter.'' These terms play significant roles in the proposed regulations. Thus, to avoid any ambiguity about the meaning of those regulations, the proposed rule would specifically define those terms. Under the proposed rule, the term PDMP would mean a state controlled substance monitoring program, including a program supported by the Secretary of HHS under section 399O of the Public Health Service Act, as amended (42 U.S.C. 280g–3). The term ''telemedicine encounter'' would mean a communication between a practitioner and a patient using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3), while the practitioner is engaged in the practice of medicine in accordance with applicable Federal and State laws.

§ 1304.03 Persons Required To Keep Records and File Reports

DEA is proposing to amend 21 CFR 1304.03 by adding new paragraph (k) requiring a practitioner to maintain copies of all qualifying telemedicine referrals that he or she issues.

§ 1304.04 Maintenance of Records and Inventories

DEA is proposing to amend 21 CFR 1304.04 by adding new paragraphs (i)(1)–(2) that would require registrants to maintain all records required by 21 CFR 1306.34 at the registered location that is listed on their certificate of registration. In most cases, this will be the practitioner's primary registration in the state where the practitioner is located.

These recordkeeping requirements will help ensure that all records associated with the prescribing practitioner, as well as any DEA-registered practitioners who are present with the patient pursuant to proposed 21 CFR 1306.34(b)(5)(ii), will be stored in a consolidated location, which will expedite the investigatory process for DEA.

§ 1306.04 Purpose of Issue of Prescription

DEA is proposing to amend 21 CFR 1306.04 by adding a new paragraph (e) to clarify when, and for what purpose, a practitioner may issue prescriptions pursuant to a telemedicine encounter under the expanded authority of these regulations. DEA proposes to authorize practitioners to issue prescriptions pursuant to 21 CFR 1306.34 if and only if the prescription is ''issued for maintenance or detoxification treatment and . . . not . . . for any other purpose.'' As stated above, buprenorphine is, at present, the only schedule III–V narcotic controlled substance that is approved by FDA for maintenance and detoxification treatment. Therefore, absent FDA approval of another schedule III–V narcotic controlled substance for the treatment of OUD, this provision only authorizes prescriptions for buprenorphine pursuant to telemedicine encounters for maintenance or detoxification treatment. This section would not authorize practitioners to issue prescriptions for other purposes, such as for the treatment of pain, as the overarching purpose of this rulemaking

[54] *Medications for Opioid Use Disorder, Treatment Improvement Protocol 63,* SAMHSA (2021) *https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP21-02-01-002.pdf.*

[55] *Proposed* 21 CFR 1306.34(7)(i)–(iv).

[56] *Buprenorphine Quick Start Guide,* SAMHSA *https://www.samhsa.gov/sites/default/files/quick-start-guide.pdf.*

[57] Registrants may refer to Treatment Improvement Protocol 63 for guidance on medication for OUD. *Medications for Opioid Use Disorder, Treatment Improvement Protocol 63,* SAMHSA (2021) *https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP21-02-01-002.pdf. See also* SAMHSA, *Telehealth for the Treatment of Serious Mental Illness and Substance Use Disorders,* (2021). *https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP21-06-02-001.pdf.*

is to facilitate the treatment of OUD in a safe manner.

§ 1306.34 Requirements for Individual Practitioners Who Conduct the Induction of Maintenance or Detoxification Treatment Via Telemedicine Encounter

DEA is proposing to amend section 1306 by adding new section 1306.34. This new section would describe the circumstances under which registrants are authorized to use the expanded authority of the proposed rule to prescribe buprenorphine pursuant to telemedicine encounters and the obligations of practitioners when doing so.

DEA is proposing to add paragraph (a), which would list the conditions upon which a practitioner is authorized to prescribe buprenorphine via a telemedicine encounter under the proposed rule. First, unless otherwise excepted,[58] registrants would be required under paragraph (a)(1) to obtain a DEA dispensing registration under 21 U.S.C. 823(g), 21 CFR 1301.13(e)(1)(iv) in the state where the practitioner is located. Next, in order to issue prescriptions, paragraph (a)(2) would require the practitioner to be authorized by state law, or not otherwise prohibited by state law, to engage in the practice of telemedicine in both the state where the practitioner is located, as well as the state where the patient is located. This requirement is statutory, as the CSA requires that the ''practice of telemedicine'' involving controlled substances be conducted ''in accordance with applicable Federal and State laws'' pursuant to 21 U.S.C. 802(54). In those states where state law prohibits the prescription of a controlled substance based solely on an audio-only evaluation,[59] the proposed regulation would not authorize the audio-only prescription of buprenorphine for OUD. Proposed paragraph (a)(3) would clarify that the prescription must comply with the provisions of the relevant CSA and DEA regulations that govern dispensing for maintenance and detoxification treatment (namely, 21 CFR 1301.13(e)(1)(iv), and 21 CFR 1306.05(b)). In other words, the practitioner would have to possess a 21 CFR 1301.13(e)(1)(iv) registration in order to prescribe a schedule III, IV, or V narcotic drug approved by the FDA specifically for use in the maintenance or detoxification treatment. Proposed paragraph (a)(4) would codify the requirement that a practitioner be technically capable of using audio and video equipment permitting two-way, real-time interactive communication with the patient and the time of the telemedicine encounter. Proposed paragraph (a)(5) would state generally that the practitioner must comply with all other relevant requirements listed in this section.

Next, paragraph (b) would list all the requirements for practitioners when issuing prescriptions. Proposed paragraph (b)(1) would require that all prescriptions issued based on a telemedicine encounter under the authority of the rule must be issued for a ''Schedule III, IV, or V narcotic drug approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment'' and must be issued pursuant to 21 CFR 1306.04. This paragraph is designed to reduce the risk that buprenorphine will be prescribed for reasons other than a legitimate medical purpose. This paragraph further specifies that such prescriptions may only be issued pursuant to § 1306.04 for the purpose of maintenance or detoxification treatment—*i.e.,* the practitioner cannot prescribe buprenorphine for pain or any other purpose besides treatment of OUD.

Proposed paragraph (b)(2) would require that practitioners review and consider relevant PDMP data in the state where the patient is located prior to prescribing.[60] As stated above, this provision is an essential safeguard to ensure practitioners are conducting appropriate due diligence to mitigate risks of diversion and ensure the public health and safety of patients. Practitioners are encouraged to review all PDMP data accessible to them as a predicate to prescribing buprenorphine, but reviewing a period of at least one year prior to issuing a prescription would be required under the proposed rule. If less than one year of data is available, practitioners must review and consider the entire available period.

Proposed paragraph (b)(3) would specify the procedures for practitioners if they are unable to access PDMP data due to the PDMP system being ''non-operational or otherwise inaccessible as a result of a temporary technological or electrical failure.'' This paragraph includes circumstances involving temporary technological or electrical failures involved with the *practitioner's* attempts to access the PDMP data. This would include, but is not limited to, circumstances where practitioners are unable to access PDMP data because of public infrastructure failures such as loss of electricity and/or loss of internet as a result of inclement weather or natural disasters. For example, a practitioner could be experiencing state-wide outages in their internet service but otherwise be able to conduct a telemedicine encounter by using a different device such as a mobile phone or tablet that is connected to a satellite internet provider. In such circumstances, DEA notes that the practitioner must otherwise be capable of using audio and video equipment permitting two-way, real-time interactive communication with the patient at the time of the telemedicine encounter prior to prescribing but is unable to access the PDMP system through the device at the time. In those exceptionally rare circumstances, DEA would encourage practitioners to use any means available to access PDMP data prior to prescribing, and practitioners must record their attempts to access the system as described below.

Proposed paragraph (b)(3)(i) would require, in those circumstances where the PDMP system is non-operational, practitioners to limit their prescriptions to patients to no more than a 7-day supply until they are able to access the PDMP system again. This limit applies until the practitioners are able to access the PDMP system, complete their review of the patient's prior prescription history, and verify the nature of prescriptions when applicable. Paragraph (3)(ii) would require the practitioner to gain access to the PDMP system and conduct appropriate reviews within 7 days of the telemedicine encounter, and paragraph (3)(iii) would require recordation of the practitioner's attempts to access the system (described in more detail below). The 7-day prescription can be refilled upon successful review of the PDMP by the

[58] The proposed rule would except from this requirement VA practitioners, those practitioners contracting with the VA when treating a patient of the VA healthcare system, and those practitioners exempt from registration under section 303(f) in all States pursuant to § 1301.23 when acting with the scope of the employment or contract that exempted them from the requirement of registration under section 303(f). It would be unduly burdensome to require registrants otherwise exempt from the requirement of DEA registration to become registered with DEA solely to make use of this proposed rule's telemedicine flexibility. The unique needs and expertise of the VA practitioners similarly weigh in favor of exempting them from this requirement. Moreover, in a related context, Congress indicated a desire, reflected in the Ryan Haight Act, that VA practitioners and those practitioners exempt from registration be uniquely allowed to engage in telemedicine without being registered in their patients' states. *See* 21 U.S.C. 831(h)(1)(B).

[59] Based on DEA's review of state law, 25 states prohibit controlled substance prescriptions based on audio-only encounters.

[60] A practitioner employed by or contracting with the VA additionally would have review the VA internal prescription database, subject to the same standards that would apply to a review of PDMP data.

practitioner, as long as the prescriptions together do not exceed a 30 day supply.

If the practitioner otherwise completes their review of the PDMP system pursuant to paragraph (2), or is otherwise able to comply with all relevant requirements in paragraph (3), proposed paragraph (4) would authorize practitioners to prescribe ''no more than a 30-day supply across all such prescriptions'' until the practitioner has conducted the required medical evaluation. Put another way, this provision would allow the doctor to provide up to a thirty-day supply in any combination of prescriptions and prohibits the doctor from going beyond that until the medical evaluation is conducted. This requirement would limit the supply of buprenorphine prescribed pursuant to an audio-only telemedicine encounter to a maximum of a 30-day supply. This supply may include dosages that are titrated up or down depending on the patient's response to the medication and the practitioner's medical judgment, however, it may not exceed a supply sufficient to treat the patient for more than 30 days.

Proposed paragraph (b)(5) would clarify what satisfies the medical evaluation requirement for the purposes of (b)(4). Such a medical evaluation would include the prescribing practitioner conducting a medical evaluation while the patient is in the physical presence of the prescribing practitioner in (b)(5)(i), or by the alternative schemes listed in (b)(5)(ii) and (iii). Under the alternative proposed in (b)(5)(ii), the patient would not be in the physical presence of the prescribing practitioner, but the patient would have to be in the physical presence of another DEA-registered practitioner pursuant to proposed (b)(5)(ii)(A)–(D). This other non-prescribing, physically present practitioner would have to be acting in the usual course of professional practice and in accordance with applicable State law. Also, the prescribing practitioner, the DEA-registered practitioner on site with the patient, and the patient would have to participate in an audio-video conference simultaneously (*i.e.,* these individuals must participate in a two-way, simultaneous interactive communication with both audio and video for this medical evaluation even if audio-only communication had been authorized under the standard of 42 CFR 410.78(a)(3) for prior communications between the prescribing practitioner and the patient). Thus, even though the prescribing practitioner would not be conducting an in-person evaluation him or herself, he or she could rely on the in-person evaluation of the on-site practitioner—and remotely observe this evaluation via video and audio when determining whether to continue prescribing to the patient.

Additionally, the requirement of a medical evaluation is satisfied when the prescribing practitioner receives a qualifying telemedicine referral from a DEA registered practitioner under (b)(5)(iii). Under this scheme, the patient must have received a face-to-face evaluation from a DEA registered practitioner, referred to simply as the referring practitioner. The referring practitioner may then issue a written qualifying telemedicine referral [61] to the prescribing practitioner based on the diagnosis, prognosis, or treatment that was provided for the medical issue upon which the medical evaluation was predicated pursuant to paragraphs (A) and (C). Moreover, under paragraph (B), the referral practitioner must communicate the results of the medical evaluation which include any diagnosis, prognosis, or treatment to the prescribing practitioner prior to the prescribing practitioner issuing the prescription. If the prescribing practitioner issues the prescription to the patient prior to receiving the information provided in (B), this does not qualify as a medical evaluation for the purposes of § 1306.34(b)(5) and the patient must receive a medical evaluation in the manner described in paragraph (b)(5)(i) or (b)(5)(ii). Once a medical evaluation meeting the specified criteria is performed, the proposed rule would allow a practitioner to continue prescribing to the patient, so long as doing so was consistent with legitimate medical purposes and a subsequent evaluation was not required by law or other provisions of this chapter.

Last, proposed paragraph (b)(6) would create recordkeeping requirements for practitioners who issue prescriptions in the manner described by this section. Paragraph (6)(i) would require records indicating whether the telemedicine encounter was conducted using audio-video or audio-only technology. This recordkeeping requirement is essential for investigation purposes, as DEA would have no other means of verifying the nature of the telemedicine encounter. Proposed paragraph (6)(ii) would also require the practitioner to record the patient's reason for requesting an audio-only encounter, if the encounter was audio-only. This provision would also assist DEA, as it may be used as evidence to establish whether the practitioner issued the prescription in the usual course of professional practice. Proposed paragraph (6)(iii) would require practitioners to record all attempts to comply with paragraph (b)(2) when the practitioner is able to access the PDMP system. This provision is necessary as it enables DEA to verify whether the registrant knew or should have known of the patient's prior prescription history. Proposed paragraph (6)(iv) would require practitioners who were unable to access their state PDMP system to record ''the dates and times that the practitioner attempted to gain access, the reason why the practitioner was unable to gain access, and any follow-up attempts made to gain access to the system.'' This provision is necessary as it enables DEA to verify the practitioner's attempts to access the PDMP system, the reasons for being unable to access, and any subsequent attempts to access the system. Proposed paragraph (6)(v) would require, if the patient seeks a medical evaluation pursuant to 1306.34(b)(5)(ii), the prescribing practitioner to record the full name, DEA registration number, National Provider Identifier (NPI) number of the DEA-registered practitioner in the physical presence of the patient, and if issued a qualifying telemedicine referral, the name and NPI of the referring practitioner, a copy of the referral and any communications shared pursuant to § 1306.31(d)(3)(i)–(iii). This provision is necessary as this information is essential to future investigations and these details of the medical evaluation, such as the physically present practitioner's name, may not otherwise be recorded by the prescribing practitioner.

IV. Regulatory Analyses

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

This proposed rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures,

[61] *Proposed* 21 CFR 1300.04(k). Note that this definition was proposed by DEA in a distinct Notice of Proposed Rulemaking that also addresses telemedicine. See RIN 1117–AB40, published elsewhere in this issue of the **Federal Register**. The public is encouraged to respond to the proposed definition in any/both documents.

and definitions governing regulatory review established in E.O. 12866.

E.O. 12866 classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. While this proposed rule is not economically significant, OMB has determined that this proposed rule is a ''significant regulatory action'' under E.O. 12866, section 3(f). Accordingly, this proposed rule has been submitted to OMB for review.

Due to COVID–19 public health emergency, DEA issued guidance which authorized the prescribing of buprenorphine to new and existing patients with OUD via telemedicine, including audio-only telemedicine (*e.g.,* telephone) by otherwise authorized practitioners without requiring such practitioners to first conduct an examination of the patient in person.[62] To continue the flexibilities of telemedicine, including audio-only telemedicine, for prescribing schedule III–V controlled substances which are approved for maintenance treatment or withdrawal management beyond the public health emergency, DEA proposes to promulgate regulations which would balance the need to increase patient access to legitimate medical treatment with the goal of providing effective controls against diversion. Thus, DEA is proposing to expand the conditions under which a practitioner is authorized to prescribe buprenorphine via telemedicine, including an audio-only telemedicine encounter, and to describe obligations which arise once a practitioner prescribes to patients.

Number of Telemedicine Encounters, Providers, and Patients

The number of telemedicine encounters, including audio-only telemedicine, leading to buprenorphine prescriptions under the temporary guidance during the public health emergency forms the basis for estimating the number of telemedicine encounters pursuant to this proposed rule.

DEA estimated the number of telemedicine encounters associated with an initial buprenorphine prescription by applying the data provided by the Centers for Medicare & Medicaid (CMS) data on Medicare Part D telemedicine services that led to buprenorphine prescriptions to the number of all buprenorphine prescriptions. Based on CMS claims data provided by the Department of Health and Human Services Office of Inspector General (HHS OIG), from March 2020, the start of the COVID–19 health emergency shutdowns, to December 2021, 24,285 Medicare fee-for-service and managed care telemedicine services, including audio-only telemedicine, were identified as being linked to buprenorphine Part D prescriptions fills.[63] These telemedicine services were provided by 7,733 providers to 15,521 beneficiaries.[64]

Based on the CMS data, the telemedicine services and associated buprenorphine prescriptions identified spiked at the beginning of the public health emergency and stayed relatively steady in 2021. Therefore, 2021 data is used to estimate the number of telemedicine, including audio-only telemedicine, encounters for this analysis. In 2021, there were a total of 1,929,151 Part D buprenorphine prescriptions associated with 1,332,353 beneficiaries.[65] Over the same period, there were 11,956 telemedicine Medicare fee-for-service and managed care telemedicine services, including audio-only telemedicine, identified as being linked to buprenorphine Part D prescriptions fills.[66] These telemedicine services were provided by 4,533 providers to 8,182 patients.[67] The 1,929,151 Part D buprenorphine claims associated with 1,332,353 beneficiaries equates to a ratio of 1.45 claims per beneficiary. Therefore, the 11,956 services represent an estimated 8,257 (11,956/1.45) initial prescriptions, which equates to 0.43 percent (8,257/1,929,151) of total Part D claims for buprenorphine (1,929,151 total claims). Based on IQVIA data, the total number of new prescriptions for buprenorphine in the U.S. in 2021 was 15,782,652.[68] Applying the telemedicine share of total Part D buprenorphine prescriptions to the estimated number of total services associated with a buprenorphine prescription yields an estimated 67,458 (0.43 percent × 15,782,652) initial prescriptions. DEA believes this is a high estimate, as the telemedicine share of total Part D buprenorphine prescriptions may include telemedicine services allowed by regulation prior to the PHE.

Affected Persons

This proposed rule would affect practitioners prescribing schedule III–V controlled substances for the induction of a maintenance treatment or withdrawal management via telemedicine using audio-video or audio-only technology and the patients they treat using this technology. Based on the analysis above, DEA expects the proposed rule to affect 67,458 patients, annually. As previously discussed, in 2021, 8,182 patients received a prescription for buprenorphine under the Medicare Part D program, from 4,533 providers, equating to a ratio of approximately 1.80 patients per provider. Applying this ratio to the number of affected patients, DEA estimates 37,373 providers are affected by this proposed rule.

Impact on Physicians or Practitioners

The proposed rule would permit the use of audio-video or audio-only telemedicine provided that the practitioner (1) meets all requisite State and Federal registration requirements for both prescribing of controlled substances and engaging in the practice of telemedicine, (2) reviews PDMP data regarding any controlled substance prescriptions issued to the patient in the previous year, (3) is limited to a 30-day supply, across all such prescriptions, until the practitioner conducts an in-person medical evaluation, and (4) maintains records of all prescriptions issued pursuant to a telemedicine encounter, including whether the encounter was audio-only or audio-video, and if by audio-only, the patient's reason for requesting an audio-only

[62] ''Dear Registrant'' letter to DEA Qualifying Practitioners and DEA Qualifying Other Practitioners, Thomas W. Prevoznik, Deputy Assistant Administrator, Diversion Control Division, March 31, 2020.

[63] HHS OIB, March 2022. HHS OIG analyzed telemedicine billing codes and patient information to identify telemedicine visits within a 48-hour period prior to a buprenorphine prescription fill associated with the same patient, and where the prescribing provider is the same or related to the billing or rendering provider of the telemedicine visit.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] HHS OIB, May 2022.

[68] IQVIA, National Prescription Audit, September, 2022.

encounter. Below is the analysis of the four requirements stated above.

1. *Meet all requisite State and Federal registration requirements:* Practitioners who would participate in audio-video or audio-only telemedicine pursuant to this proposed rule are assumed to already be conducting telemedicine and already have the necessary equipment to conduct audio-video or audio-only telemedicine at no or minimal additional cost. Additionally, DEA assumes all practitioners who would participate in telemedicine pursuant to this proposed rule to already meet all requisite registration requirements, *i.e.,* holding a DEA registration in the State where the practitioner is located, holding a DEA registration, etc. Additionally, DEA assumes all practitioners who would issue prescriptions via telemedicine encounters pursuant to this proposed rule are authorized under DEA regulations under 21 CFR 1301.13(e)(1)(iv) as well as the states where the practitioner is located (unless otherwise excepted). Therefore, the impact of this requirement is minimal.

2. *Review of PDMP data:* DEA estimates each review of the PDMP will take 4 minutes, or 0.067 hours, by a practitioner. Based on an estimated loaded hourly rate of $157.87,[69] the cost of a review of the PDMP is $10.52 ($157.87 × 0.067). Applying this cost to 67,458 services, the total cost of PDMP review is $709,970 ($10.52 × 67,458), annually. While many practitioners already check PDMP prior to issuing a prescription for a controlled substance for a variety of reasons, DEA will consider the full cost of checking PDMP, $709,970, a cost of this proposed rule to be conservative.

3. *Limited to a 30-day supply:* Currently, inducting MOUD with schedule III–V controlled substances requires an in-person visit or a telemedicine encounter as defined in § 1300.04(i). This proposed rule would expand the circumstances under which individual practitioners are authorized to prescribe schedule III–V controlled substances which are approved for maintenance treatment or withdrawal management via a telemedicine encounter, including an audio-only telemedicine encounter. Therefore, this proposed rule would enable a treatment option that would otherwise be unavailable. While DEA does not have a basis to quantify the economic impact of the 30-day supply limit, 30 days of medication for inducting treatment is a benefit over not receiving any medication. Additionally, as stated earlier, requiring an in-person visit with the prescribing practitioner within 30 days is consistent with the usual course of MOUD and purpose of the Ryan Haight Act, and necessary to enforce the CSA and its implementing regulations.

4. *Maintains records of all prescriptions issued pursuant to a telemedicine encounter, including the supervising physician name where applicable under state law and DEA number when the prescription is issued by a physician assistant or nurse practitioner, whether the encounter was audio-only or audio-video and, if audio-only, the patient's reason for requesting an audio-only encounter:* While DEA estimates two minutes for a prescriber to make such recording, DEA believes prescribers are already performing many of these tasks as usual and ordinary practice and any additional recordkeeping as a result of this proposed rule is minimal. Therefore, there is minimal additional cost associated with this requirement.

In summary, the total cost to practitioners is $709,970 annually, which is the cost associated with checking PDMP for all patients.

Impact on Patients

As discussed earlier, DEA estimates this proposed rule will affect 67,458 patients per year. DEA anticipates that patients will fall into one of two categories:

(1) Patients who would otherwise not receive treatment or prescription for OUD absent the proposed rule change. These patients have no other means to receive treatment. They are unable to visit a physician in-person or otherwise visit a practitioner engaged in the practice of telemedicine as defined in § 1300.04(i), but able to have an audio-video or audio-only telemedicine visit pursuant to this proposed rule.

(2) Patients who would eventually receive treatment and prescription even absent the proposed rule change. These patients are able to either visit a physician in-person or have telemedicine visit with a practitioner engaged in the practice of telemedicine as defined in § 1300.04(i); however, such visit might have been delayed for any variety of reason, *i.e.,* lack of reliable transportation, work or caretaking commitments, long wait times for an appointment with the physician, etc. This proposed rule, if implemented, would create additional flexibilities, potentially allowing patients to access treatment more quickly than would be possible absent this proposed rule.

DEA does not have a basis to estimate how many of the estimated 67,458 patients fall into the two groups. However, DEA anticipates a larger impact for the first group. The impact on the first group of patients is a result of receiving treatment for OUD. There would be a cost of treatment and the benefit generated from the treatment, which would not have been possible without this proposed rule. The impact on the second group would be the result of receiving treatment sooner than they would have without this proposed rule. For both groups, the impact could potentially be lifesaving. However, DEA does not have access to data that would permit it to estimate the number of lives the improved access could save. There would be a cost of treatment and the benefit of earlier treatment, including potential cost-offsets associated with reduced healthcare and public safety expenditures. According to a December 2021 research report, treatment with buprenorphine for a stable patient provided in a certified Opioid Treatment Program, including medication and twice-weekly visits were $115 per week or $5,980 per year.[70] This is likely higher than the cost of treating a stable patient in a primary care setting, where patients are more likely to see providers once per week and where there are no associated specialized costs. However, using the $5,980 per year estimate serves to establish an upper boundary for potential costs in any cost-benefit comparison. Estimates of the impact of buprenorphine use in the treatment of OUD suggest a 23.7% decrease in total deaths, and 31.2% reduction in drug poisonings (both fatal and nonfatal). In total, the combined cost-savings of buprenorphine (including both health-care costs as well as criminal justice costs) was estimated by one study at $60,000 per person.[71] At the costs listed above, the savings from the treatment of

[69] For the purpose of this analysis, the cost per registrant is estimated by multiplying the loaded labor rate by the estimated time to complete the review. The loaded labor rate is based on the estimated loaded hourly wage for 29–1229, Physicians, all other. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2021, https://www.bls.gov/oes/current/oes291229.htm.* The average hourly wage is $111.30, with benefits estimated at an additional 41.84 percent of the base wage. The load factor is calculated by comparing the benefits for private workers as a share of wages, 29.5%/70.5% = 41.84%. Bureau of Labor Statistics, *Employer Costs for Employee Compensation—December 2021, https://www.bls.gov/news.release/pdf/ecec.pdf.* The loaded wage was therefore $111.30 × 1.4184 = $157.87 per hour for private physicians, all other.

[70] *How much does opioid treatment cost?,* NIDA. (April 13, 2021), *https://nida.nih.gov/publications/research-reports/medications-to-treat-opioid-addiction/how-much-does-opioid-treatment-cost.*

[71] Fairley *et al., Cost-effectiveness of Treatments for Opioid Use Disorder.* JAMA Psychiatry, (July 01, 2021).

one person would cover the cost of buprenorphine-assisted treatment for ten others.

A study published in 2021 of the societal costs for OUD found that the ''[C]osts for opioid use disorder and fatal opioid drug poisoning in 2017 were estimated to be $1.02 trillion. The majority of the economic burden is due to reduced quality of life from opioid use disorder and the value of life lost due to fatal opioid drug poisoning.'' [72] According to the report, in 2017 total non-fatal costs are $471 billion and total fatal costs are $550 billion and there were 2.1 million persons ages 12 years and older with an OUD, and 47,000 fatal opioid drug poisonings.[73] Non-fatal costs include costs associated with health care, substance use disorder treatment, criminal justice, lost productivity, and the value of reduced quality of life. Dividing the total non-fatal cost of $471 billion by the number of persons ages 12 and older with an OUD (2.1 million), the societal cost (cost burden on society) of non-fatal OUD is approximately $224,000 ($471 billion/2.1 million) per person with OUD per year. While DEA is unable to quantify how many of the affected patients will be successfully treated for OUD or how many fatal opioid drug poisonings will be avoided as a result of this proposed rule, the potential economic benefit is disproportionally large compared to any cost associated with this rule. A small reduction in OUD has the potential to save money in excess of the total costs of the proposed rule.

Risk of Diversion

The proposed rule will reduce the requirements imposed on practitioners who wish to prescribe schedule III–V controlled substances as part of medication treatment for OUD. DEA understands that there is a risk of misuse and diversion of drugs approved for the use in maintenance treatment or withdrawal management, which could be increased by expanded prescribing.

While the proposed rule may increase the risk of diversion, with the proposed safeguards, and given the safety profile of buprenorphine, DEA estimates this increased risk will be minimal. Requirements to check the PDMP prior to issuance of a prescription, 30-day limitations, in-person requirements for follow-up appointments, and more detailed requirements for recordkeeping are expected to minimize the diversion of buprenorphine via telemedicine, including audio-only telemedicine. Practitioners already have the authority to prescribe MOUD. Studies have found that, in 2019, the percentage of buprenorphine misuse among adults with past-year use was 29.2%. Of those adults who misused buprenorphine in a previous year, 71.8%–74.7% did not have their own prescription.[74] Given the misuse of buprenorphine is often for self-treatment of OUD symptoms, these numbers underscore the need for expanded access to buprenorphine treatment for OUD.

The growth of waivers to prescribe buprenorphine was smallest among prescribers working in small nonmetropolitan counties. Prescribers in rural counties were associated with low buprenorphine dispensing.[75] DEA believes that by providing increased access for rural areas, the benefits of increasing access to MOUD outweigh any added risk of diversion as the result of this proposed rule.

Other Potential Costs

DEA also examined the cost of technology, both capital investment and operation expenses, in order to provide telemedicine in compliance with the proposed rule. DEA believes that the use of telemedicine will not require any additional capital expenditures on the part of practitioners or patients. Recordkeeping requirements are likely to have a minimal impact because current recordkeeping practices are likely to meet the requirements imposed by the proposed rule, and any additional time is expected to be minimal. Electronic medical records may be updated in the future to reflect the proposed rule change, such as the inclusion of a flag for a telemedicine visit, including an audio-only visit, but such changes are likely to be minor and included as part of any normal software update.

Summary

In summary, DEA estimates this proposed rule would affect 37,373 providers and 67,458 patients, annually. DEA believes that the proposed rule would increase patient access to MOUD for two types of patients: those who otherwise would be unable or unwilling to seek treatment, as well as those who would seek treatment but with some form of delay. Increased access to MOUD is expected to reduce the number of opioid drug poisonings annually, however DEA cannot quantify the size or total benefits of such a reduction. There would be a slight increase in labor costs per practitioner, due to increased time spent reviewing PDMP databases. The estimated total cost to the 37,373 providers is $709,970, annually. DEA estimates recordkeeping requirements are likely to have a minimal impact because current recordkeeping practices are likely to meet the requirements imposed by the proposed rule, and any additional time is expected to be minimal. The increase in the availability and flexibility of treatment with schedule III–V controlled substances may increase the risk of diversion, however DEA believes that any increase would be small, and outweighed by the benefit to patients and reduction in the societal cost of opioid use disorder.

Executive Order 12988, Civil Justice Reform

The proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (''RFA''), has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

Due to the COVID–19 public health emergency, DEA issued guidance which authorized prescribing of buprenorphine to new and existing patients with OUD via telephone by otherwise authorized practitioners

[72] Florence *et al., The economic burden of opioid use disorder and fatal opioid overdose in the United States,* (2017).

[73] *Id.*

[74] Han, Beth et al. ''Trends in and Characteristics of Buprenorphine Misuse Among Adults in the US.'' JAMA Netw Open. 2021 Oct 1; 4(10):e2129409. Accessed 9/15/2022.

[75] *Id.*

without requiring such practitioners to first conduct an examination of the patient in person.[76] To continue the flexibilities of telemedicine, including audio-only telemedicine, for prescribing Schedule III–V controlled substances which are approved for maintenance treatment or withdrawal management beyond the public health emergency, DEA proposed to promulgate regulations which would balance the need to increase patient access to legitimate medical treatment with the overarching goal of providing effective controls against diversion. Thus, DEA is proposing to expand the conditions under which a registered practitioner is authorized to prescribe buprenorphine via telemedicine, including through an audio-only telemedicine encounter, and describe the obligations which arise once a practitioner prescribes to patients.

Affected Persons

This proposed rule would affect practitioners prescribing schedule III–V controlled substances for the induction of maintenance treatment or withdrawal management of patients with OUD using telemedicine and the same patients being treating using telemedicine. As stated above, DEA estimates this proposed rule would affected 37,373 practitioners and 67,458 patients, annually. Because practitioners are individuals and not small entities, this analysis examines the impact of the proposed rule on affected physicians and small entities that employ the affected physicians.

The proposed rule would permit the use of audio-video or audio-only telemedicine provided that the practitioner (1) meets all requisite State and Federal registration requirements for both prescribing of controlled substances and engaging in the practice of telemedicine, (2) reviews PDMP data regarding any controlled substance prescriptions issued to the patient in the previous year, (3) is limited to a 30-day supply, across all such prescriptions, until the practitioner conducts an in-person medical evaluation, and (4) maintains records of all prescriptions issued pursuant to a telemedicine encounter, including the supervising physician name and DEA registration number, in cases where the prescription is issued by a nurse practitioner or physician assistant, whether the encounter was audio-only or audio-video and, if audio-only, the patient's reason for requesting an audio-only encounter.

A significant number of physicians and Mid-Level Practitioners work in offices and institutions that meet the RFA's definition of small entities. To estimate the number of affected entities, DEA first determined the North American Industry Classification System (''NAICS'') codes that most closely represent businesses that would employ the physicians and MLP's who would deliver MOUD service via telemedicine, including an audio-only telemedicine encounter. Then, DEA researched economic data for those codes. The source of the economic data is the Small Business Administration (''SBA''), Office of Advocacy, and is based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses (''SUSB'').[77] The following business NAICS codes are estimated to represent businesses that employ the affected persons, potential applicants:

- 621111—Offices of Physicians, Except Mental Health Specialists
- 621112—Offices of Physicians, Mental Health Specialists
- 621420—Outpatient Mental Health and Substance Abuse Centers
- 622110—General Medical and Surgical Hospitals
- 622210—Psychiatric and Substance Abuse Hospitals

SUSB data contains the number of firms by size ranges for each of the NAICS codes. For the purposes of this analysis, the term ''firm'' as defined in the SUSB is used interchangeably with ''entity'' as defined in the RFA.

To estimate the number of affected entities that are small entities, DEA compared the SUSB data for the number of firms in various firm size ranges with SBA size standards for each of the representative NAICS codes. The SBA size standard is the firm size based on the number of employees or annual receipts depending on industry. The SBA size standards for NAICS codes 621111, 621112, 621420, 622110, and 622210 are annual receipts of $14 million, $12 million, $16.5 million, $41.5 million, and $41.5 million, respectively.[78]

The firms in each size range below the SBA size standard are small firms. The number of firms below the SBA size standard was added to determine the total number of small firms in each NAICS code. DEA estimates there are 161,286, 10,561, 6,523, 2,560, and 396 entities in the 621111, 621112, 621420, 622110, and 622210 industries, respectively. Based on the SUSB data on the firm sizes, DEA estimates there are 157,060, 10,392, 5,773, 1,047, and 188 small entities in the 621111, 621112, 621420, 622110, and 622210 industries, respectively. In total, DEA estimates there are 181,326 entities in the five potentially affected industries, of which 174,460 (96.2 percent) are small entities. The analysis is summarized in table 1 below.

TABLE 1—NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES

NAICS code	Number of firms	SBA size standard ($)	Number of small firms *
621111—Offices of Physicians, excepting Mental Health Specialists	161,286	14,000,000	157,060
621112—Offices of Physicians, Mental Health Specialists	10,561	12,000,000	10,392
621420—Outpatient Mental Health and Substance Abuse Centers	6,523	16,500,000	5,773
622110—General Medical and Surgical Hospitals	2,560	41,500,000	1,047
622210—Psychiatric and Substance Abuse Hospitals	396	41,500,000	188
Total	181,326		174,460

[76] ''Dear Registrant'' letter to DEA Qualifying Practitioners and DEA Qualifying Other Practitioners, Thomas W. Prevoznik, Deputy Assistant Administrator, Diversion Control Division, March 31, 2020.

[77] SUSB's employer data contain the number of firms, number of establishments, employment, and annual payroll for employment size of firm categories by location and industry. A ''firm'' is defined as an aggregation of all establishments owned by a parent company (within a geographic location and/or industry) with some annual payroll. The data table is available at *https://www.sba.gov/sites/default/files/files/static_us_11.xls* (last visited April 25, 2022).

[78] SBA. Table of Size Standards, Effective July 14, 2022. *https://www.sba.gov/document/support-table-size-standards* (last visited September 28, 2022.)

TABLE 1—NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES—Continued

NAICS code	Number of firms	SBA size standard ($)	Number of small firms *
Percent of Total			95.8%

* Not all decimal places shown.

From above, E.O. 12866 section, DEA estimates there will be 67,458 telemedicine services pursuant to this proposed rule, including audio-only telemedicine services, rendered by 37,373 providers to 67,458 patients, annually. Therefore, this proposed rule is estimated to affect 37,373 individual practitioners employed in industries with 173,730 small businesses potentially affected by this proposed rule. Since some small entities will employ more than one practitioner, the number of affected small entities is expected to be less than 174,460 and are expected to be proportionally across the five industries. DEA considers a substantial number of small entities are affected if more than 30 percent of small entities in the affected industries is affected. Therefore, at 21.4 percent of the total small entities (37,373 providers/173,730 small entities), the number of small entities affected by this proposed rule is estimated to be not a substantial number for any of the representative industries.

The cost of the proposed rule impacts the affected entities and small entities on a ''per person'' basis. Rather than estimating the number of physicians and MLPs per firm, then the cost per firm, then whether the cost is significant, DEA employed a more direct approach based on the following logic:

- In order to continue as going concerns, the affected firms must generate enough revenue to pay the wages of physicians and MLPs, and other operating expenses.
- Therefore, revenue for firms must be greater than the wages paid to practitioners and MLPs.
- Therefore, if the cost of the proposed rule is not economically significant when compared to individual wages for practitioners and MLPs, the cost of the proposed rule is not economically significant when compared to the annual revenue of the firms.

From 2021 data provided by HHS OIG, DEA estimates that 8,182 patients received telemedicine services prior to receiving a prescription for buprenorphine. These services were provided by 4,533 separate providers, for approximately 1.8 patients per provider. DEA assumed that this ratio is the same for the general populations of practitioners and patients, at 37,373 providers and 67,458 patients.

DEA estimates a non-loaded median hourly wage of $111.30 [79] and $56.99 [80] for potentially affected physicians and MLPs, respectively. Applying the hourly wage rates to the estimated time to apply, DEA estimates the labor cost per PDMP review is $7.42 ($111.30 × 4/60) and $3.80 ($56.99 × 4/60) per physician and MLP, respectively. The non-loaded wage rates are calculated to represent the cost to the individual, whereas previously the loaded wage rates were calculated to represent the total cost of employment to the entity and to the economy. These rates are multiplied by 1.8 patients, for total labor costs of $13.39 and $6.86, respectively.

The non-loaded unit cost of conducting a PDMP review is compared to the non-loaded annual wage rate for physicians and MLPs. Based on the Bureau of Labor Statistics' (''BLS'') Occupational and Employment and Wages data, DEA estimates an average annual wage of $231,500 for physicians, $118,553 for MLPs.[81] Unit costs of $13.39 and $6.86 represent 0.01 percent of those wages. Table 3 presents the details of the calculation.

TABLE 3—COSTS AND FEES AS PERCENT OF WAGES

	Mean hourly wage ($)	Time to review (hours)	Cost per patient ($)	Cost per 1.8 patients ($)	Mean annual wage ($)	Additional costs as percent of wage
Physicians	111.30	0.06	7.42	13.39	231,500	0.01
MLP	56.99	0.06	3.80	6.86	118,553	0.01

The economic impact of additional time spent conducting PDMP reviews represents a small fraction (0.01 percent) of annual wages. DEA estimates the proposed rule will not have a significant economic impact on individual physicians and MLPs. The small entities that employ the potentially affected physicians and MLPs are expected to generate enough revenue to pay their wages. Therefore, DEA concludes the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The estimated annual impact of this proposed rule is minimal. Thus, DEA has determined in accordance with the Unfunded Mandates Reform Act of 1995 (''UMRA'') (2 U.S.C. 1501 *et seq.*) that this action would not result in any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government

[79] Bureau of Labor Statistics, *Occupational and Employment and Wages, May 2021, 29–1229 Physicians, All Others, http://www.bls.gov/oes/current/oes291229.htm.*

[80] Bureau of Labor Statistics, *Occupational and Employment and Wages, May 2021, 29–1071 Physician Assistants, http://www.bls.gov/oes/current/oes291071.htm.*

Bureau of Labor Statistics, *Occupational and Employment and Wages, May 2021, 29–1171 Nurse Practitioners, http://www.bls.gov/oes/current/oes291171.htm.*

DEA calculated the weighted average hourly wage based on the distribution of physician assistants (36.2%) and nurse practitioners (63.8%).

[81] *Notes* 80 and 81.

Agency Plan nor any other action is required under provisions of UMRA.

Paperwork Reduction Act of 1995

This proposed rule would impose a new collection of information under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521. The collections of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d). DEA has identified the following collection(s) of information related to this proposed rule. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. Copies of existing information collections approved by OMB may be obtained at *http://www.reginfo.gov/public/do/PRAMain.*

A. Collections of Information Associated With the Notice of Proposed Rulemaking

Title: Dispensing Records of DEA Registered Practitioners.

OMB Control Number: 1117–NEW.

Form Number: N/A.

DEA is proposing to require practitioners to record additional information than what is currently required in 21 CFR 1304.03(c). Proposed 21 CFR 1306.34(7)(i) would require records indicating whether the telemedicine encounter was conducted using audio-video or audio-only technology. Proposed paragraph (7)(ii) would also require the practitioner to record the patient's reason for requesting an audio-only encounter, if the encounter was audio-only. Proposed paragraph (7)(iii) would require practitioners to record all attempts to comply with paragraph (b)(2) when the practitioner is able to access the PDMP system. Last, proposed paragraph (7)(iv) would require practitioners who were unable to access their state PDMP system to record ''the dates and times that the practitioner attempted to gain access, the reason why the practitioner was unable to gain access, and any follow-up attempts made to gain access to the system.'' The proposed rule would also require practitioners to record the name and DEA registration number of a supervising physician, in cases where the prescription was issued by a nurse practitioner or physicians assistant.

DEA estimates the following number of respondents and burden associated with this collection of information:

- *Number of respondents:* 37,373.
- *Frequency of response:* 1.804986 (as needed, calculated).
- *Number of responses:* 67,458.
- *Burden per response:* 0.06666667 hours.
- *Total annual hour burden:* 4497 hours.

B. Request for Comments Regarding the Proposed Collections of Information

Written comments and suggestions from the public and affected entities concerning the proposed collections of information are encouraged. DEA solicits comment on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the DEA, including whether the information will have practical utility.
- The accuracy of the DEA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Recommendations to enhance the quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comments refer to RIN 1117- AB78/Docket No. DEA–948. All comments must be submitted to OMB on or before March 31, 2023. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

If you need a copy of the proposed information collection instrument(s) with instructions or additional information, please contact the Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 776–3882.

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1306

Administrative practice and procedure, Drug traffic control, Prescription drugs, Reporting and recordkeeping requirements.

For the reasons set out above, the Drug Enforcement Administration proposes to amend 21 CFR parts 1300, 1304, and 1306 as follows:

PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 829, 871(b), 951, 958(f).

■ 2. Amend § 1300.04 by revising paragraph (j) and adding paragraph (m) to read as follows:

§ 1300.04 Definitions relating to the dispensing of controlled substances by means of the internet.

* * * * *

(j) The term *prescription drug monitoring program (or PDMP)* means a State controlled substance monitoring program, including a program supported by the Secretary of Health and Human Services under section 399O of the Public Health Service Act, as amended (42 U.S.C. 280g–3).

* * * * *

(m) The term *telemedicine encounter* means a communication between a practitioner and a patient using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3).

* * * * *

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

■ 3. The authority citation for part 1304 continues to read as follows:

Authority: 21 U.S.C. 821, 827, 871(b), 958(e)–(g), and 965, unless otherwise noted.

■ 4. Amend § 1304.03 by adding paragraphs (i) and (j) to read as follows:

§ 1304.03 Persons required to keep records and file reports.

* * * * *

(i) [Reserved]

(j) A practitioner shall maintain copies of all qualifying telemedicine referrals, as defined in § 1300.04(k) of this chapter, that they issue.

■ 5. Amend § 1304.04 by adding paragraph (i), to read as follows.

§ 1304.04 Maintenance of records and inventories.

* * * * *

(i)(1) A practitioner who prescribes controlled substances in the course of maintenance or detoxification treatment pursuant to a telemedicine encounter as authorized by § 1306.34 shall maintain records required by this part at the registered location on the practitioner's certificate of registration issued pursuant to section 303(f) of the Act (21 U.S.C. 823(g)).

(2) If a prescribing practitioner conducts an evaluation during which the patient is treated by, and in the physical presence of, a DEA-registered practitioner (other than the prescribing practitioner) pursuant to § 1306.34(b)(5)(ii) of this chapter, both the prescribing practitioner and the DEA-registered practitioner shall maintain records required by this part at the registered location on the practitioners' respective certificates of registration issued pursuant to section 303(f) of the Act (21 U.S.C. 823(g)).

PART 1306—PRESCRIPTIONS AND DISPENSING

■ 6. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 829, 871(b), unless otherwise noted.

■ 7. Amend § 1306.04 by adding paragraph (e), to read as follows.

§ 1306.04 Purpose of issue of prescription.

* * * * *

(e) In addition to the requirements of this section, all narcotic prescriptions issued pursuant to § 1306.34 may only be issued for maintenance or detoxification treatment and may not be issued for any other purpose.

■ 8. Add § 1306.34 to read as follows.

§ 1306.34 Requirements for individual practitioners who conduct the induction of maintenance or detoxification treatment via telemedicine encounter.

(a) An individual practitioner not otherwise authorized to engage in the practice of telemedicine as defined in § 1300.04(i) of this chapter is authorized to prescribe any Schedule III, IV, or V narcotic drug approved by the Food and Drug Administration specifically for use in the maintenance or detoxification treatment via a telemedicine encounter as defined in § 1300.04(m) of this chapter if all of the following conditions are met:

(1) The practitioner is registered under section 303(f) of the Act (21 U.S.C. 823(g)), 21 CFR 1301.13(e)(1)(iv) in the State in which the practitioner is located. This requirement does not apply to Department of Veterans Affairs practitioners, those practitioners employed by and treating a patient enrolled in the Department of Veterans Affairs health system, or those practitioners exempt from registration under section 303(f) in all States pursuant to § 1301.23 of this chapter when acting with the scope of the employment or contract that exempted them from the requirement of registration under section 303(f);

(2) The practitioner is authorized by State law to engage in the practice of telemedicine, or not otherwise prohibited by State law from practicing telemedicine, in the State where the practitioner is located and in the State where the patient is located;

(3) The practitioner is authorized under § 1301.28 of this chapter;

(4) The practitioner must be technically capable of conducting a telemedicine encounter by using audio and video equipment permitting two-way, real-time interactive communication with the patient pursuant to 42 CFR 410.78(a)(3); and

(5) The practitioner complies in all other respects to the requirements of this section.

(b) An individual practitioner who is authorized to engage in the practice of telemedicine as described in paragraph (a) must comply with the following requirements prior to issuing a prescription.

(1) The prescription must only be issued for a Schedule III, IV, or V narcotic drug approved by the Food and Drug Administration specifically for use in in maintenance or detoxification treatment and must be issued for that purpose pursuant to § 1306.04.

(2) Prior to issuing the prescription, the practitioner, including a practitioner employed by the Department of Veterans Affairs, must review and consider the data regarding any controlled substance prescriptions issued to the patient in the last year that is contained in the prescription drug monitoring program (PDMP) described in § 1300.04(o) of this chapter in the State where the patient is located, or, if less than one year of data is available, in the entire available period. If less than one year of data is available, practitioners must review and consider the entire available period. A practitioner employed by the Department of Veterans Affairs also must review the Department of Veterans Affairs internal prescription database for data regarding any controlled substance prescriptions issued to the patient in the last year, or, if less than one year of data is available, in the entire available period.

(3) If the practitioner is unable to obtain the PDMP data (or, if employed by the Department of Veterans Affairs, the Department of Veterans Affairs internal prescription database) due to the PDMP (or Department of Veterans Affairs internal prescription database) system being non-operational or otherwise inaccessible as a result of a temporary technological or electrical failure, then:

(i) The practitioner may issue a prescription authorizing the dispensing of no more than a 7-day supply across all such prescriptions for Schedule III, IV, or V narcotic drugs approved by the Food and Drug Administration specifically for maintenance or detoxification treatment until completing the review described in paragraph (b)(2) of this section, and verifying that any previous prescriptions were not issued pursuant to a telemedicine encounter;

(ii) The practitioner must obtain the PDMP (and, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database) data and conduct the review described in paragraph (b)(2) of this section within 7 days of the telemedicine encounter; and

(iii) The practitioner must record the attempts to access the system pursuant to paragraph (b)(6) of this section.

(4) Upon completing the review described in paragraph (b)(2) of this section, the practitioner may issue prescriptions authorizing the dispensing of no more than a 30-day supply across all such prescriptions, including any prescriptions issued pursuant to paragraph (b)(3)(i) of this section, for Schedule III, IV, or V narcotic drugs approved by the Food and Drug Administration specifically for maintenance or detoxification treatment until the practitioner has conducted a medical evaluation as described in paragraph (b)(5) of this section.

(5) For the purposes of this section, the required medical evaluation may either be:

(i) An evaluation during which the patient is treated by, and in the physical presence of, the prescribing practitioner; or

(ii)(A) An evaluation during which the patient is treated by, and in the physical presence of, a DEA-registered practitioner (other than the prescribing practitioner);

(B) This practitioner in the physical presence of the patient is acting in the usual course of professional practice;

(C) The evaluation is conducted in accordance with applicable State law; and

(D) The remote prescribing practitioner, the patient, and the DEA-registered practitioner on site with the patient participate in a real-time, audio-video conference in which both the practitioners and the patient communicate simultaneously; or

(iii) An evaluation that was conducted by a DEA registered practitioner who:

(A) Issued a written qualifying telemedicine referral under 21 CFR 1300.04(k) for the patient to the prescribing practitioner;

(B) Communicated the results of the evaluation by sharing the electronic

medical record which includes, at a minimum, the diagnosis, prognosis, and treatment of the patient prior to the prescribing practitioner issuing the prescription; and

(C) Has issued the written referral based on the diagnosis, prognosis or treatment that occurred as a result of the medical evaluation.

(6) Practitioners who issue prescriptions for controlled substances in the course of maintenance or detoxification treatment via a telemedicine encounter under this section must maintain records of all prescriptions issued pursuant to §§ 1304.03 and 1304.04 of this chapter indicating the following:

(i) Whether the telemedicine encounter was conducted using audio-video or audio-only technology;

(ii) If the telemedicine encounter was conducted using audio-only technology, the patient's reason for requesting the audio-only encounter;

(iii) All efforts to comply with paragraph (b)(2) of this section when the practitioner is able to obtain the PDMP data (and, if employed by the Department of Veterans Affairs, the data from the Department of Veterans Affairs internal prescription database);

(iv) If the practitioner failed to access the PDMP (or, if employed by the Department of Veterans Affairs, Department of Veterans Affairs internal prescription database) system as described in paragraph (b)(2) of this section, the dates and times that the practitioner attempted to obtain the data, the reason why the practitioner was unable to gain access, and any follow-up attempts made to obtain the data;

(v) If a prescribing practitioner conducts an evaluation during which the patient is treated by, and in the physical presence of, a DEA-registered practitioner (other than the prescribing practitioner) pursuant to paragraph (b)(5)(ii) of this section, the full name, DEA registration number, and National Provider Identifier (NPI) number for the DEA-registered practitioner in the physical presence of the patient; and

(vi) If issued a qualifying telemedicine referral, the name, and NPI of the referring practitioner and a copy of the referral and any communications shared pursuant to § 1306.34(b)(5)(iii).

Signing Authority

This document of the Drug Enforcement Administration was signed on February 24, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–04217 Filed 2–27–23; 2:30 pm]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 202

[Docket No. FR–6321–P–01]

Changes in Branch Office Registration Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Housing and Urban Development (HUD) is publishing this proposed rule to revise HUD's regulations for branch office registration requirements. To make mortgage industry standards more flexible and modernized, the proposed rule would remove the requirement that lenders and mortgagees register with HUD each branch office where they conduct Federal Housing Administration (FHA) business.

DATES: *Comment Due Date:* May 1, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Members of the public may submit comments by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments received by mail available to the public at *https://www.regulations.gov.*

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. All submissions must refer to the docket number and title of the proposed rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD are available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy Laramie, Mortgagee Approval Analyst, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number 202–402–6814 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Prior to 1995, HUD required each mortgagee office to get approval from the HUD field office(s) located where the mortgagee intended to submit mortgages for insurance endorsement, with the exception of refinance cases.[1] After 1995, HUD expanded the geographic areas where mortgagees were allowed to originate FHA-insured mortgages. This combined HUD field offices that were geographically close together into a ''lending area'' and permitted mortgagees to conduct business with several field offices within that area. HUD required that mortgagees ''maintain at least one approved branch office within a 'lending area' from which loans are submitted to the FHA Field Offices within the lending area.'' [2]

In 2005, HUD announced three changes to the geographic areas where mortgagees originated loans.[3] The first change expanded the geographic areas where a registered office can conduct FHA business to all HUD field office jurisdictions within groups of States. The second change reduced the number of branches required to conduct FHA business nationwide from 25 to 13 using the revised lending areas. The third change allowed mortgagees to have a single office approved to do nationwide ''direct'' lending via the internet and/or a call center.

Currently, HUD follows its policy from HUD Handbook 4000.1 that was established in September of 2015. This policy calls a geographic area where a branch office is permitted to conduct FHA business an ''Area Approved for Business'' (AAFB).[4] HUD Handbook 4000.1 states that all branch offices that are registered with HUD will initially be granted a nationwide AAFB to conduct FHA business; however, the registered branch ''may only exercise its authority to originate or underwrite FHA mortgages in those states where the mortgagee fully complies with state origination and/or underwriting licensing and approval requirements.''

Under 24 CFR 202.5(k), approved FHA mortgagees and lenders can, upon approval by the Secretary, maintain branch offices to originate Title I or Title II loans [5] or submit applications for mortgage insurance; however, the branch office must be registered with HUD. Under 24 CFR 202.5(m), to retain FHA approval, a mortgagee or lender must complete FHA's recertification process annually. The recertification process requires submission of financial data that includes details about total FHA activity conducted during the fiscal year, as well as a certification that each lender and mortgagee has not been refused a license and has not been sanctioned by any state or states in which it will originate insured mortgages or Title I loans.

II. Proposed Rule

In this proposed rule, HUD seeks to update its regulations by eliminating the requirement that a lender or mortgagee must register with HUD all branch offices where it conducts FHA business. This proposed rule would revise 24 CFR 202.5(k) to instead give mortgagees and lenders the option to register and maintain branch offices with HUD, which would allow them to be placed on HUD's Lender List Search page.[6] In addition, the proposed rule would revise 24 CFR 202.5(i) to make fees applicable to each branch office that a mortgagee or lender registers with HUD rather than applying fees to each branch office where they are authorized to conduct FHA business. This proposed change is based on the mortgage industry's evolution over time and the advancement of technology. Today, there is no longer a need to maintain several branch offices to conduct FHA business nationwide. While the mortgage industry has evolved, the regulations for branch office registration requirements have remained the same.

Prior to the COVID–19 pandemic, the mortgage industry experienced an upward trend in the use of remote service delivery and use of technology to complete loan applications.[7] During the COVID–19 pandemic, remote service delivery and the use of technology became the norm and furthered the shift away from in-person, face-to-face interactions. As the mortgage industry has evolved, HUD has found it necessary to update its regulations to become more modernized and less antiquated, which would increase homeownership opportunities in underserved urban and rural areas.

Additionally, mortgagees, lenders, banks, and credit unions have expressed dissatisfaction with the requirement to register branch offices and have asked HUD what can be done to make the FHA process more flexible. The industry views the branch office requirement as burdensome and a hinderance to entities wanting to participate in FHA programs. HUD agrees that the requirement to register branch offices has become cumbersome and no longer aligns with the way the industry operates. Additionally, the requirement is somewhat redundant as branch offices will still need to be licensed by the state according to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).[8] The SAFE Act instructs states to adopt loan originator licensing and registration requirements that meet the minimum standards determined by the SAFE Act.[9] This proposed rule would provide less of an administrative burden for existing mortgagees and lenders and eliminate barriers for entities interested in FHA programs. In addition to providing relief for the mortgage industry, it may also encourage more mortgagees and lenders to originate FHA-insured mortgages.

Removing the requirement to register branch offices would not affect HUD's monitoring of mortgagees and lenders. HUD would continue to maintain oversight and risk management of mortgagees and lenders who would remain responsible to FHA for the actions of its branch offices and employees. As always, branch office employees would need to work through a mortgagee or lender to conduct FHA business. When an FHA loan is originated, enough information is collected to monitor the performance of mortgagees and lenders such as the underwriters, originators, and location of the loan. HUD can monitor mortgagees and lenders even without the specific branch office identification. Additionally, HUD would continue to monitor the origination and underwriting authority for each

[1] *See* HUD, *Mortgagee Letter 95–36: Mortgagee Approval—Single Family Loan Production—Revised Mortgagee/Program Requirements,* Aug. 2, 1995, *https://www.hud.gov/sites/documents/DOC_20554.TXT.*

[2] *See also* HUD Handbook 4060.1 REV–1, *Mortgagee Approval Handbook I (4060.1)—Chapter 5 Part A. Branch Offices, https://www.hud.gov/sites/documents/40601C5HSGH.PDF.*

[3] HUD, *Mortgagee Letter 05–40: Revisions to Single Family Origination Lending Areas and Nationwide Lending,* Oct. 20, 2005, *https://www.hud.gov/sites/documents/DOC_20553.doc.*

[4] *See* HUD Handbook 4000.1 I.A.4b, *Single Family Lending Area (4000.1), https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgh-062022.pdf.*

[5] Title I and Title II loans are mortgages or fixed-rate loans issued by the Federal Housing Administration (FHA) for home improvements and buying property.

[6] *See https://www.hud.gov/program_offices/housing/sfh/lender/lenderlist.*

[7] *See e.g.* Fiserv, Inc., *Expectations & Experiences: Borrowing and Wealth Management* (2019) (One consumer trend survey found that 65 percent of recent mortgage applicants reported using computers or mobile devices to complete at least a portion of the application). *https://www.fiserv.com/en/about-fiserv/resource-center/consumer-research/expectations-experiences-borrowing-and-wealth-management-fall-2019.html.*

[8] HOUSING AND ECONOMIC RECOVERY ACT OF 2008, Public Law 110–289, July 30, 2008, 122 Stat 2654.

[9] 12 U.S.C. 5701–5710 and 24 CFR part 3400.

mortgagee and lender under 81 Areas Approved for Business that correspond to HUD field office jurisdictions.[10] Furthermore, HUD's Office of Lender Activities and Program Compliance—Quality Assurance Division (QAD) would continue to monitor FHA lenders quarterly to determine if Credit Watch Termination is warranted against a lender.[11]

HUD does not foresee any negative impacts to risk management and oversight caused by this proposed rule change. The regulation would be updated to evolve along with the mortgage industry and reflect its business practices, mortgagees and lenders would be given more flexibility when conducting FHA business, and HUD would be able to address concerns expressed by banks, credit unions and banking industry trade associations. Moreover, the proposed changes would remove an operational and regulatory burden, which could result in more banks and credit unions participating in FHA programs. Ultimately, this would benefit homebuyers, who would have increased access to FHA-insured mortgage products as the number of banks and credit unions participating in FHA programs increased.

III. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This proposed rule was determined to be a ''significant regulatory action'' as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). The proposed rule would revise 24 CFR 202.5(i) and (k) to update HUD's regulation to conform with the mortgage industry's evolving business practices. Additionally, the proposed rule would lessen the administrative burden on mortgagees and lenders.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Environmental Review

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would remove the requirement that lenders and mortgagees register with HUD each branch office where they conduct FHA business. This would not create an undue burden on small entities, instead it would eliminate the burden for all mortgagees and lenders of having to register branch offices with HUD and pay the associated fees. HUD has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments or is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB control number 2502–0059.

List of Subjects in 24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble above, HUD proposes to amend 24 CFR part 202 as follows:

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

§ 202.5 [Amended]

■ 2. In § 202.5:

■ a. In paragraph (i), remove the words ''authorized to originate Title I loans or submit applications for mortgage insurance'' and add in their place the words ''that the lender or mortgagee registers with the Department'';

■ b. In paragraph (k), add the words ''or mortgagee'' after ''A lender'' in the first sentence, and remove the second sentence.

Julia R. Gordon,

Assistant Secretary of Office of Housing—Federal Housing Administration.

[FR Doc. 2023–04191 Filed 2–28–23; 8:45 am]

BILLING CODE 4210–67–P

[10] *See* 24 CFR 202.3(c)(2)(i) stating that HUD ''will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by a HUD field office.''

[11] FHA may terminate a lender's authority to underwrite FHA-insured loans in any HUD field office jurisdiction where the lender has an excessive rate of early defaults and claims. *See* 24 CFR 202.3(c)(2).

Notices

Federal Register
Vol. 88, No. 40
Wednesday, March 1, 2023

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–2023–0002]

Notice of Request for Extension of Approval of an Information Collection; Export Certification: Accreditation of Nongovernment Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: 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 an extension of approval of an information collection associated with accrediting nongovernment facilities to perform services related to the export of plants or plant products.

DATES: We will consider all comments that we receive on or before May 1, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0002 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–2023–0002, 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 on accrediting nongovernment facilities to perform plant related export services, contact Ms. Sarika Negi, Accreditation and Certification Policy Manager, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 851–2349; *sarika.s.negi@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Certification: Accreditation of Nongovernment Facilities.

OMB Control Number: 0579–0130.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country. This activity is authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*).

The export certification regulations, which are contained in 7 CFR part 353, describe the procedures for obtaining certification for plants and plant products offered for export or reexport. Our regulations do not require that we engage in export certification activities; however, we perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

After assessing the condition of the plants or plant products intended for export (*i.e.,* after conducting a phytosanitary inspection), an inspector will issue an internationally recognized phytosanitary certificate or a phytosanitary certificate for reexport. An important component of the certification process, when required, is laboratory testing of plant or plant product samples.

The regulations allow nongovernment facilities (such as commercial laboratories and private inspection services) to be accredited by APHIS to perform specific laboratory testing or phytosanitary inspections that could serve as the basis for issuing Federal phytosanitary certificates or phytosanitary certificates for reexport. The accreditation process requires the use of several information collection activities to ensure that nongovernment facilities applying for accreditation possess the necessary qualifications. These activities include the application for accreditation; agreement for fulfilling accreditation procedures; documentation of equipment; quality manual or equivalent documentation; identity of personnel and subcontractor's qualifications; notification of changes in personnel; report of changes in location, ownership, physical plant equipment or other conditions; appeal of denial of accreditation by APHIS and request for hearing; appeal of withdrawal of accreditation by APHIS and request for hearing; written request to eliminate accreditation status; and documentation of the corrective action.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities 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 3.87 hours per response.

Respondents: U.S. growers, shippers, exporters, and State and local plant health regulatory authorities.

Estimated annual number of respondents: 9.

Estimated annual number of responses per respondent: 6.

Estimated annual number of responses: 54.

Estimated total annual burden on respondents: 209 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 23rd day of February 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–04168 Filed 2–28–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection; Correction

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice; correction.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces a correction to the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the 2023 Irrigation and Water Management Survey.

DATES: Comments on this notice must be received by May 1, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0234, by any of the following methods:

- *Email: omboffcer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 16, 2023, in FR Doc. 2023–03290, on page 10078, correct the **SUPPLEMENTARY INFORMATION** caption, paragraph 1, under the Abstract section, to read:

Abstract: The 2023 Irrigation and Water Management Survey is conducted every 5 years as authorized by the Census of Agriculture Act of 1997 (Pub. L. 105–113). The 2023 Irrigation and Water Management Survey will use a combined probability sample of all farms and horticultural operations that reported irrigation and/or irrigation equipment on the 2022 Census of Agriculture. This irrigation survey aims to provide a comprehensive inventory of farm irrigation practices with detailed data relating to acres irrigated by category of land use, quantity of water applied, and method of application to selected crops. The 2023 survey will also collect expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; cost of water received from off-farm water supplies; and questions related to water reuse. The irrigation questions for horticultural specialties will provide the area irrigated in the open and under protection, source of water, and the irrigation method used at the State level and by 20 Water Resource Regions (WRR). The survey will publish tables showing the total estimated quantity of water applied, including one for crops. Irrigation data items are used by farmers, farming representatives, government agencies, and many other groups concerned with the irrigation industry and water use. This survey will provide the only source of dependable, comparable irrigation data by State and Water Resources Region (WRR). The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as aggregate totals.

Signed at Washington, DC, February 23, 2023.

Yvette Anderson,

Federal Register Liaison Officer, ARS, ERS, NASS.

[FR Doc. 2023–04117 Filed 2–28–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request Approval of a New Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request a new information collection, entitled *National 4–H Conference Registration and Leadership Roles.*

DATES: Written comments on this notice must be received by May 1, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Laura Givens, 816–527–5379, *Laura.Givens@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: National 4–H Conference Registration and Leadership Roles.

OMB Control Number: 5024–NEW.

Type of Request: Notice of intent to request approval of a new information collection.

Abstract: NIFA is requesting approval of a new information collection entitled ''National 4–H Conference Registration and Leadership Roles.'' This information collection is required to support the successful planning and delivery of activities associated with National 4–H Conference. The information collection is essential to provide the necessary instructions and paperwork to eligible registrants who would like to attend or serve in a leadership role at National 4–H Conference.

The National 4–H Conference at the U.S. Department of Agriculture (USDA) is known as the ''Secretary's Conference'' and has been the flagship youth development opportunity of USDA since 1927. The objectives of National 4–H Conference are to: develop the next generation of leaders; increase youths' familiarity with the government

and future career opportunities; and provide an opportunity for young people involved in 4–H in rural, urban and Tribal communities to share their voice on a national level with the federal government.

National 4–H Conference is administered by the National Institute of Food and Agriculture (NIFA) of the USDA. NIFA has determined that the Conference is reasonably and logically related to carrying out its statutory authority under Section 7511(f)(2) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), as amended.

All NIFA Land-grant Colleges and Universities (1862, 1890, and 1994) are invited to select and send high school aged 4–H participants along with chaperones to National 4–H Conference. Each is encouraged to partner within their state to select a diverse state delegation based on age, background, geographic distribution, and/or experience with the 4–H Program.

Approximately 220 4–H participants between the ages of 15 to 19; 90 adult volunteer chaperones from 1862, 1890, and 1994 Institutions and the Cooperative Extension System; and 25 partner groups from across the federal government as well as non-profit organizations register to participate. Additionally, four adults, 17 college students and six youths serve in leadership positions.

The multi-day event is held in the Washington, DC area in Spring and includes registration, a published substantive agenda, scheduled speakers, and discussion panels. A core program activity is the federal briefings where youth delegates plan and deliver briefings based on challenge questions submitted by partnering federal agencies and congressional committees. The Secretary of Agriculture speaks during the Secretary's Assembly and in the past, U.S. Presidents have graced the event.

NIFA exercises overall oversight and development of the program for National 4–H Conference and works cooperatively with a logistics company, authorized under 7 U.S.C. 3318(c), who provides the required goods and services to ensure National 4–H Conference is successful at achieving its objectives.

The information collection is used by USDA and the logistics company to ensure youth and adults who would like to attend or serve in a leadership role at National 4–H Conference can be contacted, submit activity and dietary preferences, meet eligibility requirements, and provide the required permissions required by law such as parental/guardian consent. The information collection is necessary to evaluate the application and other required paperwork for determining the applicant's eligibility and to assist in the selection of the leadership team for National 4–H Conference.

Type of Respondents: Individuals or Institutions of Higher Education.

Estimate of Burden: The annual public reporting burden for the collection of information is estimated to average one (1) hour per response. Public reporting burden for this information collection is estimated to include the time for reviewing instructions, searching existing data sources, gathering the data needed and completing and reviewing the collections of information.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Burden per Response: 1 hour.

Estimated Total Annual Burden on Respondents: 400 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Laura Givens as directed above.

Done at Washington, DC, this day of February 23, 2023.

Dionne Toombs,

Acting Director, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2023–04132 Filed 2–28–23; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–13–2023]

Foreign-Trade Zone (FTZ) 38, Notification of Proposed Production Activity; BMW Manufacturing Company, LLC; (Passenger Motor Vehicles); Spartanburg, South Carolina

BMW Manufacturing Company, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Spartanburg, South Carolina within Subzone 38A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on February 22, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status component is an aluminum instantaneous water heater (duty-free). The request indicates that aluminum instantaneous water heaters are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 10, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: February 23, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–04167 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–52–2020]

Foreign-Trade Zone 38; Application for Production Authority; Teijin Carbon Fibers, Inc.; (Polyacrylonitrile-Based Carbon Fiber); Extension of Comment Period on Submission Containing New Evidence

The comment period on a submission containing new evidence pertaining to the application, as amended, submitted on behalf of Teijin Carbon Fibers, Inc. requesting production authority within FTZ 38, is being extended to April 30, 2023, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15-day period, until May 15, 2023. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: February 23, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–04165 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Ilya Balakaev, Sharikopodshipnikovkaya 20–68, Moscow, Russian Federation; Radiotester OOO a/k/a Radiotester LLC, Sharikopodshipnikovskaya 11, Building 1, Moscow, 115088, Russian Federation; and Volgograd Prospect, House 2, Moscow, 109316, Russian Federation; Order Temporarily Denying Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC. OEE's request and related information indicates that these parties are located in the Russian Federation, at the respective addresses listed on the caption page of this order and on pages 12–13, *infra,* and that Balakaev, a Russian national, owns or controls Radiotester OOO a/k/a Radiotester LLC (referred to collectively as ''Radiotester'').

I. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''[l]ack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

Pursuant to sections 766.23 and 766.24, a temporary denial order (''TDO'') may also be made applicable to other persons if BIS has reason to believe that they are related to a respondent and that applying the order to them is necessary to prevent its evasion. 15 CFR 766.23(a)–(b) and 766.24(c). A ''related person'' is a person, either at the time of the TDO's issuance or thereafter, who is related to a respondent ''by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.'' 15 CFR 766.23(a). Related persons may be added to a TDO on an ex-parte basis in accordance with section 766.23(b) of the Regulations. 15 CFR 766.23(b).

II. OEE's Request for a Temporary Denial Order

As further detailed below, OEE's request is based upon facts indicating that Balakaev engaged in conduct prohibited by the Regulations by unlawfully procuring and exporting from the United States electronic devices subject to the EAR to the Federal Security Service of the Russian Federation (''FSB''), a BIS-listed entity located in the Russian Federation (''Russia''), and to the Democratic People's Republic of Korea (''North Korea'' or ''DPRK'') without the required U.S. government authorization. ''Export'' is defined in the EAR as an ''actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner.'' 15 CFR 734.13(a)(1).[2]

The FSB is listed on the Commerce Department's Entity List[3] with a policy of denial for all items subject to the EAR with limited exceptions for transactions authorized by the Department of the Treasury's Office of Foreign Assets Control (''OFAC'') pursuant to General License No. 1B of March 2, 2021.[4] As a result of this listing, no item subject to the Regulations may be exported, reexported, or transferred (in-country) to the FSB without prior authorization from BIS, and BIS will review any license applications for the FSB pursuant to a policy of denial.[5] The FSB was originally listed on the Entity List on January 4, 2017,[6] with a license review policy of presumption of denial

[1] The Regulations, currently codified at 15 CFR parts 730–774 (2020), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders.

[2] ''Item'' means ''commodities, software, and technology.'' 15 CFR 772.1. Further, ''technology'' may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection. *Id.*

[3] The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States.

[4] *See* 87 FR 34131 (Jun. 6, 2022). *See also* sections 734.9(g), 746.8(a)(3), and 744.21(b) of the EAR.

[5] *Id.*

[6] *See* 82 FR 722 (Jan. 4, 2017). *See also* 82 FR 18219 (Apr. 18, 2017), 86 FR 37903 (Jul. 19, 2021), 87 FR 12240 (Mar. 3, 2022), and 87 FR 34136 (Jun. 6, 2022) for additional listings of FSB-related entities on the Entity List.

for all items subject to the EAR, with some limited exceptions.[7] As such, as of January 4, 2017, a license was required to export, reexport, or transfer (in-country) all items subject to the EAR to the FSB.[8]

As of January 26, 2007, a license is required for the export or reexport to North Korea of all items subject to the EAR other than food or medicine designated as EAR99.[9] This rule was codified in title 15 CFR 746.4, which states ''consistent with United Nations Security Council Resolution 1718, a license is required to export or reexport any item subject to the EAR (see part 734 of the EAR) to the Democratic People's Republic of Korea (North Korea), except food and medicines classified as EAR99 (definitions in part 772 of the EAR).'' [10]

As referenced in OEE's request, on February 21, 2023, Balakaev was indicted on multiple counts in the United States District Court for the Eastern District of New York. The charges include, but are not limited to, conspiring to violate U.S. export control laws in connection with the unlicensed export of electronic spectrum analyzers, signal generators, and gas detection equipment, among other items, to Balakaev's company Radiotester, located in Moscow, Russia, for ultimate end use by officials of the FSB and the DPRK. As described in the OEE request and related information, Radiotester is owned or controlled by Balakaev. The company is described on its website as ''helping to quickly resolve issues of supply and repair of foreign-made measuring equipment'' and as having ''experience of working with large federal, city-forming, manufacturing enterprises''.

As described in the OEE request and indictment, Balakaev headed an illicit procurement network consisting of an individual in the United States, referred to herein as ''Individual 3'', who would assist Balakaev in purchasing the electronic equipment, as well as two members of the FSB in Russia, referred to as FSB Co-Conspirator 1 and FSB Co-Conspirator 2, who worked in FSB Center 8's Military Unit 43753 and who would publish a request for proposal (''RFP'') to repair a device on publicly available Russian websites (collectively, the ''Balakaev Network''). In particular, Balakaev would purchase the electronic devices on the internet or directly through the United States-based manufacturers and ship them to Individual 3's home in Richmond, Virginia. Then, often traveling through the Eastern District of New York, Balakaev flew to the United States to pick up the devices and bring them back to Russia or had Individual 3 and others ship the electronic devices from the United States to Russia. On occasion, Balakaev directed others to travel with the electronic devices from the United States to Russia. Balakaev subsequently used parts from the electronic devices to repair FSB equipment or provided the equipment directly to a DPRK official. The electronic devices Balakaev purchased, repaired, and sold to the FSB and DPRK are subject to the EAR and are items commonly used as part of sensitive foreign counterintelligence and military operations, including the transmission of encrypted communications, the ability to scan a room to determine if it was bugged, and the detection of hazardous gases.

In its request, OEE has presented evidence indicating that Balakaev and the other above-captioned parties are engaged in unlawfully purchasing and shipping dual-use items from U.S. manufacturers to the FSB and DPRK. These items included advanced electronics and sophisticated testing equipment, some of which can be used in sensitive foreign counterintelligence and military operations.

A. Misconduct Charged in February 2023 Indictment

The February 2023 indictment charged Balakaev, owner of Radiotester, with conspiring to defraud, conspiring to violate IEEPA, conspiring to violate ECRA, and smuggling goods from the United States. The violations charged in the indictment cover conduct occurring between at least January 2017 through February 2022, and it alleges that Balakaev was not only aware of U.S. export control laws but also took active steps to evade U.S. export controls by illicitly procuring items subject to the EAR without the required BIS export licenses.

i. Unlicensed Exports of U.S.-Origin Electronic Devices to the FSB in Russia

As stated in the indictment, Balakaev and his co-conspirators in the Balakaev Network unlawfully sourced, purchased, shipped and transported spectrum analyzers and signal generators from vendors and manufacturers in the United States for the benefit of the FSB in Russia. Spectrum analyzers are generally used to detect the frequency of radio signals to identify surveillance devices. The spectrum analyzers that were exported by Balakaev are classified under ECCN 3A992.a and are controlled for Anti-Terrorism (AT) reasons. Signal generators are generally used to securely transmit information, often as part of counterintelligence or other covert operations. The signal generators that were exported by Balakaev are classified under ECCN 3A992.a and are controlled for Anti-Terrorism (AT) reasons. A license was required to export these items to the FSB in Russia.

As described in the indictment, because many of the spectrum analyzers and signal generators used by the FSB were manufactured in the United States, it is difficult for the FSB to obtain parts to repair these items. Pursuant to the scheme involving the Balakaev Network, Balakaev conspired with FSB Co-Conspirator 1 and FSB Co-Conspirator 2, who worked in FSB Center 8's Military Unit 43753. In particular, FSB Co-Conspirator 1 and FSB Co-Conspirator 2 would publish a RFP to repair certain devices on publicly available Russian websites. Balakaev, FSB Co-Conspirator 1 and FSB Co-Conspirator 2 then negotiated a contract price to repair the devices before Balakaev submitted a bid in response to the RFP. To ensure that Balakaev won the bid, FSB Co-Conspirator 1 and FSB Co-Conspirator 2 instructed Balakaev to submit two higher bids under fictious company

[7] On March 2, 2021, the Department of State designated the FSB pursuant to Executive Order 13382 for its contributions to the proliferation of weapons of mass destruction. Thus, exports to the FSB were also prohibited under 15 CFR 744.8.

[8] As a result of Russia's invasion of Ukraine, BIS implemented a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. As of February 24, 2022, any item classified under any Export Classification Control Number (''ECCN'') in Categories 3 through 9 of the Commerce Control List (''CCL'') required a license to be exported or reexported to Russia. *See* 87 FR 12226 (Mar. 3, 2022). As of April 8, 2022, the license requirements for Russia were expanded to cover all items on the CCL. *See* 87 FR 22130 (Apr. 14, 2022). These rules were codified in title 15 CFR 746.8.

[9] *See* 52 FR 3722 (Jan. 26, 2007).

[10] Additionally, BIS implemented broad based controls for items and activities subject to the EAR in support of U.S. national security and foreign policy. 50 U.S.C. 481 l(l)–(2). These controls included restrictions on exports and reexports to the DPRK for United Nations (''UN'') and anti-terrorism reasons. 15 CFR 746.4, 742.19. Consistent with ECRA and UN Security Council Resolutions, with limited exceptions, a license was required to export or reexport any item subject to the EAR to North Korea. 15 CFR 746.4. The DPRK was also subject to a UN Security Council arms embargo, and thus, militarily sensitive items were also restricted. 15 CFR 746.1(b)(2). Furthermore, the Secretary of State designated the DPRK a state sponsor of terrorism and implemented additional restrictions on it. 15 CFR 742.19(a)(2)–(3). For example, additional prohibitions applied to certain items destined for military, police, intelligence or other sensitive end users or if an item would make a significant contribution to the military potential of the DPRK. 15 CFR 742.19(a)(3); Supplement No. 2 to part 742.

names, in addition to the agreed-upon bid through Balakaev's company, Radiotester.

Once the FSB accepted Radiotester's bid and the contract was signed, Balakaev traveled to FSB Center 8 in Russia to pick up the broken device(s). Either FSB Co-Conspirator 1 or FSB Co-Conspirator 2 would meet Balakaev outside the secure gate of FSB Center 8 to provide Balakaev with the broken device(s).

As described in OEE's request and the indictment, Balakaev then sourced the necessary repair parts from the United States. Balakaev either purchased the devices over the internet or directly from the U.S. manufacturers, and had the devices shipped to Individual 3's home in Richmond, Virginia. Once purchased, Balakaev brought or shipped the devices to Russia where he then mined the devices for component parts to use to repair the FSB devices. After Balakaev repaired the devices, he returned to FSB Center 8, where he met with either FSB Co-Conspirator 1 or FSB Co-Conspirator 2 outside the FSB Center 8 gate to provide the repaired devices. The FSB Military Unit 43753 then wired payment to Balakaev's Sberbank account.

As also referenced in OEE's request and the indictment, in total, between approximately 2017 and the present, Balakaev entered into approximately ten (10) contracts with FSB Military Unit 43753 to repair approximately forty (40) spectrum analyzers and signal generators. In furtherance of those contracts, Balakaev purchased approximately forty-three (43) devices in the United States. Balakaev frequently traveled between Russia and the United States during this time to obtain the devices, often through John F. Kennedy International Airport (''JFK Airport'') in the Eastern District of New York. In furtherance of the scheme to unlawfully export controlled items from the United States to the FSB, on or about and between February 2017 and March 2021, Balakaev traveled from Russia to the United States approximately fourteen (14) times, typically staying in the United States anywhere from two (2) to fourteen (14) days on each trip. Included below is one example of the multiple unlawful exports to the FSB which are described in further detail in the indictment.

By way of example, on or about December 19, 2019, Balakaev, acting through Radiotester, entered into a contract with the FSB Military Unit 43753. As described in the indictment, the contract was to repair an Agilent HP 8562EC and two Agilent HP 8560EC spectrum analyzers. According to purchase records and shipment notifications, Balakaev purchased two Agilent HP 8560E spectrum analyzers that were delivered to Individual 3's home in Richmond, Virginia on or about January 14, 2020 and January 15, 2020. Approximately one month later, on or about February 10, 2020, Balakaev flew from Russia to the United States, where he stayed for approximately one week, in order to obtain the two Agilent HP 8560E spectrum analyzers that he purchased. While in the United States, on or about February 17, 2020, Balakaev emailed FSB Co-Conspirator 1 with the subject of the email ''Repair Contracts 43753'' and attached a PDF about spectrum analyzers. The following month, in or about March 2020, Balakaev purchased an Agilent HP 8562EC spectrum analyzer to fulfill the FSB contract. On or about March 21, 2020, the device was delivered to Individual 3's home in Richmond, Virginia.

In addition to the example described above, between approximately April 16, 2020 and March 6, 2021, Balakaev purchased approximately thirty (30) additional spectrum analyzers, spectrum analyzer parts, and other radio parts which were shipped to Individual 3's home in Richmond, Virginia. Balakaev also traveled to the United States twice in 2021 to obtain the devices and fulfill his FSB contracts. Further, in approximately January 2022, Balakaev, through Radiotester, entered into a new contract with FSB Military Unit 43753 to repair six spectrum analyzers and signal generators, including the following make and models: HP8648D; Agilent HP 8562E; Agilent HP 8562EC; Rohde & Schwarz FS300; and Rohde & Schwarz SM300. In approximately February 2022, Balakaev picked up the devices from FSB Co-Conspirator 1 at FSB Center 8 to begin the process of procuring spectrum analyzers for use in repairing the devices.

ii. Unlicensed Exports of U.S.-Origin Gas Detection Equipment to the DPRK

Between approximately 2019 and 2020, Balakaev conspired with DPRK Government Official 1, the First Secretary of the Embassy of the DPRK to the Russian Federation, to provide the DPRK with U.S.-origin technology that can detect hazardous gases, in violation of United States laws.

As described in the OEE request and indictment, in approximately 2019, DPRK Government Official 1 contacted Balakaev to discuss business they could engage in together. DPRK Government Official 1 contacted Balakaev specifically due to connections that Balakaev had made while working at the Russian Ministry of Culture and in his travel to North Korea. Balakaev subsequently met DPRK Government Official 1 multiple times at the North Korean embassy in Moscow, Russia. On one of those occasions, DPRK Government Official 1 asked Balakaev to purchase an Altair 4X gas detector for the DPRK. The Altair 4X gas detector is a device manufactured by a company in the United States that can be used to detect deadly gases such as combustible gases, oxygen-deficient atmospheres, and toxic gases. The Altair 4X gas detector is subject to the EAR and designated as EAR99.[11]

On approximately December 28, 2019, Balakaev purchased the Altair 4X gas detector on the internet in the United States and had it shipped to Individual 3's home in Richmond, Virginia. On January 2, 2020, the shipment arrived at Individual 3's home. Approximately two months later, on or about February 9, 2020, DPRK Government Official 1 sent Balakaev a photograph of a broken CD labeled ''Altair 4XR Multigas Detector.'' Balakaev responded, in sum and substance, that he would send a link for the gas detector software. As further described in the OEE request and indictment, on or about February 10, 2020, Balakaev traveled from Russia to the United States to obtain the gas detector that was previously shipped to Individual 3's home. Approximately one week later, on or about February 17, 2020, Balakaev returned to Russia with the gas detector.

As the indictment further demonstrates, Balakaev was aware of the applicable U.S. export control laws which prohibited him from purchasing the electronic devices in the United States for ultimate end use by the FSB and DPRK. As described in the indictment, on or about November 5, 2019, Individual 3 emailed Balakaev a hyperlink to a BIS document titled ''Don't Let This Happen To You!: Actual Investigations of Export Control and Antiboycott Violations.'' In the email, Individual 3 wrote to Balakaev to ''Take a look just in case.'' The BIS document provided ''an introduction to the consequences of violating U.S. export control law.'' In addition to explaining U.S. export control laws, the document noted specific examples of individuals who violated U.S. sanction regulations by exporting items to Russia without a BIS license. Balakaev subsequently downloaded the document and saved the document to his computer.

[11] The Altair 4X gas detector would not fall within the exception set forth in § 746.4 as it is not EAR99 food or medicine.

B. Ongoing Procurement Attempts

As evidenced by the multiple transactions involving Balakaev and the Balakaev Network dating back to 2017 described in the OEE request and indictment, Balakaev has demonstrated a pattern of conduct involving the illicit procurement and unauthorized exports of EAR controlled items for end use by the FSB and DPRK. Further, as detailed in OEE's request and related information, Balakaev made statements to law enforcement that he intended to continue to procure EAR controlled items through other means and is still obtaining contracts through the FSB.

III. Findings

As described above, I find that the evidence presented by BIS demonstrates that a violation of the Regulations by the above-captioned parties is imminent in both time and degree of likelihood. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC in export or reexport transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the Regulations given the deliberate, covert, and determined nature of the misconduct and clear disregard for complying with U.S. export control laws.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with section 766.24 of the Regulations.

It is therefore ordered:

First, that ILYA BALAKAEV, with an address at Sharikopodshipnikovkaya 20–68 Moscow, Russian Federation; RADIOTESTER OOO A/K/A RADIOTESTER LLC, with an address at Sharikopodshipnikovskaya 11, Building 1, Moscow, 115088, Russian Federation, and Volgograd Prospect, House 2, Moscow, 109316, Russian Federation; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of section 766.24(e) of the EAR, Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Respondents Ilya Balakaev and Radiotester OOO a/k/a Radiotester LLC may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on each denied person and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–04189 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following AD/CVD order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–053	731–TA–1346	China	Aluminum Foil (1st Review)	Jacky Arrowsmith, (202) 482–5255.
A–570–863 [1]	731–TA–893	China	Honey (4th Review)	Thomas Martin, (202) 482–3936.
A–570–905 [2]	731–TA–1104	China	Polyester Staple Fiber (3rd Review)	Thomas Martin, (202) 482–3936.
C–570–054	701–TA–570	China	Aluminum Foil (1st Review)	Jacky Arrowsmith, (202) 482–5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of revocations and continuations through June 2018, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[3]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[4]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning AD and CVD proceedings at Commerce.

Notification to Interested Parties

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 10, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–04187 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] Commerce inadvertently identified this case number as A–533–817 and, hereby, makes the correction. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review,* 88 FR 6702 (February 1, 2023).

[2] Commerce inadvertently identified this case number as A–560–805 and, hereby, makes the correction. *Id.*

[3] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[4] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to the Act, Commerce) and the ITC automatically initiate and conduct reviews to determine whether revocation of an AD/CVD order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for April 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in April 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Carton Closing Staples from China, A–570–055 (1st Review)	Mary Kolberg, (202) 482–1785.
Foundry Coke from China, A–570–862 (4th Review)	Thomas Martin, (202) 482–3936.
Steel Wire Garment Hangers from Taiwan, A–583–849 (2nd Review)	Thomas Martin, (202) 482–3936.
Steel Wire Garment Hangers from Vietnam, A–552–812 (2nd Review)	Thomas Martin, (202) 482–3936.
Countervailing Duty Proceedings	
Steel Wire Garment Hangers from Vietnam, C–552–813 (2nd Review)	Mary Kolberg, (202) 482–1785.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in April 2023.	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Notification to Interested Parties

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 10, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–04197 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Negative Determinations of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of certain welded carbon steel standard pipes and tubes (pipe and tube), completed in Oman and the United Arab Emirates (UAE) from hot-rolled steel (HRS) produced in India, are not circumventing the antidumping duty (AD) order on pipe and tube from India.

DATES: Applicable March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jacob Keller or Dusten Hom, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4849 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2022, Commerce published in the **Federal Register** its *Preliminary Determination* that imports of pipe and tube completed in Oman and the UAE are not circumventing the *Order.*[1] On December 9, 2022, Commerce extended the deadline for the final determination of these circumvention inquiries to February 22, 2022.[2] For a summary of events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by

[1] *See Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Negative Determinations of Circumvention of the Antidumping Order,* 87 FR 52507 (August 26, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum; *see also Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986) (*Order*).

[2] *See* Memorandum, ''Extension of Final Determination,'' dated December 9, 2022.

parties for the final determinations, *see* the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order [4]

The products covered by the *Order* include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.

Merchandise Subject to the Circumvention Inquiries

These circumvention inquiries cover pipe and tube completed in Oman and the UAE using Indian-origin HRS and subsequently exported from Oman and the UAE to the United States.

Methodology

Commerce is conducting these circumvention inquiries in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226. *See* Preliminary Decision Memorandum for a full description of the methodology.[5] We have continued to apply this methodology except where otherwise noted, and incorporate by reference this description of the methodology, for our final determination.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice at the appendix.

Based on our analysis of the comments received from interested parties, we made certain revisions to the *Preliminary Determination.* For Conares, we revised our pattern of trade and sourcing analysis to include Indian HRS shipments from a trading company based on information obtained during verification. For Universal, we revised our pattern of trade and sourcing analysis using the appropriate databases submitted with Universal's initial questionnaire response to include all Indian HRS purchases. The Issues and Decision Memorandum contains explanations of these revisions.

Final Negative Determinations of Circumvention

As detailed in the Issues and Decision Memorandum, Commerce determines that pipe and tube completed in Oman and the UAE using Indian-origin HRS and subsequently exported from Oman or the UAE to the United States are not circumventing the *Order.* Accordingly, Commerce is making a negative finding of circumvention of the *Order.*

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(4), Commerce will order U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation and refund cash deposits for any imports of inquiry merchandise that are suspended under the case number applicable to this proceeding (*i.e.,* A–533–502). Commerce will instruct CBP to continue to suspend imports of inquiry merchandise suspended under other case numbers (*e.g.,* A–520–807, A–523–812) until specific liquidation instructions are issued.

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to administrative protective order (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 return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

Dated: February 22, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Merchandise Subject to the Circumvention Inquiry
IV. Scope of the *Order*
V. Changes from the *Preliminary Determination*
VI. Discussion of the Issues
Comment 1: Whether the Factors Under Section 781(b)(3) of the Act Are Determinative and Controlling
Comment 2: Whether Commerce Should Assign Adverse Facts Available (AFA) to Conares Metal Supply Limited (Conares)
Comment 3: Whether a Cash Deposit Rate Disparity Existed Between India, Oman, and the UAE During the Inquiry Period
Comment 4: Whether Pattern of Trade and Other Factors Under Section 781(b)(3) of the Act Support an Affirmative Determination of Circumvention
Comment 5: Whether a Single Product Can Be Subject to Two AD Orders
Comment 6: Whether the Production of Pipe and Tube Is Minor or Insignificant Under Section 781(b)(2) of the Act
Comment 7: Whether the Merchandise Completed in the Subject Country Is a Significant Portion of the Value of the Merchandise Exported to the United States
VII. Recommendation

[FR Doc. 2023–04161 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Order.*

[5] *See* Preliminary Decision Memorandum at 10–24.

[6] *See* Issues and Decision Memorandum at 4.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Metal Additive Manufacturing Powder Consortium

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of research Consortium.

SUMMARY: The National Institute of Standards and Technology (NIST), an agency of the United States Department of Commerce, in support of efforts to develop standards for metal powders used in additive manufacturing (AM), is establishing the Metal Additive Manufacturing Powder Consortium (''Consortium''). The Consortium will bring together stakeholders to identify and address pre-competitive measurement science and standards needs related to metal powders used in various AM technologies. The Consortium efforts are intended to develop measurement solutions and standards to improve measurement confidence, establish measurement traceability, and enable comparability in the measurements to quantify the performance of metal powders in AM applications. Participants will be required to sign a Cooperative Research and Development Agreement (CRADA). At NIST's discretion, entities which are

not permitted to enter into CRADAs pursuant to law or other governmental constraint may be allowed to participate in the Consortium pursuant to a separate non-CRADA agreement.

DATES: The Consortium's activities will commence on July 1, 2023 (''Commencement Date''). NIST will accept letters of interest to participate in this Consortium on an ongoing basis.

ADDRESSES: Completed letters of interest or requests for additional information about the Consortium can be directed via mail to the Consortium Manager, Dr. Shawn Moylan, Intelligent Systems Division of NIST's Engineering Laboratory, 100 Bureau Drive, Mail Stop 8220, Gaithersburg, Maryland 20899, or via electronic mail to *AMPowderConsortium@nist.gov,* or by telephone at (301) 975–4352.

FOR FURTHER INFORMATION CONTACT: J'aime Maynard, TPO Agreements Officer, National Institute of Standards and Technology's Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, by electronic mail to *Jaime.maynard@nist.gov.*

SUPPLEMENTARY INFORMATION: The Metal Additive Manufacturing Powder (MAMP) Consortium is focused on pre-competitive measurement science and standards research for metal powder feedstocks used in additive manufacturing (AM). Laser powder bed fusion and powder-blown directed energy deposition are of particular interest, and other AM methods utilizing metal powder may also be considered. MAMP research findings will broadly benefit the AM community, with more direct benefit to metal powder manufacturers, manufacturers of powder measurement tools, original AM equipment manufacturers, academic researchers focused on metal powders, standards development organizations addressing AM, as well as Federal and state agencies seeking to advance AM for their missions and applications. All MAMP research findings will be considered for development of new standards and modifications to existing standards under development at NIST and in other accredited standards development organizations.

The Consortium will address industrial needs over a broad range of topics, as guided by the Consortium Steering Committee, including:

(1) characterization of powder (*e.g.,* size, shape, chemistry, surface roughness, rheology, flow, packing density)
(2) defining effective powder use in the AM applications being considered and scientifically correlating it with powder characterization results
(3) quantitative experimental and theoretical comparisons between various size/shape measurement techniques
(4) quantitative experimental and theoretical comparisons between various powder mixing/flow/spreading/packing measurements
(5) correlation of bulk powder properties to spreading and blowing processes
(6) correlation of spreading processes to powder packing and laser absorption
(7) optimization of powder attributes, based on quantitative and relevant powder characterization techniques, for improved AM processes
(8) optimized powder reuse and re-conditioning practices through deeper, more fundamental understanding of powder feedstock changes during AM processes.
(9) rapid qualification of new and re-conditioned powder sources through identification and characterization of critical powder attributes

Measurements may include: 2D and 3D powder shape and size measurement, powder rheology, helium pycnometry, surface area, thermal flash, high-speed imaging of powder processes, X-ray photoelectron spectroscopy, scanning electron microscopy, X-ray diffraction, laser absorption.

The NIST AM Metrology Testbed (AMMT), Powder Spreading Testbed (PST) and other AM platforms at NIST as well as various simulation tools, including discrete element method, will be used to support the Consortium's research efforts.

No proprietary information will be shared as part of the Consortium.

Participation Process

NIST is soliciting responses from all sources, including other Federal Government agencies, State or local governments, foreign government agencies, industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations), public and private foundations, and nonprofit organizations (including universities). Eligibility will be determined by NIST based on the information provided by prospective participants in response to this notice. NIST will evaluate the submitted responses from prospective participants to determine eligibility to participate in this Consortium. Prospective participants should provide letters of interest with the following information to NIST's Consortium Manager:

(1) A description of their experience in metals-based additive manufacturing and related expertise to contribute to the Consortium.

(2) List of interested party's anticipated participants.

Letters of interest must not include business proprietary information. NIST will not treat any information provided in response to this notice as proprietary information. NIST will notify each organization of its eligibility. In order to participate in this Consortium, each eligible organization must sign a CRADA for this Consortium. Entities which are not permitted to enter into CRADAs pursuant to law or other governmental constraint may be allowed to participate in the Consortium, at NIST's discretion, pursuant to separate non-CRADA agreements with terms that may differ, as necessary, from the Consortium CRADA terms.

Participants will contribute US $25,000 in funds or equivalent in-kind contributions to be members of the Consortium. NIST does not guarantee participation in the Consortium to any organization submitting a letter of interest. This phase of the Consortium will be for up to five years.

Authority: 15 U.S.C. 3710a.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–04129 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC747]

Fisheries of the South Atlantic; 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 82 South Atlantic Gray Triggerfish Assessment Webinar I.

SUMMARY: The SEDAR 82 assessment of the South Atlantic stock of gray triggerfish will consist of a data workshop, a series of assessment webinars, and a review workshop. A SEDAR 82 Assessment Webinar I is

scheduled for March 22, 2023. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 82 South Atlantic Gray Triggerfish Post Assessment Webinar 1 is scheduled for March 22, 2023, from 11 a.m. to 2 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: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@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 three-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 which 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 which 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, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 82 South Atlantic Gray Triggerfish Assessment Webinar 1 are as follows: Discuss any leftover data issues that were not cleared up during the data process, answer any questions that the analysts have, and introduce/discuss model development and model setup.

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

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 24, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–04204 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC751]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public online meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and the NMFS Northwest Fisheries Science Center will convene an online pre-assessment workshop to review proposed data and modeling approaches to inform groundfish stock assessments for shortspine thornyhead, rex sole, and petrale sole, scheduled for assessment during 2023. The workshop is open to the public.

DATES: The pre-assessment workshop will be held Monday, March 20, 2023, from 1 p.m. until 5 p.m. (Pacific Standard Time) or until business for the day has been completed.

ADDRESSES: The pre-assessment workshop will be conducted as an online meeting. Specific meeting information, including the agenda and directions on how to join the meeting and system requirements, will be provided in the workshop announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: *marlene.bellman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the pre-assessment workshop is to review proposed data inputs, modeling approaches, and any other pertinent information to inform 2023 stock assessments for shortspine thornyhead, rex sole, and petrale sole. The goal of the pre-assessment workshop is to promote dialogue and a common understanding between assessment teams and data providers of the best data and analytical and modeling approaches applicable to these assessments. Stock assessment teams will solicit advice from data stewards, stakeholders, and fishery managers knowledgeable about these species.

No management actions will be decided by the workshop participants. The participants' role will be development of recommendations for consideration by the stock assessment teams assigned to conduct these assessments. Assessments for these stocks are tentatively scheduled for peer review during Stock Assessment Review (STAR) panels: shortspine thornyhead and rex sole (June 5–9, 2023) and petrale sole (July 24–28, 2023). The

Pacific Council and the Pacific Council's Scientific and Statistical Committee are scheduled to consider these draft assessments for use in informing management decisions at their September 2023 meeting in Spokane, WA.

Although nonemergency issues not contained in the workshops' agendas may be discussed, those issues may not be the subject of formal action during these workshops. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants 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 days prior to the meeting date.

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

Dated: February 24, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–04205 Filed 2–28–23; 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; Socioeconomics of Coral Reef Conservation, the Commonwealth of the Northern Mariana Islands 2024 Survey

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 25, 2021 (86 FR 6876) during a 60-day comment period and again on April, 16, 2021 (86 FR 20120) during a 30-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Socioeconomics of Coral Reef Conservation, the Commonwealth of the Northern Mariana Islands 2024 Survey.

OMB Control Number: 0648–0646.

Form Number(s): None.

Type of Request: Regular (revision to an existing information collection).

Number of Respondents: 1,600.

Average Hours per Response: 20 minutes (0.33 hours).

Total Annual Burden Hours: 533 hours.

Needs and Uses: This request is for a revision to a currently approved hybrid-generic information collection under OMB Control Number 0648–0646. This request adds materials for jurisdictional implementation in the Commonwealth of the Northern Mariana Islands (CNMI).

The information collection is part of the National Coral Reef Monitoring Program (NCRMP), which was established by the National Oceanic and Atmospheric Administration (NOAA) Coral Reef Conservation Program (CRCP) under the authority of the Coral Reef Conservation Act of 2000. The CRCP was created to safeguard and ensure the welfare of the coral reef ecosystems along the coastlines of America's states and territories. In accordance with its mission goals, NOAA developed a survey to track relevant information regarding each jurisdiction's population, social and economic structure, the benefits of coral reefs and related habitats, the impacts of society on coral reefs, and the impacts of coral management on communities. The survey is repeated in each jurisdiction every five to seven years in order to provide longitudinal data and information for managers to effectively conserve coral reefs for current and future generations.

The purpose of this information collection is to obtain human dimensions information from residents in the Commonwealth of the Northern Mariana Islands. Specifically, NOAA is seeking information on the behaviors and activities related to coral reefs, as well as information on perceptions of coral reef conditions and attitudes toward specific reef conservation activities. The survey has a core set of questions that are the same for all jurisdictions to allow for information to be tracked over time. To account for geographical, cultural and linguistic differences between jurisdictions, the survey questions include items that are specific to the local context and developed based on jurisdictional partner feedback.

We intend to use the information collected through this survey instrument for research purposes, as well as for measuring and improving the results of our reef protection programs. Because many of our efforts to protect reefs rely on education and changing attitudes toward reef protection, the information collected will allow CRCP to ensure that programs are designed appropriately at the start, future program evaluation efforts are as successful as possible, and outreach efforts are targeting the intended recipients with useful information.

Affected Public: Individuals or households.

Frequency: Every 5–7 years.

Respondent's Obligation: Voluntary.

Legal Authority: Coral Reef Conservation Act of 2000.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0646.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–04211 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–JS–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; NOAA Teacher at Sea Program

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance

with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 4, 2022 (87 FR 66658) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration, Commerce.

Title: NOAA Teacher at Sea Program Application.

OMB Control Number: 0648–0283.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved collection).

Number of Respondents: 375.

Average Hours per Response: Application: 1 hr. 15 min; Recommendations: 15 minutes; NOAA Health Services Questionnaire and Tuberculosis Screening Document: 45 minutes; Follow-up Report: 2 hours.

Total Annual Burden Hours: 781.

Needs and Uses: This request is for extension of a currently approved information collection.

NOAA provides educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an ongoing research project with NOAA scientists. The application solicits information from interested educators including: basic personal information, teaching experience, and ideas for applying program experience in their classrooms, plus two recommendations and a NOAA Health Services Questionnaire required of anyone selected to participate in the program.

Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going to sea by themselves. This collection supports NOAA's mission by providing educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program.

NOAA does not collect information from this universe of respondents for any other purpose than to determine which educators will participate in the NOAA Teacher at Sea Program.

Affected Public: Individuals—Educators.

Frequency: Once a year.

Respondent's Obligation: Voluntary.

Legal Authority: National Marine Sanctuaries Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0283.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–04199 Filed 2–28–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

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

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Open to the public Friday, March 17, 2023, from 11 a.m. to 1 p.m. All Eastern time.

ADDRESSES: The meeting will be conducted by teleconference only. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hill, Designated Federal Officer (DFO) of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *jennifer.s.hill4.civ@mail.mil;* or by phone at 571–342–0070.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent, strategic-level, private-sector, and academic advice and counsel on enterprise-wide business management approaches and best practices for business operations and achieving National Defense goals.

Agenda: The Board meeting will begin March 17, 2023, at 11 a.m. The DFO, Ms. Jennifer Hill will open the session, followed by a welcome to members and guests by the Board Chair, Hon. Deborah James. The Chair of the Talent Management, Culture & Diversity Subcommittee, Ms. Jennifer McClure, will then present the Building a Civilian Talent Pipeline Study. Once the study is presented, the Board Chair will ask the Board to deliberate on the study and ask for public comments. Next, the Board Chair will call for a vote to approve the study. Once the vote is complete, the Board Chair will provide closing remarks and the DFO will adjourn the open session. The latest version of the agenda will be available on the Board's website at: *https://dbb.defense.gov/Meetings/Meeting-February-2023/.*

Meeting Accessibility: Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140, the March 17 meeting is open to the public via teleconference. Persons desiring to attend the public session are required to register. To attend the public session, submit your name, affiliation/organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Requests to attend the public session must be received no later than 4:00 p.m. on Wednesday, March 15, 2023. Upon receipt of this information, the Board will provide further instructions for attending the meeting.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or regarding the Board's mission in general. Written comments or statements should be submitted to Ms. Jennifer Hill, the DFO, via electronic mail (the preferred mode of submission) at the address listed in the

FOR FURTHER INFORMATION CONTACT section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements submitted in response to the agenda outlined in this notice by Wednesday, March 15, 2023, to be considered by the Board.

The DFO will review all timely submitted written comments or statements with the Board Chair and will ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: February 23, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–04135 Filed 2–28–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Policy, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce the following Federal Advisory Committee meeting of the Defense Policy Board (DPB) will take place.

DATES: Closed to the public; Tuesday, March 7, 2023, from 8:30 a.m. to 5:00 p.m. Closed to the public; Wednesday, March 8, 2023, from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The closed meetings will be held in the Rodman Conference Room, 3D852, at The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Dr. Jeff McManus, (703) 697–7662 (Voice), *osd.pentagon.rsrcmgmt.list.ousd-policy-defense-board-mbx@mail.mil* (Email). Mailing address is 2000 Defense Pentagon, Attn: 5B683, Washington, DC 20301–2000.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Due to circumstances beyond the control of the Designated Federal Officer, the Defense Policy Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its March 7–8, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: To obtain, review, and evaluate classified information related to the DPB's mission to advise on (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and modernization on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other defense policy topics of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Policy.

Agenda: On March 7, 2023, and March 8, 2023, the DPB will receive classified briefings and hold classified discussions on how well DoD information operations are understood, leveraged, integrated, and synchronized into broader interagency and national level influence activities and strategic communications. The DPB will receive classified briefings on (1) how DoD information operations are leveraged and synchronized with programs conducted by other U.S. departments and agencies from Christopher P. Maier, Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict; (2) how DoD information operations are integrated operationally with programs conducted by other U.S. departments and agencies from RDML Ronald A. Foy, Deputy Director for Global Operations, J–39, J–3, Joint Staff; (3) receive a State Department briefing on perspectives on leveraging DoD information operations capabilities from Mr. James Rubin, Special Envoy & Coordinator, Global Engagement Center, State Department; (4) receive a State Department briefing on how DoD information operations function within public diplomacy initiatives from Ms. Elizabeth Allen, Acting Under Secretary of State for Public Diplomacy and Public Affairs, State Department; (5) receive two briefings into how DoD information operations activities are synchronized with efforts conducted by the intelligence community from the Central Intelligence Agency; (6) receive briefings on how DoD information operations are addressed in national security policy development, planning, and implementation from Mr. John Kirby, Coordinator for Strategic Communications, Ms. Cara Abercrombie, Deputy Assistant to the President and Coordinator for Defense Policy & Arms Control, and Mr. Jonathan Finer, Principal Deputy Assistant to the President for National Security Affairs; and (7) finally, discuss the Board's reflections regarding these briefings in a classified session with the Secretary, and/or the Deputy Secretary, and the Under Secretary of Defense.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of 5 U.S.C. 552b(c)(1) and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing classified material.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140(c), the public or interested organizations may submit written statements to the membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's DFO, which is listed in this notice or can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all members.

Dated: February 23, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–04123 Filed 2–28–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee for the Prevention of Sexual Misconduct; Notice of Federal Advisory Committee Meeting

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

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee for the Prevention of Sexual Misconduct (DAC–PSM) will take place.

DATES: DAC–PSM will hold a meeting open to the public on Friday, March 31, 2023 from 1 p.m. to 5 p.m. (EST).

ADDRESSES: The meeting may be accessed by videoconference. Information for accessing the videoconference will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION,** ''Meeting Accessibility''.)

FOR FURTHER INFORMATION CONTACT: Dr. Suzanne Holroyd, Designated Federal Officer (DFO), (571) 372–2652 (voice), *osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil* (email). Website: *www.sapr.mil/DAC-PSM.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 United States Code (U.S.C.) (commonly known as the Federal Advisory Committee Act (FACA) (5 U.S.C. App.)), section 552b(c) of title 5 U.S.C. (commonly known as the Government in the Sunshine Act), and sections 102–3.140 and 102–3.150 of 41 Code of Federal Regulations (CFR).

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on the DAC–PSM website (*www.sapr.mil/DAC-PSM*). Materials presented in the meeting may also be obtained on the DAC–PSM website.

Purpose of the Meeting: The purpose of the meeting is for the DAC–PSM to receive briefings and have discussions on topics related to the prevention of sexual misconduct within the Armed Forces of the United States.

Agenda: Friday, March 31, 2023 from 1:00 p.m. to 5:00 p.m. (EST)—Meeting Open (Roll Call and Opening Remarks by Chair, the Honorable Gina Grosso); Committee Discussion on Training Study; Committee Vote on Recommendations.

Meeting Accessibility: Pursuant to 5 U.S.C. 1009(a)(1) and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 1:00 p.m. to 5:00 p.m. (EST) on March 31, 2023. The meeting will be held by videoconference. All members of the public who wish to attend must register by contacting DAC–PSM at *osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil* or by contacting Dr. Suzanne Holroyd at (571) 372–2652 no later than Friday, March 24, 2023 (by 5:00 p.m. EST). Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Dr. Suzanne Holroyd at *osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil* or (571) 372–2652 no later than Friday, March 24, 2023 (by 5:00 p.m. EST) so that appropriate arrangements can be made.

Written Statements: Pursuant to section 41 CFR 102–3.140, and 5 U.S.C. 1009(a)(3), interested persons may submit a written statement to the DAC–PSM. Individuals submitting a statement must submit their statement no later than 5:00 p.m. EST, Friday, March 24, 2023 to Dr. Suzanne Holroyd at (571) 372–2652 (voice) or to *osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil* (email). If a statement pertaining to a specific topic being discussed at the planned meeting is not received by Friday, March 24, 2023, prior to the meeting, then it may not be provided to, or considered by, the Committee during the March 31, 2023 meeting. The DFO will review all timely submissions with the DAC–PSM Chair and ensure such submissions are provided to the members of the DAC–PSM before the meeting. Any comments received by the DAC–PSM will be posted on the DAC–PSM website (*www.sapr.mil/DAC-PSM*).

Dated: February 23, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–04122 Filed 2–28–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0041]

Agency Information Collection Activities; Comment Request; Loan Rehabilitation: Reasonable and Affordable Payments

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 1, 2023.

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–2023–SCC–0041. 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, the Department 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 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 Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, 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. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department 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: Loan Rehabilitation: Reasonable and Affordable Payments.

OMB Control Number: 1845–0120.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 139,000.

Total Estimated Number of Annual Burden Hours: 139,000.

Abstract: Borrowers who have defaulted on their Direct Loan or FFEL Program loans may remove those loans from default through a process called rehabilitation. Loan rehabilitation requires the borrower to make 9 payments within 10 months. The payment amount is set according to one of two formulas. The second of the two formulas uses the information that is collected in this form. The form makes it easier for borrowers to complete through simplified language, and easier for loan holders through a uniform, common format.

Dated: February 23, 2023.

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. 2023–04149 Filed 2–28–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417–278]

Central Nebraska Public Power and Irrigation District; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Revised Land and Shoreline Management Plan.

b. *Project No:* 1417–278.

c. *Date Filed:* December 29, 2022.

d. *Applicant:* Central Nebraska Public Power and Irrigation District.

e. *Name of Project:* Kingsley Dam Hydroelectric Project.

f. *Location:* The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Dawson, and Gosper counties, in south-central Nebraska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mike Drain, Central Nebraska Public Power and Irrigation District, P.O. Box 740, Holdrege, Nebraska 68949, (308) 995–8601 or *mdrain@cnppid.com.*

i. *FERC Contact:* Jon Cofrancesco, (202) 502–8951 or *Jon.Cofrancesco@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 27, 2023.

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, please send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket numbers P–1417–278.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Pursuant to License Article 421, Central Nebraska Public Power and Irrigation District (Central) filed, for Commission approval, a revised Land and Shoreline Management Plan (LSMP) for the Kingsley Dam Project. The revised LSMP is a comprehensive plan to manage the multiple resources and uses of the project's shoreline in a manner that is consistent with license requirements and project purposes, and protect environmental resources. The revised LSMP supersedes and updates the project's current LSMP approved by the Commission in 2014 and was prepared in consultation with resource agencies and with input from interested stakeholders.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', ''RECOMMENDATIONS'', or ''TERMS AND CONDITIONS'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the

application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: February 23, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04194 Filed 2–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–57–000.
Applicants: System Energy Resources, Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of System Energy Resources, Inc.
Filed Date: 2/21/23.
Accession Number: 20230221–5395.
Comment Date: 5 p.m. ET 3/14/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–84–000.
Applicants: McFarland Solar A, LLC.
Description: McFarland Solar A, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/23/23.
Accession Number: 20230223–5030.
Comment Date: 5 p.m. ET 3/16/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1982–016; ER10–1253–015; ER10–1246–017; ER10–1252–017; ER20–2671–004; ER23–138–001; ER23–139–001.
Applicants: Pleasant Hill Solar, LLC, Watlington Solar, LLC, Water Strider Solar, LLC, Consolidated Edison Solutions, Inc., Consolidated Edison Energy, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Inc.
Description: Amendment to December 15, 2022, Triennial Market Power Analysis for Northeast Region of Consolidated Edison Company of New York, Inc.
Filed Date: 2/17/23.
Accession Number: 20230217–5239.
Comment Date: 5 p.m. ET 3/10/23.

Docket Numbers: ER10–1776–004; ER16–1250–014; ER22–2173–001; ER10–2824–004; ER10–2825–005; ER22–2174–001; ER21–2272–002; ER10–2957–005; ER10–2995–005; ER10–2996–004; ER10–2999–004; ER10–3000–004; ER10–3029–004; ER21–2748–002; ER21–2847–002; ER19–2360–003; ER10–3009–006; ER10–3013–005.
Applicants: Star Point Wind Project LLC, Pebble Springs Wind LLC, Montague Wind Power Facility, LLC, Montague Solar, LLC, Lund Hill Solar, LLC, Bracewell LLP, Leaning Juniper Wind Power II LLC, Klondike Wind Power III LLC, Klondike Wind Power II LLC, Klondike Wind Power LLC, Klamath Energy LLC, Juniper Canyon Wind Power LLC, Hay Canyon Wind LLC, Golden Hills Wind Farm, LLC, Daybreak Solar, LLC, Big Horn II Wind Project LLC, Big Horn Wind Project LLC, Bakeoven Solar, LLC, Avangrid Renewables, LLC.
Description: Supplement to November 8, 2022, Notice of Change in Status of Leaning Juniper Wind Power II LLC.
Filed Date: 2/21/23.
Accession Number: 20230221–5393.
Comment Date: 5 p.m. ET 3/14/23.

Docket Numbers: ER22–2933–002.
Applicants: Nevada Power Company.
Description: Compliance filing: Compliance Filing Docket ER22–2933 to be effective 12/1/2022.
Filed Date: 2/23/23.
Accession Number: 20230223–5109.
Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: ER23–1154–000.
Applicants: Arkansas Electric Cooperative Corporation.
Description: Request for One-Time Limited Waiver of Arkansas Electric Cooperative Corporation, et al.
Filed Date: 2/21/23.
Accession Number: 20230221–5378.
Comment Date: 5 p.m. ET 3/3/23.

Docket Numbers: ER23–1164–000.
Applicants: System Energy Resources, Inc.
Description: Compliance filing: SERI UPSA Compliance (EL18–152 and ER23–816) to be effective 1/1/2023.
Filed Date: 2/22/23.
Accession Number: 20230222–5182.
Comment Date: 5 p.m. ET 3/15/23.

Docket Numbers: ER23–1165–000.
Applicants: Database returns error. There is a problem with archive data and system. Contact Administrator.
Description: Baseline eTariff Filing: McFarland Solar A, LLC MBR Tariff to be effective 4/1/2023.
Filed Date: 2/23/23.
Accession Number: 20230223–5001.
Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: ER23–1166–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3596 Tenaska Clear Creek Wind Facilities Constr. Agr Cancel to be effective 8/13/2021.
Filed Date: 2/23/23.
Accession Number: 20230223–5034.
Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: ER23–1167–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 6804; Queue No. AC2–090 to be effective 1/24/2023.
Filed Date: 2/23/23.
Accession Number: 20230223–5061.
Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: ER23–1168–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 Filing: Amended Development Agreement between NYISO, NYTransco SA 2510 to be effective 1/19/2023.
Filed Date: 2/23/23.
Accession Number: 20230223–5064.
Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: ER23–1169–000.
Applicants: Basin Electric Power Cooperative.
Description: Initial rate filing: Basin Electric, Baseline Submission of Service Agreement No. 118 with NPPD to be effective 7/10/2020.
Filed Date: 2/23/23.
Accession Number: 20230223–5068.
Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: ER23–1170–000.
Applicants: Basin Electric Power Cooperative.
Description: § 205(d) Rate Filing: Basin Electric, Submission of Amended Service Agreement No. 118 with NPPD to be effective 1/31/2023.
Filed Date: 2/23/23.
Accession Number: 20230223–5077.
Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: ER23–1171–000.
Applicants: MD Solar 2, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 3/1/2023.
Filed Date: 2/23/23.
Accession Number: 20230223–5082.
Comment Date: 5 p.m. ET 3/16/23

Docket Numbers: ER23–1172–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii) MAIT submits Revised Interconnection Agreement, SA No. 4577 with MetEd to be effective 4/25/2023.

Filed Date: 2/23/23.

Accession Number: 20230223–5091.

Comment Date: 5 p.m. ET 3/16/23.

Docket Numbers: RT04–2–000; ER09–1532–000; ER20–2054–000.

Applicants: ISO New England Participating Transmission Owners and Protest.

Description: Formal Challenge of RENEW Northeast, Inc. to July 29, 2022 Annual Informational Filing by ISO New England Participating Transmission Owners and Protest.

Filed Date: 1/31/23.

Accession Number: 20230131–5481.

Comment Date: 5 p.m. ET 3/16/23

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: February 23, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04196 Filed 2–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15041–001]

One Drop Hydro, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 15041–001.

c. *Date Filed:* December 27, 2022.

d. *Submitted By:* One Drop Hydro, LLC (One Drop).

e. *Name of Project:* Elizabeth Webbing Falls Dam Project (project).

f. *Location:* On the Blackstone River, in the cities of Central Falls and Pawtucket, Providence County, Rhode Island. No Federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Justin Bristol, One Drop Hydro, LLC; P.O. Box 571, Old Mystic, CT 06372; (401) 793–6041; or email at *jbristol@onedrophydro.com.*

i. *FERC Contact:* Taconya D. Goar at (202) 502–8394; or email at *Taconya.Goar@ferc.gov.*

j. One Drop filed its request to use the Traditional Licensing Process on December 27, 2022, and provided public notice of its request on December 21, 22, and 23, 2022. In a letter dated February 22, 2023, the Director of the Division of Hydropower Licensing approved One Drop's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Rhode Island State Historic Preservation Office, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating One Drop as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On December 27, 2022, One Drop filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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.

o. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 23, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04193 Filed 2–28–23; 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: RP23–453–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: § 4(d) Rate Filing: Fuel Filing—Eff. April 1, 2023 to be effective 4/1/2023.

Filed Date: 2/22/23.

Accession Number: 20230222–5166.

Comment Date: 5 p.m. ET 3/6/23.

Docket Numbers: RP23–454–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: 3–1–2023 Formula Based Negotiated Rates to be effective 3/1/2023.

Filed Date: 2/23/23.

Accession Number: 20230223–5033.

Comment Date: 5 p.m. ET 3/7/23.

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.

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: February 23, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04192 Filed 2–28–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL23–15–000, ER23–680–000]

Sunfish Solar, LLC v. PJM Interconnection, LLC; Notice of Withdrawal

On February 16, 2023, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure,[1] Sunfish Solar LLC (Sunfish) filed a notice of withdrawal (Notice of Withdrawal) to withdraw its December 12, 2022 complaint in Docket No. EL23–15–000 and its December 16, 2022 petition for limited waiver, motion to consolidate proceedings, and request for expedited review in Docket No. ER23–680–000. Sunfish requests expedited treatment of its Notice of Withdrawal. On February 21, 2023, the Commission issued a notice shortening the answer period for the Notice of Withdrawal to February 22, 2023.

Sunfish states that PJM Interconnection, L.L.C. (PJM) and Sunfish have resolved all of the issues that were the subject of the complaint and are actively engaged in amending their respective Interconnection Service Agreement (ISA) and Interconnection Construction Service Agreement (ISCA) with Virginia Electric and Power Company (VEPCO) accordingly. Sunfish states that the Notice of Withdrawal is made in good faith based on the current agreement among Sunfish, PJM, and VEPCO regarding the necessary amendments to the ISA and ICSA. Sunfish notes that, to the extent required by the PJM Open Access Transmission Tariff and the Commission's regulations, such amended agreements will be filed with the Commission in the near future. Sunfish states that no party will be prejudiced by its withdrawal of its pleadings in these proceedings.

Upon consideration, notice is hereby given that Sunfish's requested Notice of Withdrawal is granted, effective as of the date of this notice.

Dated: February 23, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–04195 Filed 2–28–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.216 (2021).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEJECR–2023–0099; FRL–10687–01–OA]

White House Environmental Justice Advisory Council; Notification of Virtual Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the White House Environmental Justice Advisory Council (WHEJAC) will meet on the date and times described below. Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days public notice. The meeting is open to the public. For additional information about registering to attend the meeting or to provide a public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION.** Pre-registration is required.

DATES: The WHEJAC will convene a virtual public meeting on Wednesday, March 1, 2023, at approximately 3:00 p.m. to 7:30 p.m. Eastern Time. Meeting discussions will focus on several topics including, but not limited to, workgroup activity, proposed recommendations for the Council on Environmental Quality's (CEQ) consideration, CEQ briefings, new charges, and interaction between the White House Interagency Council on Environmental Justice (IAC) and WHEJAC. A public comment period relevant to current WHEJAC charges will be considered by the WHEJAC at the meeting (See **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must register by 11:59 p.m., Eastern Time, February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Karen L. Martin, WHEJAC Designated Federal Officer, U.S. EPA; email: *whejac@epa.gov;* telephone (202)564–0203. Additional information about the WHEJAC is available at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the WHEJAC states that the advisory committee will provide independent advice and recommendations to the Chair of the CEQ and to the IAC. The WHEJAC will provide advice and recommendations about broad cross-cutting issues, related but not limited to, issues of environmental justice and pollution reduction, energy, climate change mitigation and resiliency, environmental health, and racial inequity. The WHEJAC's efforts will include a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

I. Registration

Individual registration is required for the public meeting. Information on how to register is located at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council.* Registration for the meeting is available throughout the scheduled end time of the meeting. Registration to speak during the public comment period will close 11:59 p.m., Eastern Time, on February 27, 2023. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, or whether you are submitting written comments.

A. Public Comment

The WHEJAC is interested in receiving public comments relevant to the following charges, topics, and questions currently under consideration: (1) the Climate and Economic Justice Screening Tool; (2) the Environmental Justice Scorecard; (3) Indigenous Peoples and Tribal Nations; (4) Adverse health impacts from a changing climate disproportionally affects disadvantaged communities. What are the policies or programs that can address adverse health impacts before, during, and after extreme climate events?; (5) Tribal communities are disproportionately impacted by the ecosystem collapse caused by climate change that is destroying subsistence hunting, fishing, and growing traditional foods. How can Federal Government policies and programs prevent or address these impacts?; (6) What are the core elements of a multi-agency strategy apart from Carbon Capture Utilization and Sequestration (CCUS) that can address potential use of carbon management while protecting

communities? More information on WHEJAC charges is located online at: *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council* under WHEJAC Membership and Workgroups. Priority to speak during the meeting will be given to public commenters with comments relevant to the topics and questions listed above. Every effort will be made to hear from as many registered public commenters during the time specified on the agenda. Individuals or groups making remarks during the public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your issue and your recommendation relevant to the current charges, topics, and questions under consideration by the WHEJAC. Submitting written comments for the record is strongly encouraged. You can submit your written comments in three different ways: (1) by creating comments in the Docket ID No. EPA–HQ–OEJECR–2023–0099 at *http://www.regulations.gov,* (2) by using the webform at *https://www.epa.gov/environmentaljustice/forms/white-house-environmental-justice-advisory-council-whejac-public-comment,* and (3) by sending comments via email to *whejac@epa.gov.* Written comments can be submitted through March 15, 2023.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin via email at *whejac@epa.gov* or contact by phone at (202) 546–0203. To request special accommodations for a disability or other assistance, please submit your request at least five (5) working days prior to the meeting to give EPA sufficient time to process your request. All requests should be sent to the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2023–04179 Filed 2–28–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0260; FRL–8118–02–OCSPP]

RIN 2070–ZA22

Pesticides; Final Guidance for Pesticide Registrants on the Lists of Pests of Significant Public Health Importance (Pesticide Registration Notice 2023–1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a final Pesticide Registration Notice (PR Notice) entitled, ''Lists of Pests of Significant Public Health Importance'' and identified as PR Notice 2023–1. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This PR Notice updates and replaces the PR Notice 2002–1, which identifies pests of significant public health importance. The Health and Human Services (HHS), United States Department of Agriculture (USDA), and the Environmental Protection Agency (EPA) determined that updating the lists to reflect the current public health situation were warranted because vector-borne diseases and related research has changed significantly since the original PR Notice was published almost 20 years ago. This update includes the addition or removal of pests, new impacts, renaming pests, or grouping pests of similar species.

DATES: PR Notice 2023–1 is effective March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Susan Jennings, Immediate Office (7501M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (706) 355–8574; email address: *jennings.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, however, it may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

We are taking this action under FIFRA, 7 U.S.C. 136 *et seq.* FIFRA section 28(d) charges EPA with identifying ''pests of significant public health importance.'' FIFRA section 2(t) defines the term ''pest'' as meaning (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under FIFRA section 25(c)(1). EPA previously exercised FIFRA section 25(c)(1) authority to make pest declarations, by amending the regulatory definition of ''pest'' at 40 CFR 152.5. The intended changes to the lists of pests of significant public health importance are within the statutory and regulatory definitions.

C. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0260, is available through *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, visit *https://www.epa.gov/dockets.*

II. What guidance does this PR Notice provide?

This final PR Notice 2023–1 updates and replaces PR Notice 2002–1, which identifies pests of significant public health importance. The lists were first published in 2002, fulfilling the requirement of FIFRA section 28(d) to identify pests of significant public health importance (see the original lists: *https://www.epa.gov/sites/production/files/2014-04/documents/pr2002-1.pdf*). EPA, HHS and USDA believe that pests, diseases, and control techniques have changed since 2002. The lists provide an interagency baseline for the federal government and the public to begin any discussions on government regulation and control of disease or vectors of

disease agents. EPA uses the lists of pests of significant public health importance to develop and implement programs to improve and facilitate the safe and necessary use of chemical, biological and other methods to control pests of public health importance. When a pest is added to these lists, it reflects a determination that the pest is a pest of significant public health importance and the lists serve as a public reference to that effect. The publication of the updated lists does not affect the regulatory status of any registration or application for registration of any specific pesticide product, therefore, registrants do not need to take any action.

EPA announced the availability and sought public comments on a draft PR Notice (85 FR 70146, November 4, 2020 (FRL–10010–13)). EPA received 9 unique public comments that are discussed in a Response to Comments document, along with the Agency's responses. The Response to Comments document is available in the docket and is briefly summarized here. The comments covered a range of topics including general comments on the lists geographic scope or level of detail, whether there could be a regulatory impact from the lists (none is anticipated), or if products exempt from registration could be impacted. More specific comments were also submitted on the content of the lists, such as requests to add or remove species, formatting considerations, and the public health impacts of specific pests.

After considering the public comments, EPA is finalizing the PR Notice with the following modifications: Minor adjustments to the introductory language; adding several pests (especially in the vertebrate list); clarifying several of the public health impacts; and combining rows where pests or the public health impacts could be combined.

III. Do PR Notices impose binding requirements?

The PR Notice discussed in this document is intended to provide guidance to EPA personnel and decisionmakers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and pesticide registrants, the PR Notice does not impose new binding requirements on either EPA or pesticide registrants, and EPA may depart from the guidance presented in the PR Notice where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a regulatory action under Executive Order 12866 (58 FR 51735; October 4, 1993) and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This guidance does not create any paperwork burdens that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* The information collection activities associated with pesticide registration are already approved by OMB under OMB Control No. 2070–0060, entitled ''Application for New and Amended Pesticide Registration'' (EPA ICR No. 0277.24).

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 23, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–04155 Filed 2–28–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0140; FRL–10756–01–OGC]

Proposed Consent Decree, Clean Water Act and Administrative Procedure Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding ''Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,'' notice is hereby given of a proposed consent decree in *Cape Fear River Watch et al.,* v. *United States Environmental Protection Agency,* No. 1:22–cv–03809 (D. D.C). On December 23, 2022, Plaintiffs Cape Fear River Watch, Rural Empowerment Association for Community Help, Waterkeepers Chesapeake, Waterkeeper Alliance, Humane Society of the United States, Food & Water Watch, Environment America, Comite Civico del Valle, Center for Biological Diversity, and Animal Legal Defense Fund (collectively, ''Plaintiffs'') filed a complaint against the EPA alleging that the Agency had failed to perform duties mandated by the Clean Water Act (''CWA'') to revise the effluent limitations guidelines (''ELGs'') and promulgate pretreatment standards for the Meat and Poultry Products (''MPP'') industrial category, after EPA had determined that such revised ELGs and standards were appropriate. EPA seeks public input on a proposed consent decree prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed consent decree must be received by March 31, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0140 online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Additional Information About Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Pooja Parikh, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–0839; email address: *parikh.pooja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

In September 2021 (86 FR 51155, September 14, 2021), EPA published its preliminary effluent guidelines plan 15 and solicited comment on it, pursuant to CWA section 304(m). For the Meat and Poultry Products industrial category, the preliminary plan indicated that revision of the ELG and promulgation of pretreatment standards may be appropriate, and that EPA was initiating a rulemaking for this category.

In December 2022, Plaintiffs filed a complaint alleging that EPA's failure to

revise ELGs and to promulgate pretreatment standards for the MPP category constituted failures to act by statutory deadlines in violation of the CWA and Administrative Procedures Act (''APA'').

Although EPA was in the process of conducting the MPP rulemaking, EPA had not publicly announced any specific timeline for completion. The parties initiated settlement discussions, which ultimately produced the proposed consent decree. Under the consent decree, EPA would have obligations to sign a notice of proposed rulemaking by December 13, 2023, and to sign a decision taking final action by August 31, 2025. The consent decree's schedule is based on EPA's projected timeline for completing the rulemaking. These deadlines may be extended by the court only upon written finding of good cause.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed consent decree from persons who are not parties to the litigation. EPA also may hold a public hearing on whether to enter into the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA or APA.

II. Additional Information About Commenting on the Proposed Consent Decree.

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2023–0140) contains a copy of the Proposed Order. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the Proposed Order and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0140 via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Steven M. Neugeboren,

Associate General Counsel.

[FR Doc. 2023–04163 Filed 2–28–23; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, March 9, 2023.

PLACE: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov,* select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

PORTIONS OPEN TO THE PUBLIC:

- Approval of February 9, 2023, Minutes

PORTIONS CLOSED TO THE PUBLIC:

- Office of Secondary Market Oversight Periodic Report [1]

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–04336 Filed 2–27–23; 4:15 pm]

BILLING CODE 6705–01–P

---

[1] Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1274; FR ID 128818]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 1, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1274.

Title: Application for the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 Fixed Support.

Form Number: FCC Form 5634.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions, and State, Local or Tribal governments.

Number of Respondents and Responses: 20 respondents; 30 responses.

Estimated Time per Response: 2–80 hours.

Frequency of Response: One-time and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, and 254.

Total Annual Burden: 1,620 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Although some information collected in FCC Form 5634 will be made available for routine public inspection, the Commission will withhold certain information collected in FCC Form 5634 from routine public inspection. Specifically, the Commission will treat certain financial and technical information submitted in FCC Form 5634 as confidential. However, if a request for public inspection for this technical or financial information is made under 47 CFR 0.461, and the applicant has any objections to disclosure, the applicant will be notified and will be required to justify continued confidential treatment. To the extent that an applicant seeks to have other information collected in FCC Form 5634 or during the post-selection review process withheld from public inspection, the applicant may request confidential treatment pursuant to 47 CFR 0.459.

Needs and Uses: In the *Uniendo a Puerto Rico Fund and Connect USVI Fund Order,* the Commission comprehensively reformed the high-cost program within the universal service fund to focus support on networks capable of providing advanced, hardened voice and broadband services in Puerto Rico and the U.S. Virgin Islands (collectively, the Territories). *Uniendo a Puerto Rico Fund and the Connect USVI Fund,* WC Dockets Nos. 18–143 et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109 (*PR–USVI Order*). As part of the *PR–USVI Order,* the Commission adopted a single-round competitive proposal process to award Stage 2 support for fixed telecommunications networks in the Territories (Stage 2 Competition).

For the Stage 2 Competition, service providers will compete to receive high-cost support of up to $504.7 million in Puerto Rico and $186.5 million in the U.S. Virgin Islands over 10 years to offer fixed voice and broadband services to all locations in the Territories in accordance with the framework adopted in the *PR–USVI Order.* The information collection requirements reported under this collection are the result of the competitive proposal process adopted by the *PR–USVI Order* to award support to winning applicants. The Commission adopted various rules regarding the eligibility of service providers and the term of support. In addition, the Commission adopted rules to govern the competitive proposal process, which includes information to be submitted by parties as part of their competitive proposals and information that must be submitted by winning bidders seeking to become authorized to receive Stage 2 fixed support. The Commission concluded, based on its experience with awarding high-cost support and consistent with the record, that this single-stage competitive proposal process balances the need to collect information essential to awarding support and authorizing Stage 2 fixed support with administrative efficiency.

The Commission estimates that approximately 20 parties will apply and approximately 10 will be selected as winning applicants. The Commission is therefore seeking approval from the OMB to extend the collection on FCC Form 5634 of the information, disclosures, and certifications adopted by the Commission. This information collection addresses the burdens associated with these requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–04200 Filed 2–28–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0222; FR ID 128817]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 1, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0222.

Title: Section 97.213, Telecommand of an Amateur Station.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents and Responses: 40,000 respondents and 40,000 responses.

Estimated Time per Response: 5 minutes (.084 hours).

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is approved under 47 U.S.C. 303, 151–155, 301–609.

Total Annual Burden: 3,360 hours.

Annual Cost Burden: No cost.

Needs and Uses: The third party disclosure requirement contained in 47 CFR 97.213 consists of posting a photocopy of the amateur station license, a label with the name, address, and telephone number of the station licensee, and the name of at least one authorized control operator in a conspicuous place at the station location. This requirement is necessary so that quick resolution of any harmful interference problems can be identified and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

This information is used by FCC personnel during inspections and investigations to determine who is responsible for the proper operation of the remotely controlled station. In the absence of this third party disclosure requirement, field inspections and investigations related to harmful interference could be severely hampered and needlessly prolonged due to inability to determine the responsible licensee.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–04202 Filed 2–28–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation Q (FR Q; OMB No. 7100–0313).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation Q.

Collection identifier: FR Q.

OMB control number: 7100–0313.

Effective Date: The revisions are applicable as of March 1, 2023.

General description of collection: The Board's Regulation Q—Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks (12 CFR part 217) sets forth the capital adequacy requirements for state member banks (SMBs), certain bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and certain covered savings and loan holding companies (SLHCs).[1]

The reporting, recordkeeping, and disclosure requirements included in the FR Q information collection provide the Board and other stakeholders, including market participants, with information regarding the interaction between firms

[1] The Board's capital rule generally does not apply to BHCs or covered SLHCs that meet the requirements of the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement, 12 CFR part 225, Appendix C. For the definition of ''Covered savings and loan holding company,'' see 12 CFR 217.2.

and the regulatory capital framework. Specifically, the reporting and recordkeeping requirements allow the Board to verify that firms are appropriately implementing the capital framework; they also provide the Board with information necessary for monitoring firms participating in the advanced approaches framework. The disclosure requirements are intended to support market discipline by providing information regarding banking organizations' activities, overall risk profiles, and risk management policies. Together, these requirements help to ensure the safety and soundness of the financial system by facilitating the identification of problems at firms and ensuring that firms have implemented any corrective actions imposed by the Board, as well as by allowing stakeholders to make meaningful assessments of firms' financial position.

Frequency: Annual, quarterly.

Respondents: SMBs, certain BHCs, IHCs, and certain covered SLHCs.

Total estimated number of respondents:

Minimum Capital Ratios

Recordkeeping (Ongoing)—1,055.

Standardized Approach

Reporting (Ongoing)—1.
Recordkeeping (Initial Setup)—1.
Recordkeeping (Ongoing)—1,055.
Disclosure (Initial Setup)—1.
Disclosure (Ongoing)—38.

Advanced Approach

Reporting (Initial Setup)—1.
Reporting (Ongoing)—21.
Recordkeeping (Initial Setup)—1.
Recordkeeping (Ongoing)—21.
Recordkeeping (Ongoing quarterly)—21.
Disclosure (Initial setup)—1.
Disclosure (Ongoing)—21.
Disclosure (Ongoing quarterly)—21.
Disclosure (Ongoing quarterly Table 13)—27.

Estimated average hours per response:

Minimum Capital Ratios

Recordkeeping (Ongoing)—16.

Standardized Approach

Reporting (Ongoing)—1.
Recordkeeping (Initial Setup)—122.
Recordkeeping (Ongoing)—20.
Disclosure (Initial Setup)—226.25.
Disclosure (Ongoing)—131.25.

Advanced Approach

Reporting (Initial Setup)—161.
Reporting (Ongoing)—111.77.
Recordkeeping (Initial Setup)—299.
Recordkeeping (Ongoing)—429.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—328.
Disclosure (Ongoing)—5.78.
Disclosure (Ongoing quarterly)—41.5.
Disclosure (Ongoing quarterly Table 13)—5.

Total estimated change in burden: 34 hours.

Total estimated annual burden hours: 76,250.[2]

Current actions: On November 4, 2022, the Board published a notice in the **Federal Register** (87 FR 66701) requesting public comment for 60 days on the extension, with revision, of the FR Q. The Board proposed to revise the FR Q information collection to account for a reporting provision in section 217.37(c)(4)(i)(E) of Regulation Q and a disclosure provision in section 217.124(a) of Regulation Q, which have not been previously cleared by the Board under the PRA. The comment period for this notice expired on January 3, 2023. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, February 23, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–04138 Filed 2–28–23; 8:45 am]

BILLING CODE 6210–01–P

[2] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR Q.

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Survey of Small Business and Farm Lending (FR 2028; OMB No. 7100–0061).

DATES: Comments must be submitted on or before May 1, 2023.

ADDRESSES: You may submit comments, identified by FR 2028, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9 a.m. and 5 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft

reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Survey of Small Business and Farm Lending.

Collection identifier: *FR 2028.*

OMB control number: 7100–0061.

General description of collection: The Survey of Small Business and Farm Lending (SSBFL) comprises the following three reports:

- Survey of Terms of Bank Lending to Farmers (FR 2028B),
- Prime Rate Supplement of Survey of Terms of Lending (FR 2028S), and
- Small Business Lending Survey (FR 2028D).

The SSBFL collects unique information concerning price and certain nonprice terms of loans made to businesses and farmers each quarter (February, May, August, and November) from a sample of banks. The FR 2028B collects detailed data on individual loans funded during the first full business week of the mid-month of each quarter, and the FR 2028S collects the prime interest rate for each day of the survey week from FR 2028B respondents. The FR 2028D provides focused and enhanced information on small business lending including rates, terms, credit availability, and reasons for their changes. The FR 2028D collects quarterly average quantitative data on terms of small business loans and qualitative information on changes and the reasons for changes in the terms of lending. From these sample SSBFL data, estimates of the terms of business loans and farm loans extended are constructed. The aggregate estimates for business loans are published in the Federal Reserve Bank of Kansas City's quarterly release, *Small Business Lending Survey,* and aggregate estimates for farm loans are published in the statistical release, *Agricultural Finance Databook.*

Proposed revisions: The Federal Reserve proposes to revise the FR 2028D form and instructions, to be effective for the September 30, 2023, as of date with the transmission period beginning on October 1, 2023, based on loan activity over the third quarter 2023. The proposed revisions would add clarity in reporting instructions and requirements, improve data quality, and make slight reductions in reporting burden. These changes include removing items related to credit card lending and net drawdowns on lines of credit. A question requesting information on how respondents define small businesses for the purposes of small business lending would be added. Additionally, three questions were modified to add open-ended text fields offering respondents the opportunity to provide additional information on reasons for changes in lending. Minor wording changes are proposed to the form and instructions to add clarity to the survey or address changes to the form. Additionally, minor changes are proposed to the Frequently Asked Questions section to increase clarity of form definitions.

FR 2028D Deletions

Questions determined to provide lower value, in comparison to the burden imposed on respondents required to track and respond, would be removed from the survey. Specifically, a survey question requesting net amounts of drawdowns on commercial and industrial (C&I) commitments broken out by fixed rate and variable rate would be removed. Additionally, questions related to new and outstanding credit card loans would be removed, eliminating 6 questions each for fixed rate and variable rate small business C&I loans along with one qualitative question.

FR 2028D Additions

An open-ended question would be added to increase clarity in how respondents are defining small business lending for quantitative and qualitative loan data. The question would clarify whether a respondent is utilizing the survey definition of a small business, non-farm businesses domiciled in the U.S. with no more than $5 million in total annual revenue, or another internal definition. Current reporters would be asked to respond annually to the new question or when a change occurs in their internal small business definition. First time reporters would respond in the quarter that they are added to the respondent panel. Additionally, three questions would be modified to add voluntary open-ended text fields, offering respondents the opportunity to provide additional information on reasons for changes in credit standards/terms and credit quality of applicants.

Frequency: Quarterly.

Respondents: The FR 2028B and FR 2028S panels have an authorized size of 250 domestically chartered commercial banks. The panel of banks has been drawn from a random sample of banks stratified according to farm loan volumes since 1989. The authorized panel for the FR 2028D panel is 398 domestically chartered commercial banks. The size is based on obtaining survey results with a 95% confidence level and 5% standard error, allowing for a 10% nonresponse rate. The panel of banks is a random sample of banks stratified according to the dollar volumes of commercial and industrial loans with original amounts of $1,000,000 or less.

Total estimated number of respondents:

FR 2028B—250.

FR 2028S—250.

FR 2028D—398.

Estimated average hours per response:

FR 2028B—1.4.

FR 2028S—0.1.

FR 2028D—2.8.

Total estimated change in burden: (318).

Total estimated annual burden hours: 5,958.[1]

Board of Governors of the Federal Reserve System, February 23, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–04136 Filed 2–28–23; 8:45 am]

BILLING CODE 6210–01–P

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 2028.

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Information Collections and Forms Related to Regulation MM (FR MM; OMB No. 7100–0340).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Information Collections and Forms Related to Regulation MM.

Collection identifier: FR MM.

OMB control number: 7100–0340.

Effective Date: The revisions are applicable as of March 1, 2023.

General description of collection: The FR MM consists of information that must be filed in connection with certain proposals involving savings and loan holding companies (SLHCs) that are organized in mutual holding company (MHC) form, including the reorganization of a savings association into MHC form, stock issuances of holding company subsidiaries of MHCs, and conversions of MHCs to stock form, as well as certain disclosures related to these filings. The Board requires the submission of these filings to allow the Board to fulfill its obligations to review such transactions under section 10(o) of the Home Owners' Loan Act (HOLA), as amended (12 U.S.C. 1467a(o)) and the Board's Regulation MM–Mutual Holding Companies (12 CFR part 239). The Board uses the information submitted by an applicant or notificant to evaluate these transactions with respect to the relevant statutory and regulatory factors.

Frequency: On occasion.

Respondents: Mutual savings associations that wish to reorganize to form a mutual holding company under the HOLA, subsidiary holding companies of a mutual holding company, mutual holding companies, and members of applying mutual organizations.

Total estimated number of respondents: 19.

Total estimated change in burden: (139).

Total estimated annual burden hours: 553.[1]

Current actions: On November 4, 2022, the Board published a notice in the **Federal Register** (87 FR 66700) requesting public comment for 60 days on the extension, with revision, of the FR MM. The comment period for this notice expired on January 3, 2023. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, February 23, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–04139 Filed 2–28–23; 8:45 am]

BILLING CODE 6210–01–P

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR MM.

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting and Recordkeeping Requirements Associated with Regulation KK (FR KK; OMB No. 7100–0364).

DATES: Comments must be submitted on or before May 1, 2023.

ADDRESSES: You may submit comments, identified by FR KK, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9 a.m. and 5 p.m. on

weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Reporting and Recordkeeping Requirements Associated with Regulation KK.[1]

Collection identifier: FR KK.

OMB control number: 7100–0364.

General description of collection: Pursuant to sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Board, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Farm Credit Administration (FCA), and Federal Housing Finance Agency (FHFA) (collectively, the agencies) have adopted regulations, including the Board's Regulation KK—Swaps Margin and Swaps Push-out (12 CFR part 237), establishing capital requirements and initial and variation margin requirements for certain entities on all non-cleared swaps and non-cleared security-based swaps. These regulations include reporting and recordkeeping requirements.[2]

Frequency: Annual, event generated.

Respondents: Any swap entity[3] that is a state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)), as well as any other entity determined to be a covered swap entity by the Board.

Total estimated number of respondents: 1.

Estimated average hours per response:

Reporting Sections 237.8(c) and 237.8(d)–240.

Reporting Section 237.8(f)(3)–50.

Reporting Section 237.9(e)–10.

Reporting Sections 237.22(a)(1) and 237.22(e) (Board only)–7.

Recordkeeping Sections 237.2 (definition of ''eligible master netting agreement,'' item 4), 237.8(g), and 237.10–5.

Recordkeeping Section 237.7(c)–100.

Recordkeeping Section 237.8(h)–20.

Total estimated annual burden hours: 452.[4]

Board of Governors of the Federal Reserve System, February 23, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–04137 Filed 2–28–23; 8:45 am]

BILLING CODE 6210–01–P

[1] The Board has modified the title of this information collection to reflect that the Board's Regulation KK does not include any disclosure collections of information, as defined by the Paperwork Reduction Act (PRA). Specifically, the Board has determined that section 237.1(h), previously cleared as part of the FR KK, no longer includes a disclosure collection of information, because the conditions triggering the disclosure will not occur. In addition, the Board has determined to omit from the FR KK the following provisions of Regulation KK that were formerly referenced in the clearance, because it has determined that they do not constitute collections of information under the PRA: sections 237.1(d); 237.5(c)(2)(i); 237.8(c)(2); 237.8(d)(5), (12), and (13); 238.8(e); and 237.8(f)(2), (3), and (4).

[2] See 80 FR 74839 (November 30, 2015); see also 79 FR 340 (January 3, 2014). The Board specific rules have been codified in Regulation KK.

[3] A ''swap entity'' means a person that is registered with the Commodity Futures Trading Commission (CFTC) as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (Commodity Exchange Act), or a person that is registered with the U.S. Securities and Exchange Commission (SEC) as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (Securities Exchange Act). 12 CFR 237.2.

[4] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review*. On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR KK.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–E–4415]

Determination of Regulatory Review Period for Purposes of Patent Extension; VERZENIO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VERZENIO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by May 1, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 28, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 1, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received 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–2018–E–4415 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VERZENIO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for

example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VERZENIO (abemaciclib). VERZENIO is indicated:

- in combination with fulvestrant for the treatment of women with hormone receptor (HR)-positive, human epidermal growth factor receptor 2 (HER2)-negative advanced or metastatic breast cancer with disease progression following endocrine therapy and
- as monotherapy for the treatment of adult patients with HR-positive, HER2-negative advanced or metastatic breast cancer with disease progression following endocrine therapy and prior chemotherapy in the metastatic setting.

Subsequent to this approval, the USPTO received a patent term restoration application for VERZENIO (U.S. Patent No. 7,855,211) from Eli Lilly and Company, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 13, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VERZENIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VERZENIO is 2,907 days. Of this time, 2,760 days occurred during the testing phase of the regulatory review period, while 147 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* October 15, 2009. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 15, 2009.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* May 5, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for VERZENIO (NDA 208716) was initially submitted on May 5, 2017.

3. *The date the application was approved:* September 28, 2017. FDA has verified the applicant's claim that NDA 208716 was approved on September 28, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 652 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04177 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1427]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by March 31, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0466. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Hazard Analysis and Critical Control Point (HACCP) Procedures for the Safe and Sanitary Processing and Importing of Juice—21 CFR Part 120

OMB Control Number 0910–0466—Extension

This information collection supports regulations in part 120 (21 CFR part 120) which mandate the application of HACCP procedures to the processing of fruit and vegetable juices. HACCP is a

preventative system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)(4)). Under section 402(a)(4) of the FD&C Act, a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or rendered injurious to health. The Agency also has authority under section 361 of the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State, territory, or possession to another, or from outside the United States into this country. Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA is authorized to issue regulations for the efficient enforcement of the FD&C Act.

Under HACCP, processors of fruit and vegetable juices establish and follow a preplanned sequence of operations and observations (the HACCP plan) designed to avoid or eliminate one or more specific food hazards, and thereby ensure that their products are safe, wholesome, and not adulterated, in compliance with section 402 of the FD&C Act. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety.

In an effort to reduce burden and assist respondents, our website (*https://www.fda.gov/food/hazard-analysis-critical-control-point-haccp/juice-haccp*) offers guidance for industry, training and education, and background information to assist the food industry in developing and implementing a juice HACCP. Included in this information are guidance documents entitled ''Juice HACCP and the FDA Food Safety and Modernization Act'' (December 2021) (available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-juice-haccp-and-fda-food-safety-modernization-act*) and ''Juice HACCP Hazards and Controls Guidance—First Edition'' (March 2004) (available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-juice-hazard-analysis-critical-control-point-hazards-and-controls-guidance-first*). All Agency guidance documents are issued in accordance with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time

In the **Federal Register** of October 7, 2022 (87 FR 61087), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section; activity	Number of record-keepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
120.6(c) and 120.12(a)(1) and (b); require written monitoring and correction records for Sanitation Standard Operating Procedures.	1,875	365	684,375	0.1 (6 minutes)	68,438
120.7, 120.10(a), and 120.12(a)(2), (b)–(c); require written hazard analysis of food hazards.	2,300	1.1	2,530	20	50,600
120.8(b)(7) and 120.12(a)(4)(i) and (b); require a recordkeeping system that documents monitoring of the critical control points and other measurements as prescribed in the HACCP plan.	1,450	14,600	21,170,000	0.01 (1 minute)	211,700
120.10(c) and 120.12(a)(4)(ii) and (b); require that all corrective actions taken in response to a deviation from a critical limit be documented.	1,840	12	22,080	0.1 (6 minutes)	2,208
120.11(a)(1)(iv) and (a)(2) and 120.12 (a)(5) and (b); require records showing that process monitoring instruments are properly calibrated and that end-product or in-process testing is performed in accordance with written procedures.	1,840	52	95,680	0.1 (6 minutes)	9,568
120.11(b)–(c) and 120.12(a)(5) and (b); require that every processor record the validation that the HACCP plan is adequate to control food hazards that are likely to occur.	1,840	1	1,840	4	7,360
120.11(c) and 120.12(a)(5) and (b); require documentation of revalidation of the hazard analysis upon any changes that might affect the original hazard analysis (applies when a firm does not have a HACCP plan because the original hazard analysis did not reveal hazards likely to occur).	1,840	1	1,840	4	7,360
120.14(a)(2), (c)–(d), and 120.12(b); require that importers of fruit or vegetable juices, or their products used as ingredients in beverages, have written procedures to ensure that the food is processed in accordance with our regulations in part 120.	308	1	308	4	1,232
120.8(a)–(b) and 120.12(a)(3), (b)–(c); require written HACCP plan.	1,560	1.1	1,716	60	102,960
Total					461,426

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 provides our estimate for the next 3 years for the total annual recordkeeping burden of our regulations in part 120. Based on our experience with the information collection over the past 3 years, our burden estimate

remains unchanged since our last review of the information collection.

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04174 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1047]

Q13 Continuous Manufacturing of Drug Substances and Drug Products; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' The guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The guidance provides clarification on continuous manufacturing (CM) concepts and describes scientific approaches and regulatory considerations specific to CM of drug substances and drug products. The guidance is intended to provide scientific and regulatory considerations for the development, implementation, operation, and life-cycle management of CM. The guidance replaces the draft guidance entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products'' issued on October 14, 2021. This guidance also replaces the draft guidance entitled ''Quality Considerations for Continuous Manufacturing'' issued on February 27, 2019.

DATES: The announcement of the guidance is published in the **Federal Register** on March 1, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for Written/Paper Submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1047 for ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Sau Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4182, Silver Spring, MD 20993–0002, 301–796–2905; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259, *Jill.Adleberg@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' The guidance was prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to *https://www.ich.org/*).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In the **Federal Register** of October 14, 2021 (86 FR 57159), FDA published a notice announcing the availability of a draft guidance entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' The notice gave interested persons an opportunity to submit comments by December 13, 2021. After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies on November 16, 2022.

This final guidance provides guidance on the development, implementation, operation, and life-cycle management of CM and provides clarification on CM concepts and describes scientific approaches and regulatory considerations specific to CM of drug substances and drug products. This guidance also replaces the draft guidance entitled ''Quality Considerations for Continuous Manufacturing,'' issued on February 27, 2019. Many of the principles in that guidance have been incorporated in the guidance entitled ''Q13 Continuous Manufacturing of Drug Substances and Drug Products,'' rendering the 2019 guidance obsolete.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Q13 Continuous Manufacturing of Drug Substances and Drug Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 relating to the submissions of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 relating to the submissions of new drug applications and abbreviated new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 relating to the submissions of biologics license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR parts 210 and 211 relating to current good manufacturing practice have been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.regulations.gov, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04212 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0516]

Mylan Pharmaceuticals Inc., et.al.; Withdrawal of Approval of 11 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 11 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 March 31, 2023.

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 075980	Tramadol Hydrochloride (HCl) Tablets, 50 milligrams (mg).	Mylan Pharmaceuticals Inc., 3711 Collins Ferry Rd., Morgantown, WV 26505.
ANDA 075986	Tramadol HCl Tablets, 50 mg	Do.
ANDA 201510	Pirmella 7/7/7 Tablets, 0.035 mg, 0.035 mg, 0.035 mg; 0.5 mg, 0.75 mg, 1 mg.	Lupin Pharmaceuticals, Inc., U.S. Agent for Lupin Ltd., 111 South Calvert St., Harborplace Tower, 21st Floor, Baltimore, MD 21202.
ANDA 201512	Pirmella 1/35 Tablets, 0.035 mg; 1 mg	Do.
ANDA 203803	Propafenone HCl, Extended-Release Capsules, 225 mg, 325 mg, and 425 mg.	Mylan Pharmaceuticals Inc.
ANDA 203900	Tacrolimus Injection, Equivalent to (EQ) 5 mg base/milliliters (mL).	Hospira, A Pfizer Company, 275 North Field Dr., Lake Forest, IL 60045.
ANDA 203946	Fludeoxyglucose F18 Injectable, 20–300 millicurie (mCi)/mL.	Essential Isotopes, LLC, 1513 Research Park Dr., Columbia, MO 65211.
ANDA 205923	Caspofungin Acetate Powder, 50 mg/vial, and 70 mg/vial.	Xellia Pharmaceuticals USA, LLC, U.S. Agent for Xellia Pharmaceuticals ApS, 2150 East Lake Cook Rd., Suite 1015, Buffalo Grove, IL 60089.
ANDA 209571	Darifenacin Hydrobromide Extended-Release Tablets, EQ 7.5 mg/base and EQ 15 mg/base.	Xiromed, LLC., U.S. Agent for Xiromed Pharma España, S.L., 180 Park Ave., Suite 101, Florham Park, NJ 07932.
ANDA 211972	Zileuton Extended-Release Tablets, 600 mg	Lupin Pharmaceuticals, Inc.
ANDA 213222	Icatibant Acetate Injectable, EQ 30 mg base/3 mL (EQ 10 mg base/mL).	Glenmark Pharmaceuticals Inc., USA, U.S. Agent for Glenmark Pharmaceuticals Ltd., 750 Corporate Dr., Mahwah, NJ 07430.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of March 31, 2023. 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 March 31, 2023 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: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04175 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0487]

Discussion Paper: Artificial Intelligence in Drug Manufacturing, Notice; Request for Information and Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for information and comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing publication of a discussion paper providing information for stakeholders and soliciting public comments on a specific area of emerging and advanced manufacturing technologies. The discussion paper presents areas for consideration and policy development identified by the Center for Drug Evaluation and Research (CDER) scientific and policy experts associated with application of artificial intelligence (AI) to pharmaceutical manufacturing. The discussion paper includes a series of questions to stimulate feedback from the public, including CDER and the Center for Biologics Evaluation and Research (CBER) stakeholders.

DATES: Submit either written or electronic comments and information by May 1, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 1, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received 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–2023–N–0487 for ''Discussion Paper: Artificial Intelligence in Drug Manufacturing, Notice; Request for Information and Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• *Confidential Submissions:* To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto Friedman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4162, Silver Spring, MD 20993, 240–402–7930, *Elizabeth.Giaquinto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Advanced manufacturing is a term that describes an innovative pharmaceutical manufacturing technology or approach that has the potential to improve the reliability and robustness of the manufacturing process and resilience of the supply chain. Advanced manufacturing can: (1) integrate novel technological approaches, (2) use established techniques in an innovative way, or (3) apply production methods in a new domain where there are no defined best practices. Advanced manufacturing can be used for new or currently marketed large or small molecule drug products.

FDA has recognized and embraced the potential of advanced manufacturing. In 2014, CDER established the Emerging Technology Program (ETP) to work collaboratively with companies to support the use of advanced manufacturing. CDER observed a rapid emergence of advanced manufacturing technologies through the ETP and recognized that regulatory policies and programs may need to evolve to enable timely technological adoption.

The National Academies of Sciences, Engineering, and Medicine issued a 2021 report titled *Innovation in Pharmaceutical Manufacturing on the Horizon: Technical Challenges, Regulatory Issues, and Recommendations,* highlighting innovations in integrated pharmaceutical manufacturing processes. These innovations could have implications for measurement, modeling, and control technologies used in pharmaceutical manufacturing. AI may play a significant role in monitoring and controlling advanced manufacturing processes.

This discussion paper presents areas associated with the application of AI to pharmaceutical manufacturing that FDA has identified for consideration as FDA evaluates our existing risk-based regulatory framework. CDER scientific and policy experts identified these areas from a comprehensive analysis of existing regulatory requirements applicable to the approval of drugs manufactured using AI technologies. The areas of consideration in this discussion paper are those for which FDA would like public feedback.

There are additional areas of consideration not covered within this document, for example, difficulties that could result from ambiguity on how to apply existing regulations to AI or lack of Agency guidance or experience. The areas of consideration presented in this discussion paper focus on drug products that would be marketed under a new drug application (NDA), abbreviated new drug application (ANDA), or biologic license application (BLA). Public feedback will help inform CDER's evaluation of our existing regulatory framework.

While the initial analysis focused on products regulated by CDER, FDA's CBER has also encountered a rapid emergence of advanced manufacturing technologies associated with AI. As such, both CDER and CBER stakeholders are invited to provide feedback on the discussion questions.

II. Requested Information and Comments

Interested persons are invited to provide detailed comments to CDER and CBER on all aspects described in the discussion paper. To facilitate input, FDA has developed a series of questions based on the considerations articulated in the discussion paper. The questions are not meant to be exhaustive, and FDA is also interested in any other pertinent information stakeholders would like to share on this topic. In all cases, FDA encourages stakeholders to provide the specific rationale and basis for their comments, including any available supporting data and information.

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04206 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0008]

Request for Nominations for Voting Members for the Patient Engagement Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is requesting nominations for voting members, excluding consumer and industry representatives, to serve on the Patient Engagement Advisory Committee (the Committee) in the Center for Devices and Radiological Health. Nominations will be accepted for upcoming vacancies effective with this notice. FDA seeks to include the views of members of all gender groups, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Nominations received on or before May 1, 2023, will be given first consideration for membership on the Committee. Nominations received after May 1, 2023, will be considered for nomination to the Committee as later vacancies occur.

ADDRESSES: All nominations for membership should be submitted electronically, by logging into the FDA Advisory Committee Membership Nomination Portal (*https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm*) and selecting Academician/Practitioner from the dropdown menu (regardless of whether Academician/Practitioner accurately describes the nominee), or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Letise Williams, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5407, Silver Spring, MD 20993–0002, 301–796–8398, email: *Letise.Williams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members to fill upcoming vacancies on the Patient Engagement Advisory Committee. This notice does not include consumer and industry representative nominations. The Agency will publish two separate notices announcing the vacancy of a representative of consumer interests and vacancy of representatives of interests of the device manufacturing industry.

I. General Description of the Committee Duties

The Committee provides relevant skills and perspectives to improve communication of benefits, risks and clinical outcomes, and increase integration of patient perspectives into the regulatory process for medical devices. It performs its duties by identifying new approaches, promoting innovation, recognizing unforeseen risks or barriers, and identifying unintended consequences that could result from FDA policy. The Committee provides advice on complex scientific issues related to medical devices, the regulation of devices, and their use by patients. Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient-reported outcomes, device-related quality of life measure or health status issues are among the topics that may be considered by the Committee.

II. Criteria for Voting Members

The Committee consists of a core of nine voting members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities who are knowledgeable in areas such as clinical research, patient or caregiver experience, healthcare needs of patient groups in the United States, or are experienced in the work of patient and health professional organizations, scientific methodologies for patient-reported outcomes and other clinical outcome assessments, scientific methodologies for eliciting patient preferences, and strategies for communicating benefits, risks, and clinical outcomes to patients and research subjects, as well as other relevant areas. Members will be invited to serve for overlapping terms of up to 4 years. Prospective members should also have an understanding of the broad spectrum of patients in a particular disease area. Almost all non-Federal members of this Committee serve as Special Government Employees, with the exception of the representatives from Industry.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the Committee. Self-nominations are also accepted. Nominations must include a cover letter; a current, complete résumé or curriculum vitae for each nominee, including current business and/or home address, telephone number, and email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**). Nominations must specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04169 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees

recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of individuals on its advisory committees regardless of their gender identification, religious affiliation, racial and ethnic identification, or disability status and, therefore, encourages nominations of appropriately qualified candidates from all groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by April 17, 2023, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by April 17, 2023. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2023.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4769, *Rakesh.Raghuwanshi@fda.hhs.gov*.	FDA Science Board Advisory Committee.
Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1226, Silver Spring, MD 20993–0002, 240–402–8006, *Prabhakara.Altreya@fda.hhs.gov*.	Allergenic Products Advisory Committee.
Moon Hee Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–2894, *MoonHee.Choi@fda.hhs.gov*.	Anesthetic and Analgesic Drug Products Advisory Committee, Non-Prescription Drugs Advisory Committee.
She-Chia Jankowski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31 Rm. 2438, Silver Spring, MD 20993–0002, 240–402–5343, *She-Chia.Jankowski@fda.hhs.gov*.	Antimicrobial Drugs Advisory Committee.
Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2412, Silver Spring, MD 20993–0002, 301–796–7699, *Jessica.Seo@fda.hhs.gov*.	Peripheral and Central Nervous System Drugs Advisory Committee.
Yvette Waples, Center for Drug Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–837–7126, *Yvette.Waples@fda.hhs.gov*.	Cardiovascular and Renal Drugs Advisory Committee, Medical Imaging Drugs Advisory Committee.
LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993–0002, 301–796–2855, *LaToya.Bonner@fda.hhs.gov*.	Endocrinologic and Metabolic Drugs Advisory Committee.
Takyiah Stevenson, Center for Drug Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2406, Silver Spring, MD 20993–0002, 240–402–2507, *Takyiah.Stevenson@fda.hhs.gov*.	Pharmacy Compounding Advisory Committee.
Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2426, Silver Spring, MD 20993–0002, 301–796–7973, *Joyce.Frimpong@fda.hhs.gov*.	Psychopharmacologic Drugs Advisory Committee.
Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–636–0510, *Candace.Nalls@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Ear, Nose and Throat Devices Panel; Gastroenterology-Urology Devices Panel; General and Plastic Surgery Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	Circulatory System Devices Panel; Microbiology Devices Panel.
Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, *Akinola.Awojope@fda.hhs.gov*.	Dental Products Panel; Orthopaedic and Rehabilitation Devices Panel.
Jarrod Collier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5214, Silver Spring, MD 20993–0002, 240–672–5763, *Jarrod.Collier@fda.hhs.gov*.	General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Molecular and Clinical Genetics Panel; Ophthalmic Devices Panel; Radiological Devices Panel.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov*.	National Mammography Quality Assurance Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs Administration (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Allergenic Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	Immediately.
Anesthetic and Analgesic Drug Products Advisory Committee—Knowledgeable in the fields of anesthesiology, surgery, epidemiology or statistics, and related specialties.	1—Voting	April 1, 2023.
Non-Prescription Drugs Advisory Committee—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties.	1—Voting	Immediately.
Antimicrobial Drugs Advisory Committee—Knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	May 1, 2023.
Peripheral and Central Nervous Systems Drugs Advisory Committee—Knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties.	1—Voting	February 1, 2023.
Cardiovascular and Renal Drugs Advisory Committee—Knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics.	1—Voting	July 1, 2023.
Medical Imaging Drugs Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Endocrinologic and Metabolic Drugs Advisory Committee—Knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Pharmacy Compounding Advisory Committee—Knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing, pharmacy, medicine, and other related specialties.	1—Voting	October 1, 2023.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (e.g., cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Ear, Nose and Throat Devices Panel—Otologists, neurotologists, audiologists	1—Nonvoting	November 1, 2023.
Gastroenterology-Urology Devices Panel—Gastroenterologists, urologists, and nephrologists	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Circulatory System Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, and mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Dental Products Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; experts in labor and delivery nursing.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Nonvoting	Immediately.
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, e.g., pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, as well as ancillary fields of study will be considered.	1—Nonvoting	Immediately.
Ophthalmic Devices Panel—Ophthalmists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	1—Nonvoting	Immediately.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties, and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
National Mammography Quality Assurance Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	3—Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. FDA Science Board Advisory Committee

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease, and makes appropriate recommendations to the Commissioner regarding the affirmation or revocation of biological product licenses; on the safety, effectiveness, and labeling of the products; on clinical and laboratory studies of such products; on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products; and on the quality and relevance of FDA's research programs.

C. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

D. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases, and advises the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee serves as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency-sponsored intramural

and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

E. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

F. Arthritis Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

G. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

H. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

I. Medical Imaging Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

J. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

K. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding by pharmacists and licensed practitioners.

L. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

M. Medical Devices Advisory Committee Panels

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

N. National Mammography Quality Assurance Advisory Committee

Advises the Agency on the development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; establishing a mechanism to investigate consumer complaints; and reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities. The Committee also advises on determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; determining whether there will be a sufficient number of medical physicists after October 1, 1999; and determining the costs and benefits of compliance with these requirements.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 45 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes

ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. After selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04170 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2018–E–4422, FDA–2018–E–4827, and FDA–2018–E–4427]

Determination of Regulatory Review Period for Purposes of Patent Extension; VYZULTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VYZULTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by May 1, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 28, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 1, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received 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 Nos. FDA–2018–E–4422, FDA–2018–E–4827, and FDA–2018–E–4427 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VYZULTA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management

Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VYZULTA (latanoprostene bunod). VYZULTA is indicated for reduction of intraocular pressure in patients with open-angle glaucoma or ocular hypertension. Subsequent to this approval, the USPTO received patent term restoration applications for VYZULTA (U.S. Patent Nos. 7,273,946; 7,629,345; and 8,058,467) from Nicox S.A., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated May 13, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VYZULTA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VYZULTA is 3,879 days. Of this time, 3,043 days occurred during the testing phase of the regulatory review period, while 836 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* March 23, 2007. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on March 23, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 21, 2015. FDA has verified the applicant's claim that the new drug application (NDA) for VYZULTA (NDA 207795) was initially submitted on July 21, 2015.

3. *The date the application was approved:* November 2, 2017. FDA has verified the applicant's claim that NDA 207795 was approved on November 2, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,826 days or 1,507 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04178 Filed 2–28–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Maternal, Infant, and Early Childhood Home Visiting Program Home Visiting Program Budget Assistance Tool

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of

Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than March 31, 2023.

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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer, at 301–594–4394.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program Home Visiting Budget Assistance Tool (HV–BAT), OMB No. 0906–0025—Revision.

Abstract: HRSA is requesting an extension of approval and revision to the burden estimates for the HV–BAT. The tool collects information on standardized cost metrics from programs that deliver home visiting services. Entities receiving MIECHV formula funds that are states, jurisdictions, and nonprofit awardees are required to submit cost data using the HV–BAT to HRSA once every 3 years to be reviewed for accuracy and quality control and to collect data to estimate national program costs.

The MIECHV Program, authorized by section 511 of the Social Security Act, 42 U.S.C. 711, and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and for parents with young children up to kindergarten entry. States, tribal entities, and certain nonprofit organizations are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to local implementing agencies (LIAs) to provide services to eligible families in at-risk communities. HRSA is making the following changes to the HV–BAT:

- Updating the burden estimate for completing the HV–BAT based on recently gathered information. The burden estimate reflects both awardee and LIA staff hours to complete an HV–BAT. HRSA expects the majority of awardees will be submitting data from multiple LIAs, and some LIAs may submit multiple HV–BATs to account for each model implemented at their site.
- Translating the HV–BAT data collection instrument into Spanish to expand accessibility.

A 60-day notice was published in the **Federal Register** on November 8, 2022, 87 FR 67481–82. HRSA received five responses to the request for public comment. Two commentors are current MIECHV awardees, one is a home visiting model developer, one is a national membership organization representing MIECHV awardees, and one is a consultancy group directing a national initiative relating to home visiting. Commentors posed questions about the utility of HV–BAT data (*e.g.,* relevance of data collected from the prior year, lack of data context collected through the tool, how HRSA will account for variation in local labor markets) and of the specific data items collected (*e.g.,* necessity of collecting rural and frontier visit data, MIECHV funding percentages, and combined salary and fringe data). In addition, commentors provided recommendations for updating burden estimates and improving HRSA's technical assistance and feedback (*e.g.,* providing support for estimating in-kind costs and additional suggestions for review and feedback from HRSA).

HRSA views HV–BAT as an important tool for collecting standardized cost information across awardees, understanding the comprehensive costs of home visiting, and informing program planning and policy. During HV–BAT tool development, HRSA reviewed available cost measurement reports, tested the tool with awardees during the pilot and feasibility studies, and assessed the types of data that would be critical for understanding home visiting costs and funding allocation. Data categories within the tool were chosen to address these identified needs and fill in gaps in existing research. To ensure consistency in data collected across three cohorts of respondents, HRSA is not proposing to make updates to the data collection instrument itself at this time. However, in response to feedback on burden, the estimated average burden per response was increased from 24 to 40 hours, which includes burden on both LIAs and state-level awardees. In addition, awardees will have the option for HRSA to aggregate their LIA-level HV–BAT data, decreasing awardee burden. HRSA values the comments received regarding technical assistance, such as challenges with the tool and the utility of feedback received during the first round of submissions. HRSA is in the process of refining technical assistance materials and processes to better support awardees in response to these comments and to decrease awardee time spent on back-and-forth regarding HV–BAT revisions.

Need and Proposed Use of the Information: HRSA uses HV–BAT data to collect comprehensive home visiting cost data. Awardees submit aggregated data from their individual LIAs, which provides HRSA with information needed to produce state and national cost estimates and support procurement activities and subrecipient monitoring. Requiring data submission also allows HRSA to ensure the tool is being accurately and appropriately used. Because the use of a standardized tool of this kind is novel to the field of home visiting, HRSA requires that states submit data collected using HV–BAT to HRSA for the purposes of quality control reviews and accuracy checks. Submission will allow HRSA to estimate national-level costs for use in conducting research and analysis of home visiting costs, understanding cost variation, and assessing how comprehensive program cost data can inform other policy priorities, such as innovative financing strategies. HRSA is seeking to revise burden estimates to ensure accuracy and inform awardee planning for this activity. In addition, HRSA is translating the HV–BAT data collection instrument into Spanish in response to previous awardee feedback and to increase accessibility for LIA sites that primarily operate in Spanish.

Likely Respondents: One-third of MIECHV Program awardees (n=19, annually) that are states, jurisdictions, and nonprofit organizations receiving MIECHV funding to provide home visiting services within states.

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
Home Visiting Budget Assistance Tool	19	13	247	40	9,880
Total	19	13	247	40	9,880

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–04185 Filed 2–28–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Biographical Sketch Form for Use With Applications to the Maternal and Child Health Bureau Research Grants OMB No. 0906–Reinstatement

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 May 1, 2023.

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 more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Forms for Use with Applications to the Maternal and Child Health Bureau Research Grants, OMB No. 0906-Reinstatement.

Abstract: HRSA is requesting reinstatement of the Biographical Sketch Form for use with applications to the Maternal and Child Health Bureau Research Grants (Biographical Sketch) for HRSA's SF424 Research and Related (R&R) application package. These grants are funded by a number of authorities such as 42 U.S.C. 701(a)(2) (title V, section 501(a)(2) of the Social Security Act) and by 42 U.S.C. 280i-1(f) (title III, section 399BB(f) of the Public Health Service Act. The purpose of these grants is to advance the health and well-being of Maternal and Child Health populations and children and adolescents with autism spectrum disorder by supporting innovative, applied, and translational intervention research studies on critical issues affecting these populations.

Need and Proposed Use of the Information: HRSA plans to use the Biographical Sketch as a required element of the SF424 R&R application package. The applicants use the Biographical Sketch form to summarize the qualifications of each key personnel on their proposed research team, including education/training, positions and honors, contributions to science, and related experience. The grant reviewers will use this information to assess the capabilities of the research team to carry out the planned research project. The Biographical Sketch form also collects demographic data (race, ethnicity, and gender) for the Principal Investigator and key program staff or, for applicants that are uncomfortable reporting this information, they can mark their demographic information as ''Not Reported/Unknown;'' this will have no impact on funding decisions. Collecting demographic information allows HRSA to determine to what extent individuals of different backgrounds are participating. This information, in addition to other information including career stage, geographic location of the institution, and educational level assists HRSA in ensuring that federal grant and cooperative agreement awards are reaching diverse populations.

HRSA is considering several changes for the Biographical Sketch:

- *Clarifying instructions:* Provides the applicant more information on what should and should not be included on the biographical sketch.
- *Removal of Section D:* Section D: Related Experience has been removed.
- *Removal of Section E:* Section E: Additional Information: Research Support and/or Scholastic Performance Awards has been removed.
- *''Some Other Race'' Category:* At the request of our applicants, this category was added.

Likely Respondents: Respondents are applicants to HRSA's Maternal and Child Health Bureau research programs.

Burden Statement: Burden includes 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, disclosing and providing information. It also accounts for time to train personnel, respond to a collection of information, search data sources, complete and review the collection of information, and transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request 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
Biographical Sketch Form	200	5	1,000	1.75	1,750
Total	200	5	1,000	1.75	1,750

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. 2023–04188 Filed 2–28–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization

AGENCY: Office for Civil Rights, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the Statement of Organization of the Office for Civil Rights (OCR) of the Department of Health and Human Services.

DATES: This reorganization was approved by the Secretary of Health and Human Services on February 10, 2023, and took effect on February 25, 2023.

SUPPLEMENTARY INFORMATION: In accordance with Executive Orders and agency actions related to equity—including E.O. 12862: Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government; E.O. 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation; E.O. 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; E.O. 14031: Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders; and E.O. 14035: Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce; the OCR Statement, as last amended at 83 FR 2802 (January 19, 2018), is being amended at Chapter AT, Office for Civil Rights (OCR) to reflect the restructuring of OCR as follows:

I. Under Chapter AT, Office for Civil Rights (OCR), in the outline section at the beginning of the Chapter that reads:

''AT.00 Mission
AT.10 Organization
AT.20 Functions''

II. Under Chapter AT, Office for Civil Rights (OCR), delete ''Section AT.00 Mission'' in its entirety and replace with the following:

''AT.00 Mission

As a law enforcement agency, OCR investigates complaints, conducts compliance reviews, develops policy, promulgates regulations, provides technical assistance, and educates the public about federal laws that prohibit recipients of HHS federal financial assistance from discriminating on the basis of race, color, national origin, disability, age, sex, and religion. It also ensures that the practices of health care providers, health plans, healthcare clearinghouses, and their business associates comply with the Federal privacy, security, and breach notification laws and regulations that OCR enforces through the investigation of complaints and breach reports, compliance reviews, and audits. Through its work, OCR helps to ensure equal and non-discriminatory access to and coverage of health and human services, promotes positive change throughout our nation's social service and health care systems to advance equity and accountability, and provides tools for covered entities and individuals to understand their rights and obligations under the law.

OCR accomplishes this by:

- Enforcing laws, investigating complaints, conducting compliance reviews, promulgating regulations, developing policy, providing technical assistance, and engaging in public education and outreach to ensure understanding of and compliance with all the laws OCR has authority over;
- Ensuring that recipients of HHS federal financial assistance comply with federal civil rights laws that prohibit discrimination on the bases of race, color, national origin, disability, age, sex, and religion; and
- Ensuring the practices of health care providers, health plans, health care clearinghouses, and their business associates adhere to federal privacy, security, and breach notification regulations under the Health Insurance Portability and Accountability Act (HIPAA) through the investigation of complaints, self-reports of breaches, compliance reviews, and audits.''

III. Under Chapter AT, Office for Civil Rights (OCR), delete ''Section AT.10 Organization'' in its entirety and replace with:

''AT.10 Organization
A. Office of the Director (AT)
B. Operations and Resources Division (ATA)
C. Policy Division (ATB)
D. Health Information Privacy, Data, and Cybersecurity Division (ATC)
E. Enforcement Division (ATD)
F. Strategic Planning Division (ATE)

IV. Under Chapter AT, Office for Civil Rights (OCR), Section ''AT.20 Functions'' delete subsection ''A. Office of the Director (AT)'' in its entirety and replace with the following:

''*A. Office of the Director (AT).* The Director is the Department's chief officer and adviser to the Secretary concerning implementation of, compliance with, and enforcement of civil rights and conscience protection laws applicable to HHS-funded or conducted programs or activities, and privacy, security, and breach notification rules under HIPAA. The Director provides leadership, priorities, guidance, and supervision to OCR and is responsible for its overall policy, programs, and operations. The Director is also responsible for representing the Secretary and the Department, in coordination and consultation with the Assistant Secretary for Legislation, before Congress and the Executive Office of the President on matters relating to civil rights, the exercise of conscience, and health information privacy and for liaising with other federal departments and agencies responsible for similar or related matters.''

V. Under Chapter AT, Office for Civil Rights (OCR), Section ''AT.20 Functions'' at subsection ''B. Operations and Resources Division (ATA)'' delete ''Advising on all regional operations and the Centralized Case Management Operation (CCMO);'' after ''Responsibilities of the Deputy Director for Operations and Resources include:'' and delete ''Regional offices are led by

Regional Managers who report to the Deputy Director for ORD and are responsible for civil rights, conscience and religious freedom, and HIPAA complaint investigations, enforcement, and outreach. ORD is responsible for responding to stakeholder calls and triaging civil rights, conscience and religious freedom, and HIPAA complaints at intake'' after ''property management, accountability, and performance metrics.''

VI. Under Chapter AT, Office for Civil Rights (OCR), Section ''AT.20 Functions'' at subsection ''C. Civil Rights Division (ATB),'' delete ''Civil Rights'' and replace with ''Policy'' and add ''(including sexual orientation, gender identity, and pregnancy)'' after ''sex'' and add ''religion'' after ''disability'' and delete ''enforces'' and add ''oversees'' and add ''protection'' after ''conscience'' and delete ''provides national leadership in OCR's enforcement and compliance activities, including advising OCR staff nationwide on case development and quality and assisting in developing negotiation, enforcement, and litigation strategies;'' and delete ''The Civil Rights Division also leads national civil rights compliance reviews;'' and replace with ''The Policy Division also consults and coordinates with the Enforcement Division on national civil rights and conscience protection laws enforcement and compliance activities;'' and add ''and conscience protection'' after ''designs civil rights'' and add ''and conscience protection'' after ''regional civil rights'' and add ''and conscience protection'' after ''provides civil rights''

VII. Under Chapter AT, Office for Civil Rights (OCR), Section ''AT.20 Functions'' at subsection ''D. Health Information Privacy Division (ATC), delete ''Health Information Privacy'' and replace with ''Health Information Privacy, Data, and Cybersecurity''.

VIII. Under Chapter AT, Office for Civil Rights (OCR), Section ''AT.20 Functions'' delete subsection E in its entirety and replace with the following:

AT.20 Functions

''E. Enforcement Division *(ATD).* The Enforcement Division is headed by the Deputy Director of Enforcement, who reports to the Director. The Enforcement Division is responsible for overseeing OCR's regional operations and case management to support comprehensive implementation all of its authorities. Responsibilities of the Deputy Director of Enforcement include: Advising on all regional operations and the Centralized Case Management Operation (CCMO); developing and conducting public education activities in coordination and collaboration with the Strategic Planning Division to drive compliance with the law,; directing case management on data analytics and operations; and coordinating and implementing leadership and professional development training for staff within the Enforcement Division. Regional offices are led by Regional Managers who report to the Deputy Director of Enforcement and are responsible for civil rights, conscience protection, and HIPAA complaint investigations, enforcement, and outreach. The Enforcement Division is responsible for responding to stakeholder calls and triaging civil rights, conscience protection, and HIPAA complaints at intake and throughout the investigation or compliance process.''

VIII. Under Chapter AT, Office for Civil Rights (OCR), Section ''AT.20 Functions'' add a new subsection F as follows:

AT.20 Functions

''F. Strategic Planning Division (ATE). The Strategic Planning Division is headed by the Deputy Director for Strategic Planning, who reports to the Director. The Strategic Planning Division oversees OCR's outreach and other activities to provide the public with information about their rights and how OCR protects civil rights, conscience protections, and the privacy of individuals' health information. The division promotes OCR's enforcement activities to ensure covered entities are aware of their obligations under federal law and the consequences of violations of that law. The Division provides other HHS components with technical assistance and training on civil rights, conscience protections, and information privacy laws and works with other Operating and Staff Divisions within HHS to drive compliance with the law. The Division also provides identifies and provides staff with training opportunities that meet workforce development objectives, goals for individual professional growth, and succession planning.''

VIII. Pending further delegations, directives, or orders by the Secretary or the OCR Director, all delegations and redelegations of authority to positions of the affected organizations in effect prior to the date of this notice shall continue in effect in them or their successors, provided they are consistent with this reorganization.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–03892 Filed 2–27–23; 11:15 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Global Affairs: Stakeholder Listening Session on Amendments to the International Health Regulations (2005)

ACTION: Notice of public listening session; request for comments.

TIME AND DATE: The listening session will be held on Friday, March 17, 2023, from 10 a.m. to 12 p.m., Eastern Daylight Time.

PLACE: The session will be held virtually, with online slide share and dial-in information shared with registered participants.

STATUS: This meeting is open to the public but requires RSVP to *OGA.RSVP1@hhs.gov* by Wednesday, March 8, 2023. *See RSVP section below for details.*

SUPPLEMENTARY INFORMATION:

Purpose: The U.S. Department of Health and Human Services (HHS) is charged with leading U.S. participation in the Working Group on the Amendments to the International Health Regulations (2005) and will convene a Stakeholder Listening Session.

The World Health Assembly (WHA) originally adopted the International Health Regulations (IHR) in 1969. The regulations were amended multiple times, resulting in the current IHR (2005). The purpose of IHR (2005) is to prevent, protect against, control, and provide public health response to the international spread of disease. In May 2021, Member States set up a Working Group on Strengthening WHO Preparedness and Response to Health Emergencies (WGPR) with the intent of strengthening WHO's capacities and ability to support Member States in the prevention and response of public health emergencies. The WGPR produced a report with key findings and recommendations that included amending the IHR. The United States submitted a package of targeted amendments to the IHR for consideration. These amendments seek to improve early warnings and alerts, transparency, and accountability in a manner that does not compromise national security or sovereignty. Other countries have also submitted proposals that the United States seek feedback from stakeholders on the proposed amendments. The Stakeholder Listening Session is designed to seek input from stakeholders and subject-matter experts on these proposals and to help inform and prepare the U.S. government for engagement with the Working Group on

the Amendments to the International Health Regulations (2005).

Matters to be Discussed: The listening session will discuss potential amendments to the IHR (2005). Topics will include those amendments currently under consideration by the Working Group. An Article-by-Article Compilation of Proposed Amendments to the International Health Regulations (2005) can be found here: *https://apps.who.int/gb/wgihr/pdf_files/wgihr1/WGIHR_Compilation-en.pdf.* Participation is welcome from stakeholder communities, including:

- Public health and advocacy groups
- State, local, and Tribal groups
- Private industry
- Minority health organizations
- Academic and scientific organizations, etc.

RSVP: Persons seeking to attend or speak at the listening session must register by *Wednesday, March 8, 2023.*

Registrants must include their full name and organization, if any, and indicate whether they are registering as a listen-only attendee or as a speaker participant to *OGA.RSVP1@hhs.gov.*

Requests to participate as a speaker must include:

1. The name of the person desiring to participate;
2. The organization(s) that person represents, if any;
3. Identification of the primary amendment of interest.

Other Information: Written comments should be emailed to *OGA.RSVP1@hhs.gov* with the subject line ''*Written Comment Re: Stakeholder Listening Session 1 for the WGIHR*'' by Friday, March 31, 2023.

We look forward to your comments on proposed amendments to the International Health Regulations (2005).

Dated: February 23, 2023.

Susan Kim,

Chief of Staff, Office of Global Affairs.

[FR Doc. 2023–04160 Filed 2–28–23; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Preventing Alcohol-Related Deaths Through Social Detoxification

Announcement Type: New.

Funding Announcement Number: HHS–2023–IHS–PARD–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.654.

Key Dates

Application Deadline Date: March 31, 2023.

Earliest Anticipated Start Date: April 17, 2023.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS), Office of Clinical and Preventive Services, Division of Behavioral Health (DBH) is accepting applications for cooperative agreements for the Preventing Alcohol-Related Deaths (PARD) through Detoxification. This program is authorized under the Snyder Act, 25 U.S.C. 13; Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022); and the Transfer Act, 42 U.S.C. 2001(a). This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.654.

Background

According to the Centers for Disease Control and Prevention (CDC) mortality data (Centers for Disease Control and Prevention, National Center for Health Statistics. National Vital Statistics System, Mortality 1999–2020 on CDC WONDER Online Database, released in 2021), alcohol related deaths among American Indian and Alaska Native (AI/AN) persons is a significant and persistent tragic outcome in the US. From 2016 to 2020, the crude rates for alcohol-related deaths was 51.9 (per 100,000) for AI/AN persons, nearly five times higher than non-AI/AN persons (11.7 per 100,000). The geography of these deaths is telling, as 48% were in a cluster across Arizona and New Mexico. Twenty of those counties have death rates over the 51.9 national rate. The highest rates were within McKinley County, with a 147.7 crude death rate for AI/AN persons—nearly 13 times higher than the rate for non-AI/AN, nationally. In the most recent PARD grant program (2017–2022, *https://www.gpo.gov/fdsys/pkg/FR-2017-08-14/pdf/2017-17102.pdf*), the estimated alcohol-related crude death rates in the proximities of the previous project sites (*https://www.ihs.gov/sites/asap/themes/responsive2017/display_objects/documents/pardaward sbystate2017.pdf*), McKinley County, New Mexico (Gallup City project) and Oglala Lakota County, South Dakota (formerly Shannon County), remain notably high. With this opportunity, in coordination with the PARD awardee, IHS will address increasing the clinical capacity of services offered between the awardee and local continuum of services.

Purpose

The purpose of this program is to increase access to community-based prevention strategies that provide social detoxification, evaluation, stabilization, fostering patient readiness for and entry into treatment for alcohol use, and other substance use disorders In alignment with the IHS 2019–2023 Strategic Plan Goal 1: To ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to AI/AN people, the PARD project is designed to provide communities the ability to reduce alcohol-related mortality and encourage clients to seek additional alcohol and/or substance use disorder treatment after discharge from a detoxification program.

IHS will use this funding to focus on the provision of services in Tribal and Urban Indian communities with the highest burden of alcohol-related deaths among AI/AN persons. IHS analyzed the national rates of causes of deaths using the CDC data (Centers for Disease Control and Prevention, National Center for Health Statistics. National Vital Statistics System, Mortality 1999–2020 on CDC WONDER Online Database, released in 2021), and determined that McKinley County, New Mexico (with the largest city of Gallup), continues to have the highest burden of alcohol-related deaths among AI/AN persons. Additionally, the 2017 Senate Appropriations Committee Report 114–281 expressed the Committee's expectation that IHS address alcohol and substance abuse through Federal, State, local, and tribal partners, calling for a sustainable model for life-saving community services, with specific attention on the capabilities of the Na'Nizhoozhi Center in Gallup, New Mexico.

A consensus among clinical and subject matter experts understand detoxification does not provide the full spectrum of alcohol and/or substance use disorder treatment but can serve as a pathway to seeking treatment and as a component in the continuum of services for alcohol and substance use disorders (Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Improvement Protocol (TIP) 45 (*https://www.samhsa.gov/resource/ebp/tip-45-detoxification-substance-abuse-treatment*).

Required Activities

The PARD program requires applicants to review the Substance Abuse and Mental Health Services

Administration (SAMHSA) Treatment Improvement Protocol (TIP) 45 (*https://www.samhsa.gov/resource/ebp/tip-45-detoxification-substance-abuse-treatment*), which identifies the principle for the basis of the TIP. The PARD program must include the three critical components—evaluation, stabilization, and fostering patient readiness for and entry into treatment. The three critical components identified in the SAMHSA TIP 45 will serve as the program objectives that each applicant will be required to meet. The three objectives include:

1. To evaluate clients encountering the detoxification program by the following methods:

a. testing for the presence of substances of use either through the bloodstream, urine or saliva tests, breathalyzers, and visually; and,

b. measuring the client's coordination and concentration; and,

c. screening for co-occurring mental and physical conditions; and

d. may include a comprehensive assessment of the client's medical and psychological conditions, social situations, and historical traumas.

The evaluation serves as the basis for the initial treatment plan once a client has been withdrawn successfully.

2. To stabilize the clients while in detoxification, which includes the following methods:

a. The medical and psychosocial processes of assisting the client through acute intoxication and withdrawal to the attainment of a medically stable, fully supported, substance-free state. This may be done with the assistance of medications, though in some approaches, no medication is used.

b. Familiarizing patients with their role and what to expect in the detoxification program.

c. The detoxification staff seek the involvement of the client's social support systems (family, employers, significant others, congregations, etc.—with release of confidentiality).

d. Provide hot meals, showers, hygiene kits, and other activities of daily living that are necessary for individuals in detoxification and treatment services.

e. Ensure evidence-based interventions, promising/best practices, and culture-based practices are incorporated into the detoxification curriculum while individuals are participating in services.

3. To foster the client's readiness for and entry into treatment for alcohol use disorders, and when appropriate, other substance use disorders:

a. Preparing the client for entry into alcohol and/or substance use disorder treatment by stressing the importance of following through with their complete continuum of care, as a documented treatment plan.

b. It is highly recommended to encourage clients to continue alcohol and/or substance use disorder treatment prior to discharge from the detoxification program, and record the commitment that is indicated by the client in their documented treatment plan.

c. Provide recovery pathways for all clients (recorded in their respective documented treatment plans) by linking them to further treatment for alcohol and/or substance use disorders, including the facilitation of contact with treatment providers and programs after detoxification.

d. Measure the overall treatment process, including the progress and results of referrals, by following individuals who enter the detoxification program and throughout their follow-on uses of alcohol and/or substance use disorder treatment/rehabilitation after detoxification, and record the results in their respective treatment plans.

The IHS encourages applicants to develop and submit a work plan that emphasizes cross-system collaboration, the inclusion of family and social support systems, community resources, and culturally appropriate approaches.

Grantees will be required to:

(1) Review and implement the guidance of the SAMHSA TIP 45, Detoxification and Substance Abuse Treatment.

(2) Provide semi-annual reports to the IHS program officer on the number of individuals served, number of individuals referred to treatment services, number of individuals who access services more than once, and number of individuals who access safe housing options.

(3) Collect data that accounts for all the interventions provided to each patient in a format that measures operationally defined methods, content, and dose.

(4) The data collected must account for the service transitions for each patient (*e.g.,* transfer to the emergency room, transfer to detoxification) in the local continuum of care.

(5) The data collected must account for the outcomes for each patient (*e.g.,* incarceration, inpatient treatment, sobriety, moved out of service area, missing, and death).

(6) The complete patient-level data, de-identified, will be securely transferred by the awardee to the IHS DBH National Data Coordinator every quarter, for independent and nationally comparative analysis.

(7) Participate in the development, implementation, and evaluation of a strategy that prevents alcohol related death.

(8) Participate in the development, implementation, and evaluation of a sustainable model for clinical capacity.

(9) Provide annual reports on successes and challenges.

(10) Host annual site visits for IHS officials to discuss progress, partnerships, clinical capacity, challenges, and opportunities for improvement.

(11) Provide meals, showers, hygiene kits, and other activities of daily living that are necessary for individuals in detoxification and treatment services. The meals should only be provided while the patient is in the detoxification program to ensure proper nutrition and safety for the patient.

(12) Ensure coordination with cultural services and traditional healers to provide services while individuals are participating in services.

(13) If applicable, provide transportation to and from medical appointments or for medical clearance and ensure that medication management is offered while individuals are participating in services.

(14) Must use 100 percent of IHS award funds for services provided to AI/AN individuals.

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total amount of funding identified for the first budget year, starting in fiscal year (FY) 2023 is approximately $2 million. The amount of funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately one award will be issued under this program announcement.

Period of Performance

The project period is for 5 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic

involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

(1) Participate in community-level meetings with key stakeholders who will develop a strategy to combat the issue of alcohol use disorders and subsequent alcohol-related deaths.

(2) Participate in annual site visits for technical assistance on increasing the clinical capacity of services offered between the awardee and IHS programs, where available.

(3) Provide subject matter expertise on policies, procedures, guidelines, and other services provided by the grantee.

(4) Provide guidance to the awardee involving strategy, data collection, analysis, reporting, coordination of activities, and evaluation.

(5) Provide medical services as appropriate for individuals requiring a higher level of care, or medical clearance.

(6) Monitor the overall progress and challenges of the awardee's program and their adherence to the terms and conditions of the cooperative agreement.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity an applicant will be a public or private institution operated by a state, local, Tribal, or private entity that operates direct, on-site alcohol and/or substance use disorder treatment services, including social alcohol detoxification services, to AI/AN persons. For purposes of this announcement, ''institution'' means an entity that provides substance use disorder treatment services including detoxification. Applicants must be able to start services on the first day of the award. Applicants must serve AI/AN persons.

The Division of Grants Management (DGM) will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Additional Required Documentation

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application, by the Application Deadline Date listed under the Key Dates section on page 1 of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS DGM by obtaining documentation confirming delivery (*i.e.,* FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give your files brief descriptive names. The filenames are key in finding specific documents during the objective review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a single file. Creating a single file creates confusion when trying to find specific documents. Such confusion can contribute to delays in processing awards, and could lead to lower scores during the objective review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov*.

2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Application forms:

1. SF–424, Application for Federal Assistance.
2. SF–424A, Budget Information—Non-Construction Programs.
3. SF–424B, Assurances—Non-Construction Programs.
4. Project Abstract Summary form.

- Project Narrative (not to exceed 10 pages). See Section IV.2.A, Project Narrative for instructions.
- Budget Narrative (not to exceed 5 pages). See Section IV.2.B, Budget Narrative for instructions.
- Letters of Support from organization's Board of Directors, Tribal partners, and community stakeholders.
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all key personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).
- Organizational Chart (optional).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/*.

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative: This narrative must be a separate document that is no more than 10 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria), and place all responses and required information in the correct

section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, reviewers will be directed to ignore any content beyond the page limit. The 10-page limit for the project narrative does not include the standard forms, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are three parts to the project narrative:

Part 1—Program Information;
Part 2—Program Planning and Evaluation; and
Part 3—Program Report.

See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—2 Pages)

Section 1: Needs.

Describe the current issue of alcohol use disorders, alcohol-related deaths, and rates of alcohol-related liver cirrhosis, as well as other social and health issues impacted by alcohol-related deaths. Describe the program's current social detoxification program, who operates it, number of employees, how long it has been operating, and what programs or services are currently being provided. Provide a statement of fact on the clientele served, average daily census, and ratio of individuals served who are enrolled members of federally recognized Tribes to those who are not.

Part 2: Program Planning and Evaluation (Limit—6 Pages)

Section 1: Program Plans.

Describe fully and clearly the direction the applicant plans to take to provide detoxification services, including the three critical components: evaluation, stabilization, and fostering patient readiness for and entry into treatment. Describe how the applicant will provide safe housing and custodial care in a safe environment by employees who have successfully passed background checks, who have been trained in social detoxification, and who are familiar with the features of substance use withdrawal, have training in basic life support, and have access to emergency medical systems. Describe how the applicant will provide appropriate monitoring and security to prevent self-harm of served individuals and harm to others. Describe how the applicant has the ability to provide transportation to and from emergency departments, as needed. Further information on general guidelines for addressing these needs can be found in the SAMHSA TIP–45.

Describe fully and clearly the types of community partnerships and referral providers to provide health and behavioral health treatment services, among others. Include information about how the applicant will implement a communication and support strategy that includes family members of individuals served (with their consent). Describe the applicant's ability to provide daily activities of living such as exercise, showers, meals, personal hygiene, blankets, and appropriate clothing. Include information on how the applicant will provide culturally appropriate interventions and activities. Provide details on nurse support for medical issues and medication management and referral to a higher level of care, when needed; medication management, assessments, and screening of clients; and case management services.

Section 2: Program Evaluation.

This section of the project narrative should describe your organization's plan for gathering client-specific non-identifiable data, submitting data requirements, and documenting the ability to ensure accurate digital data collection and reporting on community and client level activities, including those that correspond to treatment plans. The applicant should describe how their program intends to evaluate its activities to include successes, challenges, outputs, and outcomes. Some examples of activities include training of staff on observation and signs to look for in clients encountering the detoxification program; safety protocols; organizational protocols and procedures; safety plans; data collection methods and support systems for collecting data; partnerships developed and sustained; and recovery support activities provided for clients.

Part 3: Program Report (Limit—2 Pages)

Section 1: Describe your organization's significant program activities and accomplishments as a detoxification program over the past 5 years associated with the goals of this announcement. Please identify current staffing and key personnel who will be responsible for the management of the cooperative agreement.

Additionally, the applicant's should describe their ability to report on collaboration and networking with local partners. Reporting elements will pertain to activities, processes, barriers, and outcomes and include any partners who will assist in evaluation efforts if separate from the primary applicant.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the first year of the project. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys, Deputy Director, DGM, by email at *DGM@ihs.gov*. Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement under this program may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by

selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If you cannot submit an application through *Grants.gov*, you must request a waiver prior to the application due date. You must submit your waiver request by email to *DGM@ihs.gov,* with a copy to Mr. Paul Gettys, Deputy Director, DGM, at *Paul.Gettys@ihs.gov.* Your waiver request must include clear justification for the need to deviate from the required application submission process. The IHS will not accept any applications submitted through any means outside of *Grants.gov* without an approved waiver.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Late applications or application that do not include a copy of the signed waiver from the Deputy Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management (SAM)

Organizations that are not registered with SAM must access the SAM online registration through the SAM home page at *https://sam.gov.* Organizations based in the U.S. will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov,* which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS awardees to report information on sub-awards. Accordingly, all IHS awardees must notify potential first-tier sub-awardees that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime awardee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

The purpose of this funding opportunity is to support programs that provide detoxification for alcohol use disorders and when appropriate, other substance use disorders to address its impact in AI/AN populations and reduce the mortality associated with alcohol and other substance use. The applicant must describe fully and clearly the following areas.

A. Part 1: Program Information (40 Points)

1. The impact of alcohol use disorders, alcohol-related deaths, alcohol-related morbidity, and other social and health issues attributed to alcohol and other substances in the community they serve.

2. The status of the social detoxification program, who operates it, the number of employees, how long it has been in operation, and what programs or services are being provided.

3. Demonstrate the need for funding and how the funding will complement, enhance, increase, and/or expand the services currently provided.

4. The applicant's service population, clientele served, average daily census, and ratio of individuals served who are enrolled members of federally recognized Tribes to those who are not.

5. The applicant's readiness and capacity to provide services on day one of the award.

6. The applicant's staffing level, experience and education of staff, and key personnel who will manage the project.

B. Part 2: Program Planning and Evaluation (40 Points)

Section 1: Program Planning.

1. The applicant's description of the social detoxification program that includes the three critical components of evaluation, stabilization, and fostering patient readiness for and entry into treatment.

2. The applicant's plans to provide safe housing, including custodial care in a safe environment.

3. The applicant's process of ensuring employees have passed background checks and are trained in appropriate alcohol and substance use disorder identification; withdrawal management; emergency and crisis intervention training; evidence/culture-based interventions and best practices; and treatment approaches.

4. The applicant's appropriate monitoring of individuals accessing services and security measures to ensure safety and prevention of self-harm and harm to others.

5. Community partnerships and referral networks for health and behavioral health treatment services, including when medical intervention is required for stabilization.

6. The applicant's ability to provide transportation to and from emergency departments.

7. Communication strategies with the client's support system that fosters the client's recovery efforts upon consent (*i.e.,* family, social support groups, peer recovery specialists, and traditional healing services).

8. The applicant's ability to provide activities for daily living including physical and mental exercises, showers, meals, cultural activities, blankets, appropriate clothing, and activities that foster increased self-esteem, self-awareness, and self-efficacy.

9. The applicant's ability to provide clinical and behavioral health support for medical issues and medication management, assessments, screening, referral to higher levels of care, and case management.

Section 2: Program Evaluation.

10. The organization's plan for gathering client-specific non-identifiable data.

11. The ability to ensure accurate digital data collection and reporting on community and client level activities.

12. The ability to report on networking and partnering with local partners through memorandums of agreements/understanding, letters of support, council/Tribal resolutions, and coalition involvement.

13. The applicant should describe how their program intends to evaluate its activities to include successes, challenges, outputs, and outcomes.

C. Part 3: Program Report (10 Points)

1. The applicant's significant program activities and accomplishments over the past 5 years associated with the goals of this funding opportunity.

2. Identifies current staffing and key personnel who will be responsible for the management of the cooperative agreement.

3. The applicant's ability to report on collaboration and networking with local partners and submit reporting elements that pertain to activities, processes, barriers, and outcomes.

4. Include any partners who will assist in evaluation efforts if separate from the primary applicant.

D. Budget Narrative (10 Points)

1. How clearly the applicant demonstrates each budget item aligns with its proposal and program approach.

2. The degree to which the applicant budgets for evaluation activities.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the ORC and will not be funded. The program office will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS DBH within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-sec75-372.pdf.*

C. Grants Policy:

• HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

• Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75, subpart E, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75-subpartE.pdf.*

E. Audit Requirements:

• Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75, subpart F, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2021-title45-vol1/pdf/CFR-2021-title45-vol1-part75-subpartF.pdf.*

F. As of August 13, 2020, 2 CFR part 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020. ''If you are successful and receive a Notice of Award, in accepting the award, you agree that the award and any activities thereunder are subject to all provisions of 45 CFR part 75, currently in effect or implemented during the period of the award, other Department regulations and policies in effect at the time of the award, and applicable statutory provisions.''

2. Indirect Costs

This section applies to all awardees that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs,

> any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS awardees are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or write to *DGM@ihs.gov.*

3. Reporting Requirements

The awardee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Reports are due 90 days after the end of each budget period, and a final report is due 120 days after the end of the period of performance. Awardees are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report.

Failure to submit timely reports may result in adverse award actions blocking access to funds.

C. Data Collection and Reporting

All awardees will be required to collect and report data pertaining to activities, processes, and outcomes. The IHS DBH will provide guidance on data collection and reporting for evaluation purposes within 6 months of award. Programmatic reporting must be submitted within 30 days after the budget period ends for each project year (specific dates will be listed in the NoA Terms and Conditions). All reporting items will be submitted via the Grant Solutions. Technical assistance for web-based data entry will be timely and readily available to awardees by assigned IHS DBH staff. Awardees are responsible and accountable for accurate information being submitted by required due dates for Data Collection and Reporting.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with

information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for awardees of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/*.

E. Non-Discrimination Legal Requirements for Awardees of Federal Financial Assistance

The awardee must administer the project in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, and comply with applicable conscience protections. The awardee must comply with applicable laws that prohibit discrimination on the basis of sex, which includes discrimination on the basis of gender identity, sexual orientation, and pregnancy. Compliance with these laws requires taking reasonable steps to provide meaningful access to persons with limited English proficiency and providing programs that are accessible to and usable by persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. See *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html*.

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov*.
- For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html*.
- HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html*.
- For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html*.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov/fapiis/#/home* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75, appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10 million for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and awardees must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E47, Rockville, MD 20857. (Include ''Mandatory Grant Disclosures'' in subject line). Office: (301) 443–4750. Fax: (301) 594–0899. Email: *DGM@ihs.gov*.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201. URL: *https://oig.hhs.gov/fraud/report-fraud/*. (Include ''Mandatory Grant Disclosures'' in subject line). Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. *Questions on the programmatic issues may be directed to:* JB Kinlacheeny, Public Health Advisor, Indian Health Service, Division of Behavioral Health, 5600 Fishers Lane, Mail Stop: 0834NB, Rockville, MD 20857. Phone: (301) 443–0104. Email: *JB.Kinlacheeny@ihs.gov*.

2. *Questions on grants management and fiscal matters may be directed to:* Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E47, Rockville, MD 20857, Email: *DGM@ihs.gov*. For technical assistance with *Grants.gov*, please contact the *Grants.gov* help desk at 800–518–4726, or by email at *support@grants.gov*.

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract awardees to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities

(or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2023–04151 Filed 2–28–23; 8:45 am]

BILLING CODE 4165–16–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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glioma, Multiple Sclerosis, and Neuroinflammation.

Date: March 22, 2023.

Time: 10:00 a.m. to 2:00 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: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration, Addiction, Eye, and System Neuroscience.

Date: March 30, 2023.

Time: 9:00 a.m. to 12:30 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: Pablo Miguel Blazquez Gamez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *pablo.blazquezgamez@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: March 30, 2023.

Time: 10:00 a.m. to 6:30 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: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; HIV Coinfections and HIV Associated Cancers Study Section.

Date: March 30–31, 2023.

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: Joshua David Powell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–5370, *josh.powell@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Immunology and Infectious Diseases C.

Date: March 30–31, 2023.

Time: 10:00 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: Shannon J. Sherman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0715, *shannon.sherman@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Structure, Function, and Signaling.

Date: March 30, 2023.

Time: 11:00 a.m. to 5:00 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: Robert O'Hagan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 909–6378, *ohaganr2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Drug Development.

Date: March 30, 2023.

Time: 11:00 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: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–0229, *kenneth.ryan@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA: Counter ACT Therapeutics Discovery and Early-Stage Development and Basic Research on Chemical Threats that Affect the Nervous System.

Date: March 31, 2023.

Time: 8:30 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: Jodie Michelle Fleming, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812R, Bethesda, MD 20892, (301) 867–5309, *flemingjm@csr.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: February 23, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04140 Filed 2–28–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 General Medical Sciences Special Emphasis Panel; Review of Research on Interventions that Promote the Careers of Individuals in the Biomedical Research Enterprise (R01).

Date: March 14–15, 2023.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).
Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN12B, Bethesda, Maryland 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 23, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04141 Filed 2–28–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Materials to Enhance Training in Experimental Rigor (METER) Review.
Date: March 21, 2023.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard Rockville, MD 20852 (Virtual Meeting).
Contact Person: Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Blvd., Room 3208 MSC 9529, Bethesda, MD 20892, 301–827–0799 *eric.tucker@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: February 23, 2023,

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–04181 Filed 2–28–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests

that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare, * 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2023–04121 Filed 2–28–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0063]

Port Access Route Study: Approaches to Galveston Bay and Sabine Pass, Texas and Calcasieu Pass, Louisiana

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the adequacy of existing vessel routing measures and determine whether additional vessel routing measures are necessary for port approaches to Galveston Bay and Sabine Pass, Texas, Calcasieu Pass, Louisiana, and international and domestic transit areas in the Eighth Coast Guard District area of responsibility (AOR). The Approaches to Galveston Bay and Sabine Pass, Texas and Calcasieu Pass, Louisiana PARS (TX/LAPARS) will consider whether existing or additional

routing measures are necessary to improve navigation safety due to factors such as planned or potential wind energy offshore development, current port capabilities and planned improvements, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty. Vessel routing measures, which include traffic separation schemes, two-way routes, recommended tracks, deep-water routes, precautionary areas, and areas to be avoided, are implemented to reduce risk of marine casualties. The recommendations of the study may subsequently be implemented through rulemakings or in accordance with international agreements.

DATES: All comments and related material must be received on or before April 17, 2023. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight, Eastern Daylight Time, on the last day of the comment period.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0063 using the Federal eRulemaking Portal (*http://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 notice of study, call or email Ms. Brandi Canada, Eighth Coast Guard District (dpw), U.S. Coast Guard: telephone (504) 671–2107, email *SMB-D8NewOrleans-TXLAPARS@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

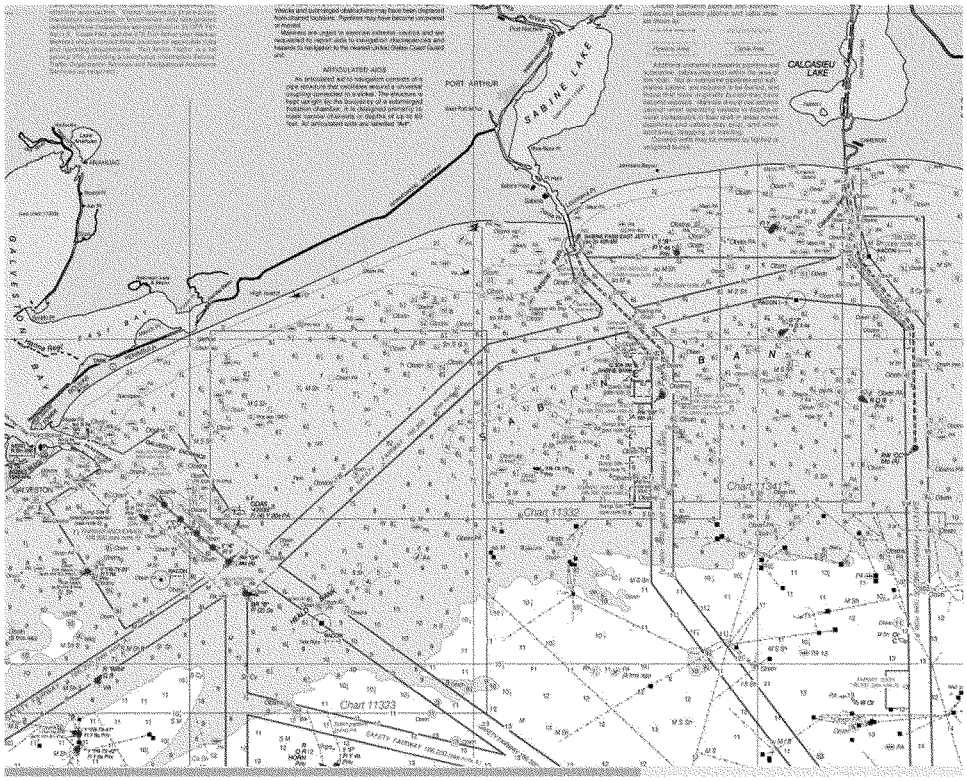
AIS Automatic Identification System
COMDTINST Commandant Instruction
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
TXPARS Approaches to Texas Port Access Route Study
MTS Marine Transportation System
PARS Port Access Route Study
TSS Traffic Separation Scheme
USCG United States Coast Guard

II. Background and Purpose

A. *Requirements for Port Access Route Studies:* Under section 70003 of title 46 of the United States Code, the Commandant of the U.S. Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

Before establishing or adjusting fairways or TSSs, the Coast Guard must conduct a PARS, *i.e.,* a study of potential traffic density and the need for safe access routes for vessels. Through the study process, the Coast Guard must coordinate with Federal, State, Tribal, and foreign state agencies (where appropriate) and consider the views of maritime community representatives, environmental groups, and other stakeholders. The primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as anchorages, construction, operation of renewable energy facilities, marine sanctuary operations, commercial and recreational activities, and other uses.

In addition to aiding in the establishment of new or adjusting existing fairways or TSSs, this PARS may recommend establishing or amending other vessel routing measures. Examples of other routing measures include two-way routes, recommended tracks, deep-water routes (for the benefit primarily of ships whose ability to maneuver is constrained by their draft), precautionary areas (where ships must navigate with particular caution), and areas to be avoided (for reasons of exceptional danger or especially sensitive ecological environmental factors).



Charted vessel routing measures in study area

B. *Previous Port Access Route Studies within this Study Area:* The Coast Guard established the TSS in the approaches to Galveston Bay, TX in 1983. It was redesignated in 1987 and 1989. There are no previous PARS within this study area.

C. *Need for a New Port Access Route Study:* The Bureau of Ocean Energy Management (BOEM) has designated two areas in the Gulf of Mexico for the development of offshore wind projects. These Wind Energy Areas (WEA) would be the first in the Gulf of Mexico. One WEA is located approximately 24 nautical miles (nm) off the coast of Galveston, Texas and the other is located approximately 56 nm off the coast of Lake Charles, Louisiana. The Coast Guard has determined the need to conduct the TX/LAPARS to determine what impact, if any, the WEAs may have on existing users of the study area.

III. Information Requested

The purpose of this notice is to announce commencement of this PARS and to solicit public comments. We encourage you to participate in the study process by submitting comments in response to this notice. Comments should address impacts to navigation in the area of study resulting from factors such as offshore development, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty.

IV. Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials.

A. *Submitting Comments:* To submit your comment online, go to *http://www.regulations.gov,* and insert ''USCG–2023–0063'' in the ''search box.'' Click ''Search''. Then click ''Comment.'' The ''Comment'' button can be found on the following pages:

- Docket Details page when a document within the docket is open for comment,
- Document Details page when the document is open for comment, and
- Document Search Tab with all search results open for comment displaying a ''Comment'' button.

Clicking ''Comment'' on any of the above pages will display the comment form. You can enter your comment on the form, attach files (maximum of 20 files up to 10MB each), and choose whether to identify yourself as an individual, an organization, or anonymously. Be sure to complete all required fields depending on which identity you have chosen. Once you have completed all required fields and chosen an identity, the ''Submit Comment'' button is enabled. Upon completion, you will receive a Comment Tracking Number for your comment. For additional step by step instructions, please see the Frequently Asked Questions page on *http://www.regulations.gov* or by clicking *https://www.regulations.gov/faq*.

We accept anonymous comments. Comments we post to *http://www.regulations.gov* will include any personal information you have provided.

We review all comments and materials received during the comment period, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

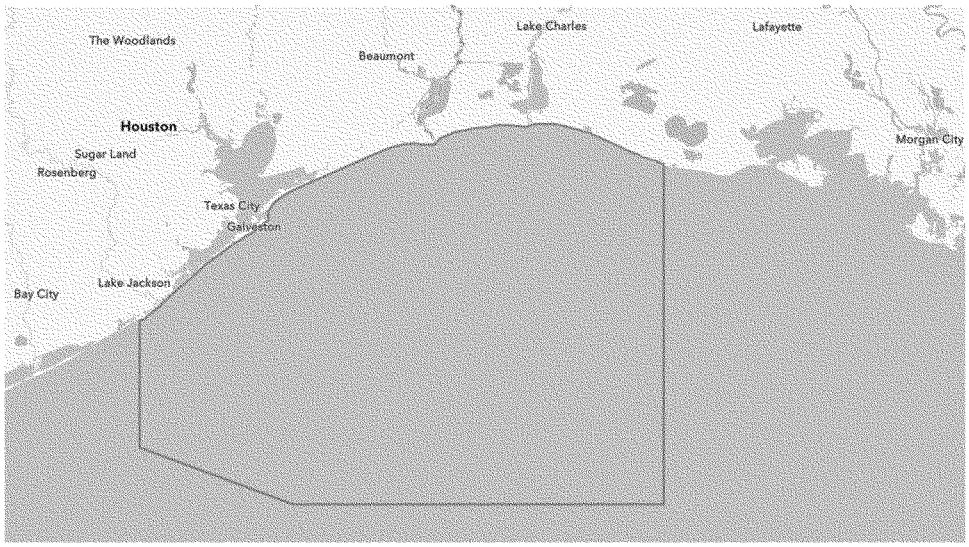
B. *How do I find and browse for posted comments on Regulations.gov*. On the previous version of *Regulations.gov*, users browsed for comments on the Docket Details page. However, since comments are made on individual documents, not dockets, new *Regulations.gov* organizes comments under their corresponding document. To access comments and documents submitted to this draft version of the study report go to *http://www.regulations.gov,* and insert ''USCG–2023–0063'' in the ''search box.'' Click ''Search.'' Then scroll down to and click on the ''notice'' entitled ''Port Access Route Study: Notice of availability of draft report and public information session; request for comments.'' This will open to the ''Document Details'' page. Then click on the ''Browse Comments'' tab. On the comment tab, you can search and filter comments. Note: If no comments have been posted to a document, the ''Comments'' tab will not appear on the Document Details page.

C. *If you need additional help navigating the new Regulations.gov*. For additional step by step instructions to submit a comment or to view submitted comments or other documents please see the Frequently Asked Questions (FAQs) at *http://www.regulations.gov/faqs* or call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

D. *Privacy Act:* Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding DHS's eRulemaking in the March 11, 2020 issue of the **Federal Register** (85 FR 14226).

V. TX/LAPARS: Timeline, Study Area, and Process

The Eighth Coast Guard District will conduct this PARS. The study will commence upon publication of this notice and may take 12 months or more to complete. The study area will include the Gulf of Mexico regions within the Eighth Coast Guard District AOR encompassed by a line connecting the following geographic points: beginning where the coast intersects longitude 95°25′00″ N; thence south to latitude 28°16′00″ N, longitude 95°25′00″ W; thence southeast to latitude 28°00′00″ N, longitude 94°36′00″ W; thence east to latitude 28°00′00″ N, longitude 92°37′00″ W; thence north along latitude 92°37′00″ W to the coast. This area extends approximately 106 nautical miles seaward at its greatest distance and covers approximately 13,100 square nautical miles. An illustration showing the study area is below.



Chartlet showing the TX/LA PARS study area

Analyses will be conducted in accordance with COMDTINST 16003.2B, Marine Planning to Operate and Maintain the Marine Transportation System (MTS) and Implement National Policy. Instruction is available at *https://media.defense.gov/2019/Jul/10/2002155400/-1/-1/0/CI_16003_2B.PDF*.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate the status quo (no routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to address navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

VI. Future Actions

In Person Public Meetings: Although the Coast Guard prefers and highly encourages all comments and related material be submitted directly to the electronic docket we do understand the value that in person public meetings will add to the study. Therefore, the Coast Guard intends to hold public meetings at various locations throughout the study area as the 2023 study process continues. For this initial comment period we ask that you make your comments directly to the docket, addressing impacts to navigation in the area of study resulting from factors such as offshore development, increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty. We anticipate that these early comments will inform us as to prevalent concerns and how best to use our limited resources when scheduling meeting locations.

Future public meetings will be announced by a notice in the *Federal Register*.

This notice is published under the authority of 5 U.S.C. 552(a).

Dated: February 24, 2023.

R.V. Timme,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2023–04207 Filed 2–28–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0117]

Free Trade Agreements

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 31, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 77131) on December 16, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Free Trade Agreements.
OMB Number: 1651–0117.
Form Number: N/A.
Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours, method of collection or to the information collected.
Type of Review: Extension (without change).
Affected Public: Businesses.
Abstract: Free Trade Agreements (FTAs) are established to reduce and eliminate trade barriers, strengthen, and develop economic relations, and to lay the foundation for further cooperation to expand and enhance benefits of the agreement. These agreements establish free trade by reduced-duty treatment on imported goods.

The U.S. has entered into FTAs with the following countries: Chile (Pub. L. 108–77); the Republic of Singapore (Pub. L. 108–78, 117 Stat. 948,19 U.S.C. 3805 note); Australia (Pub. L. 108–286); Morocco (Pub. L. 108–302); Jordan (Pub. L. 107–43); Bahrain (Pub. L. 109–169); Oman (Pub. L. 109–283); Peru (Pub. L. 110–138, 121 Stat. 1455); Korea (Pub. L. 112–41); Colombia (Pub. L. 112–42, 125 Stat. 462); Panama (Pub. L. 112–43); and Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (Pub. L. 109–53, 119 Stat. 462); Japan (Presidential Proclamation 9974, (**Federal Register** Notice (84 FR 72187)); Mexico and Canada (USMCA) (Pub. L. 116–113 section 101–195) and Consolidated Appropriations Act of 2021 (Pub. L. No: 116–260) (December 27, 2020).

These FTAs involve collection of data elements such as information about the importer and exporter of the goods, a description of the goods, tariff classification number, and the preference criterion in the Rules of Origin.

Respondents can obtain information on how to make claims under these FTAs at *http://www.cbp.gov/trade/free-trade-agreements,* and use a standard fillable format for the FTA submission by going to *http://www.cbp.gov/document/guides/certification-origin-template.*

Type of Information Collection: Free Trade Agreements.
Estimated Number of Respondents: 4,699,460.
Estimated Number of Total Annual Responses: 4,701,060.
Estimated Time per Response: 2 hours.
Estimated Total Annual Burden Hours: 9,402,120.

Dated: February 23, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–04115 Filed 2–28–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0098]

NAFTA Regulations and Certificate of Origin

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 31, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 77626) on December 19, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651–0098.

Form Number: 434, 446, and 447.

Current Actions: This submission is being made to extend the expiration dates for CBP Forms 434, 446, and 447 with no change to the estimated burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, the North American Free Trade Agreement (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (Pub. L. 103–182, 107 Stat. 2057).

CBP Form 434, *North American Free Trade Agreement Certificate of Origin,* is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11, 181.22, and is accessible at: *https://www.cbp.gov/newsroom/publications/forms.*

CBP Form 446, *NAFTA Verification of Origin Questionnaire,* is used by CBP personnel to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: *https://www.cbp.gov/newsroom/publications/forms.*

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election,* is used to gather information required by 19 CFR 181 Appendix, Section 11(2) ''Information Required When Producer Chooses to Average for Motor Vehicles''. This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: *https://www.cbp.gov/newsroom/publications/forms.*

This information is collected from members of the trade community who are familiar with the CBP regulations.

Type of Information Collection: NAFTA Certificate of Origin (Form 434).

Estimated Number of Respondents: 13,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 13,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 26,000.

Type of Information Collection: NAFTA Questionnaire (Form 446).

Estimated Number of Respondents: 400.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 400.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 800.

Type of Information Collection: NAFTA Motor Vehicle Averaging Election.

Estimated Number of Respondents: 11.

Estimated Number of Annual Responses per Respondent: 1.28.

Estimated Number of Total Annual Responses: 14.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 14.

Dated: February 23, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–04118 Filed 2–28–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0063]

Petroleum Refineries in Foreign Trade Sub-Zones

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

ACTION: 60-Day notice and request for comments; Extension with change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 1, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0063 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Petroleum Refineries in Foreign Trade Sub-zones.

OMB Number: 1651–0063.

Form Number: N/A.

Current Actions: Extension with a decrease in burden but no change to the information collected or method of collection.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: The Foreign Trade Zones Act, 19 U.S.C. 81c(d) contains specific provisions for petroleum refinery sub-zones. It permits refiners and U.S. Customs and Border Protection (CBP) to assess the relative value of such multiple products at the end of the manufacturing period during which these products were produced, when the actual quantities of these products resulting from the refining process can be measured with certainty.

19 CFR 146.4(d) provides that the operator of the refinery sub-zone is required to retain all records relating to the above-mentioned activities for five years after the merchandise is removed from the sub-zone. Further, the records shall be readily available for CBP review at the sub-zone.

Instructions on compliance with these record keeping provisions are available in the Foreign Trade Zone Manual which is accessible at: *http://www.cbp.gov/document/guides/foreign-trade-zones-manual.*

Type of Information Collection: Recordkeeping for Petroleum Refineries.

Estimated Number of Respondents: 47.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 47.

Estimated Time per Response: 1,000 hours.

Estimated Total Annual Burden Hours: 47,000.

Dated: February 23, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–04119 Filed 2–28–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2315]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before May 30, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2315, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/*

prelimdownload and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Pope County, Minnesota and Incorporated Areas Project: 18–05–0003S Preliminary Date: May 29, 2020 and November 23, 2022	
City of Long Beach	Long Beach City Hall, 23924 North Lakeshore Drive, Glenwood, MN 56334.
Wright County, Minnesota and Incorporated Areas Project: 08–05–4043S Preliminary Date: June 22, 2011, July 31, 2018 and April 29, 2022	
City of Maple Lake	City Hall, 10 Maple Avenue South, Maple Lake, MN 55358.
Township of Corinna	Corinna Township Hall, 9801 Ireland Avenue NW, Annandale, MN 55302.
Allen County, Ohio and Incorporated Areas Project: 14–05–4448S Preliminary Date: December 14, 2020 and September 30, 2022	
City of Lima	Municipal Center, 50 Town Square, Lima, OH 45801.
Unincorporated Areas of Allen County	Allen County Board of Elections, 204 North Main Street, Suite 301, Lima, OH 45801.
Luzerne County, Pennsylvania (All Jurisdictions) Project: 15–03–0227S Preliminary Date: August 31, 2022	
Borough of Forty Fort	Municipal Building, 1271 Wyoming Avenue, Forty Fort, PA 18704.
Borough of West Wyoming	Municipal Building, 464 West 8th Street, West Wyoming, PA 18644.
City of Wilkes-Barre	City Hall, 40 East Market Street, Wilkes-Barre, PA 18711.

[FR Doc. 2023–04173 Filed 2–28–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0043; OMB No. 1660–0107]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Public Assistance Customer Satisfaction Surveys

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revisions and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of the respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before March 31, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Jason Salazar, Program Analyst, Recovery Directorate, *Jason.Salazar@FEMA.dhs.gov,* 940.268.9245.

SUPPLEMENTARY INFORMATION: This collection is in accordance with E.O. 12862 and E.O. 13571 requiring all Federal agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act of 1993 (GPRA) requires Federal agencies to set missions and goals and to measure agency performance against them. See Public Law 103–62, 107 Stat 285 (1993). The GPRA Modernization Act of 2010 requires quarterly performance assessments of government programs for the purposes of assessing agency performance and improvement. See Public Law 111–352, 124 Stat 3875 (2011). FEMA fulfills these requirements by collecting customer satisfaction program information through surveys of States, Local and Tribal governments, and eligible non-profit organizations.

This proposed information collection previously published in the **Federal Register** on December 9, 2022, at 87 FR 75643 with a 60-day public comment period. One public comment was received with multiple questions within it. FEMA has provided detailed responses to these questions in our Supporting Statement A. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office

of Management and Budget for review and clearance.

Collection of Information

Title: FEMA Public Assistance Program Customer Satisfaction Survey.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0107.

FEMA Forms: FEMA Form FF–104–FY–21–155 (formerly 519–0–32), Public Assistance Initial Customer Satisfaction Survey (Telephone); FEMA Form FF–104–FY–21–156 (formerly 519–0–33), Public Assistance Initial Customer Satisfaction Survey (internet); FEMA Form FF–104–FY–21–157 (formerly 519–0–34), Public Assistance Assessment Customer Satisfaction Survey (Telephone); FEMA Form FF–104–FY–21–158 (formerly 519–0–35), Public Assistance Assessment Customer Satisfaction Survey (internet); FEMA Manual FM–104–FY–22–102, Customer Survey and Analysis Qualitative Research Protocol.

Abstract: Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with those services. The FEMA Public Assistance Customer Satisfaction Surveys are used to monitor program performance and assess service delivery. Survey results are used to ensure the Agency is meeting the needs of FEMA applicants.

Affected Public: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 3,885.

Estimated Number of Responses: 3,885.

Estimated Total Annual Burden Hours: 1,839.

Estimated Total Annual Respondent Cost: $86,459.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $13,500.

Estimated Total Annual Cost to the Federal Government: $897,467.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–04116 Filed 2–28–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2316]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before May 30, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2316, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and

other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Dyer County, Tennessee and Incorporated Areas Project: 18–04–0035S Preliminary Date: October 27, 2021	
City of Dyersburg	City Hall, 425 West Court Street, Dyersburg, TN 38024.
Unincorporated Areas of Dyer County	Dyer County Building and Zoning, 1910 Pioneer Road, Dyersburg, TN 38024.
Collin County, Texas and Incorporated Areas Project: 20–06–0102S Preliminary Date: October 18, 2022	
City of Dallas	Dallas Water Utilities, Stormwater Operations, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.
City of Plano	Municipal Center, 1520 K Avenue, Suite 250, Plano, TX 75074.

[FR Doc. 2023–04171 Filed 2–28–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0055; OMB No. 1660–0047]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Request for Federal Assistance Form—How To Process Mission Assignments in Federal Disaster Operations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the collection of information necessary to allow FEMA to support the needs of State, Tribes, and Territories during disaster situations through the use of other Federal agency resources.

DATES: Comments must be submitted on or before March 31, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or John Walls, via email: *john.wallsjr@fema.dhs.gov* or by phone (202) 674–4936.

SUPPLEMENTARY INFORMATION: According to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 *et seq.,* FEMA is authorized to provide assistance before, during, and after a disaster has impacted a State, Tribe, or Territory. For a major disaster, the Stafford Act authorizes FEMA to direct any agency to utilize its existing authorities and resources in support of State, Tribe, and Territory assistance response and recovery efforts. *See* 42 U.S.C. 5170(a)(1). For an emergency, the Stafford Act authorizes FEMA to direct any agency to utilize its existing authorities and resources in support of State and local emergency assistance efforts. *See* 42 U.S.C. 5192(a)(1). FEMA may task other Federal agencies to assist during disasters and to support emergency efforts by State and local governments by issuing a mission assignment to the appropriate agency. *See* 44 CFR 206.5, 206.208. FEMA collects the information necessary to determine what resources are needed and if a mission assignment is appropriate. The information collected explains which States, Tribes, or Territories require assistance, what needs to be accomplished, details any resource shortfalls, and explains what assistance is required to meet these needs.

This proposed information collection previously published in the **Federal Register** on December 13, 2022, at 87 FR 76208 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Request for Federal Assistance Form—How to Process Mission Assignments in Federal Disaster Operations.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0047.

FEMA Form: FEMA Form FF–104–FY–21–120 (formerly 010–0–7), Resource Request Form.

Abstract: If a State, Tribe, or Territory determines that its capacity to respond to a disaster exceeds its available resources, it may submit to FEMA a request that the work be accomplished by a Federal agency. This request documents how the response requirements exceed the capacity for the State to respond to the situation on its own and what type of assistance is required. FEMA reviews this information and may issue a mission assignment to the appropriate Federal agency to assist the State in its response to the situation.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 10.

Number of Responses: 6,400.

Estimated Total Annual Burden Hours: 2,133.

Estimated Total Annual Respondent Costs: $180,430.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $44,318.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–04120 Filed 2–28–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Denver (FEMA Docket No.: B–2278).	City and County of Denver (22–08–0408P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 North Bannock Street, Room 350, Denver, CO 80202.	Department of Transportation and Infrastructure, 201 West Colfax Avenue, Department 608, Denver, CO 80202.	Jan. 13, 2023	080046
Jefferson (FEMA Docket No.: B–2291).	City of Arvada (21–08–1154P).	The Honorable Marc Williams, Mayor, City of Arvada, 8101 Ralston Road, Arvada, CO 80002.	Engineering Division, 8101 Ralston Road, Arvada, CO 80002.	Jan. 20, 2023	085072
Jefferson (FEMA Docket No.: B–2291).	Unincorporated areas of Jefferson County (21–08–1154P).	The Honorable Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	Jan. 20, 2023	080087
Larimer (FEMA Docket No.: B–2291).	Town of Estes Park (22–08–0205P).	The Honorable Wendy Koenig-Schuett, Mayor, Town of Estes Park, P.O. Box 1200, Estes Park, CO 80517.	Town Hall, 170 MacGregor Avenue, Estes Park, CO 80517.	Feb. 2, 2023	080193
Larimer (FEMA Docket No.: B–2291).	Unincorporated areas of Larimer County (22–08–0205P).	The Honorable Kristin Stephens, Chair, Larimer County Board of Commissioners, 200 West Oak Street, Suite 2200, Fort Collins, CO 80521.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Feb. 2, 2023	080101
Weld (FEMA Docket No.: B–2291).	Town of Windsor (22–08–0286P).	The Honorable Paul Rennemeyer, Mayor, Town of Windsor, 301 Walnut Street, Windsor, CO 80550.	Town Hall, 301 Walnut Street, Windsor, CO 80550.	Feb. 6, 2023	080264
Weld (FEMA Docket No.: B–2291).	Unincorporated areas of Weld County (22–08–0286P).	Scott James, Chair, Weld County Board of Commissioners, 1150 O Street, Greeley, CO 80632.	Weld County Administration Building, 1150 O Street, Greeley, CO 80632.	Feb. 6, 2023	080266
Florida:					
Collier (FEMA Docket No.: B–2291).	City of Marco Island (22–04–4408P).	Mike McNees, City of Marco Island, Manager, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	Jan. 27, 2023	120426
Manatee (FEMA Docket No.: B–2284).	Unincorporated areas of Manatee County (22–04–0770P).	Scott Hopes, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Development, Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	Jan. 25, 2023	120153
Monroe (FEMA Docket No.: B–2284).	Unincorporated areas of Monroe County (22–04–4636P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210 Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Feb. 2, 2023	125129
Polk (FEMA Docket No.: B–2291).	Unincorporated areas of Polk County (22–04–1142P).	Bill Beasley, Polk County Manager, P.O. Box 9005, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	Jan. 26, 2023	120261
Volusia (FEMA Docket No.: B–2284).	City of Deland (22–04–2131P).	Michael F. Pleus, Manager, City of Deland, 120 South Florida Avenue, Deland, FL 32720.	Public Services Department, 1102 South Garfield Avenue, Deland, FL 32724.	Jan. 13, 2023	120307
Volusia (FEMA Docket No.: B–2284).	Unincorporated areas of Volusia County (22–04–2131P).	George Recktenwald, Volusia County Manager, 123 West Indiana Avenue, Deland, FL 32730.	Volusia County, Thomas C. Kelly Administration Center, 123 West Indiana Avenue, Deland, FL 32730.	Jan. 13, 2023	125155
Idaho:					
Gooding (FEMA Docket No.: B–2284).	City of Gooding (21–10–1380P).	The Honorable Diane Houser, Mayor, City of Gooding, 308 5th Avenue West, Gooding, ID 83330.	Public Works Department, 308 5th Avenue West, Gooding, ID 83330.	Jan. 20, 2023	160064
Gooding (FEMA Docket No.: B–2284).	Unincorporated areas of Gooding County (21–10–1380P).	The Honorable Mark Bolduc, Chair, Gooding County Board of Commissioners, P.O. Box 417, Gooding, ID 83330	Gooding County Planning and Zoning Department, 714 Main Street, Gooding, ID 83330.	Jan. 20, 2023	160227
New Mexico:					
Bernalillo (FEMA Docket No.: B–2284).	City of Albuquerque (22–06–0212P).	The Honorable Timothy M. Keller, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Planning Department, 600 2nd Street Northwest, Albuquerque, NM 87102.	Jan. 18, 2023	350002
North Carolina:					
Franklin (FEMA Docket No.: B–2299).	Unincorporated areas of Franklin County (22–04–3395P)	The Honorable Michael S. Schriver, Chair, Franklin County Board of Commissioners, 113 Market Street, Louisburg, NC 27549.	Franklin County Planning and Inspections Department, 215 East Nash Street, Louisburg, NC 27549.	Feb. 10, 2023	370377

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Wake (FEMA Docket No.: B–2291).	City of Raleigh (21–04–0780P).	The Honorable Mary-Ann Baldwin, Mayor, City of Raleigh, 222 West Hargett Street, Raleigh, NC 27602.	Engineering Services Department, 1 Exchange Plaza, Suite 706, Raleigh, NC 27601.	Jan. 5, 2023	370243
North Dakota:					
Walsh (FEMA Docket No.: B–2284).	City of Grafton (21–08–0925P).	The Honorable Chris West, Mayor, City of Grafton, P.O. Box 578, Grafton, ND 58237.	City Hall, 5 East 4th Street, Grafton, ND 58237.	Jan. 19, 2023	380137
Walsh (FEMA Docket No.: B–2284).	Township of Grafton (21–08–0925P).	The Honorable Lawrence Burianek, Chair, Township of Grafton, 117 Westwood Drive, Grafton, ND 58237.	Walsh County Administrative Building, 638 Cooper Avenue, Suite 2, Grafton, ND 58237.	Jan. 19, 2023	380302
Walsh (FEMA Docket No.: B–2284).	Township of Oakwood (21–08–0925P).	The Honorable Mark Gourde, Chair, Township of Oakwood, 15387 County Road 11, Grafton, ND 58237.	Walsh County Administrative Building, 638 Cooper Avenue, Suite 2, Grafton, ND 58237.	Jan. 19, 2023	380303
Pennsylvania: Lehigh (FEMA Docket No.: B–2291).	Township of Upper Macungie (22–03–0156P).	The Honorable James M. Brunell, Chair, Township of Upper Macungie, Board of Supervisors, 8330 Schantz Road, Breinigsville, PA 18031.	Township Hall, 8330 Schantz Road, Breinigsville, PA 18031.	Feb. 3, 2023	421044
South Carolina: Darlington (FEMA Docket No.: B–2284).	Unincorporated areas of Darlington County (22–04–2654P).	Marion C. Stewart, III, Darlington County Administrator, 1 Public Square, Room 210, Darlington, SC 29532.	Darlington County Planning Department, 1 Public Square, Darlington, SC 29532.	Jan. 12, 2023	450060
Tennessee: Hamilton (FEMA Docket No.: B–2284).	Unincorporated areas of Hamilton County (21–04–5804P).	The Honorable Weston Wamp, Mayor, Hamilton County, 625 Georgia Avenue, Chattanooga, TN 37402.	Hamilton County Engineering Department, Development Resource Center, 1250 Market Street, Suite 3046, Chattanooga, TN 37402.	Jan. 25, 2023	470071
Texas:					
Bexar (FEMA Docket No.: B–2291).	City of San Antonio (21–06–2098P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements, Storm Water Division Department, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Jan. 23, 2023	480045
Bexar (FEMA Docket No.: B–2299).	City of San Antonio (21–06–2378P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements, Storm Water Division Department, 1901 South Alamo Street, 2nd Floor San Antonio, TX 78204.	Feb. 6, 2023	480045
Bexar (FEMA Docket No.: B–2299).	City of San Antonio (21–06–3278P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements, Storm Water Division, Department, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Feb. 6, 2023	480045
Bexar (FEMA Docket No.: B–2291).	Unincorporated areas of Bexar County (21–06–2098P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County, Public Works Department, 1948 Probandt Street, San Antonio, TX 78283.	Jan. 23, 2023	480035
Denton (FEMA Docket No.: B–2284).	City of Fort Worth (22–06–0030P).	The Honorable Mattie, Parker Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	Jan. 23, 2023	480596
Denton (FEMA Docket No.: B–2284).	Unincorporated areas of Denton County (22–06–0030P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100 Denton, TX 76208.	Denton County Public Works Department, Engineering Department 1505 East McKinney Street, Suite 175, Denton, TX 76209.	Jan. 23, 2023	480774
Erath (FEMA Docket No.: B–2284).	City of Stephenville (22–06–0024P).	Jason King, Manager, City of Stephenville, 298 West Washington Street, Stephenville, TX 76401.	Department of Public Works, 298 West Washington Street, Stephenville, TX 76401.	Jan. 17, 2023	480220
Harris (FEMA Docket No.: B–2291).	City of Houston (22–06–0051P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77002.	Jan. 30, 2023	480296
Harris (FEMA Docket No.: B–2291).	Unincorporated areas of Harris County (22–06–1000P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77092.	Harris County Engineering Department, Permit Division, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Jan. 30, 2023	480287
Tarrant (FEMA Docket No.: B–2284).	City of Benbrook (22–06–0792P).	The Honorable Jason Ward, Mayor, City of Benbrook, 911 Winscott Road, Benbrook, TX 76126.	Department of Public Works, 8401 Laguna Palms Way, Benbrook, TX 76126.	Feb. 2, 2023	480586
Tarrant (FEMA Docket No.: B–2278).	City of Fort Worth (22–06–2031P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 200 Texas Street, Fort Worth, TX 76102.	Jan. 12, 2023	480596
Tarrant (FEMA Docket No.: B–2278).	City of Grapevine (21–06–3397P).	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76051.	City Hall, 200 South Main Street, Grapevine, TX 76051.	Jan. 13, 2023	480598

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Williamson (FEMA Docket No.: B–2291).	City of Hutto (21–06–3276P).	The Honorable Mike Snyder, Mayor, City of Hutto, 500 West Live Oak Street, Hutto, TX 78634.	Department of Public Works, 210 U.S. Highway 79 East, Suite 203, Hutto, TX 78634.	Feb. 2, 2023	481047
Williamson (FEMA Docket No.: B–2291).	Unincorporated areas of Williamson County (21–06–3276P).	The Honorable Bill Gravell, Jr., Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Central Maintenance Facility, 3151 Southeast Inner Loop, Georgetown, TX 78216.	Feb. 2, 2023	481079
Utah:					
Davis (FEMA Docket No.: B–2291).	City of Bountiful (22–08–0009P).	The Honorable Kendalyn Harris, Mayor, City of Bountiful, 795 South Main Street, Bountiful, UT 84010.	Engineering Department, 795 South Main Street, Bountiful, UT 84010.	Feb. 2, 2023	490039
Davis (FEMA Docket No.: B–2291).	City of Centerville (22–08–0009P).	The Honorable Clark Wilkinson, Mayor, City of Centerville, 250 North Main Street, Centerville, UT 84014.	Public Works Department, 655 North 1250 West, Centerville, UT 84014.	Feb. 2, 2023	490040
Wisconsin: Dane (FEMA Docket No.: B–2291).	City of Madison (22–05–1179P).	The Honorable Satya Rhodes-Conway, Mayor, City of Madison, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	Municipal Building, 215 Martin Luther King Jr. Boulevard, Room 017, Madison, WI 53703.	Feb. 1, 2023	550083
Wyoming: Sweetwater (FEMA Docket No.: B–2291).	City of Rock Springs (22–08–0270P).	The Honorable Tim Kaumo, Mayor, City of Rock Springs, 212 D Street, Rock Springs, WY 82901.	Department of Planning and Zoning, 212 D Street, Rock Springs, WY 82901.	Jan. 19, 2023	560051

[FR Doc. 2023–04172 Filed 2–28–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0130]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Record of Abandonment of Lawful Permanent Residence Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until May 1, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0130 in the body of the letter, the agency name and Docket ID USCIS–2013–0005. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2013–0005.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Jerry Rigdon, Acting Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2013–0005 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Record of Abandonment of Lawful Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–407; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. Lawful Permanent Residents (LPRs) use Form I–407 to inform USCIS and formally record their abandonment of lawful permanent resident status. U.S. Citizenship and Immigration Services uses the information collected in Form I–407 to record the LPR's abandonment of lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–407 is 14,449 and the estimated hour burden per response is .25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,612 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,540,005.

Dated: February 22, 2023.

Jerry L. Rigdon,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–04159 Filed 2–28–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2023–N006; FXES11130200000–234–FF02ENEH00]

Endangered Wildlife; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act (ESA) prohibits certain activities that may impact endangered species, unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please submit your written comments by March 31, 2023.

ADDRESSES:

Document availability: Request documents from the contact in the **FOR FURTHER INFORMATION CONTACT** section.

Comment submission: Submit comments by email to *fw2_te_permits@fws.gov.* Please specify the permit application you are interested in by number (*e.g.,* Permit Record No. PER1234567).

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Supervisor, Environmental Review Division, by phone at 505–248–6651, or via email at *marty_tuegel@fws.gov.* 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:

Background

With some exceptions, the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and require that we invite public comment before issuing permits for activities involving listed species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species' propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Our release of documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the permit record number when submitting comments.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER0116052	New Mexico Office of the State Engineer/Interstate Stream Commission; Los Lunas, New Mexico.	Rio Grande Silvery Minnow (*Hybognathus amarus*).	New Mexico	Captive propagation, maintain captive adult population, educational display, conduct research.	Harass, harm, and capture.	Renew/Amend.

Permit record No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER0084202	Attwater Prairie Chicken National Wildlife Refuge; Eagle Lake, Texas.	Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri*).	Texas, Oklahoma.	Capture, band, tag, collet bio-samples, captive propagation, artificial insemination, collect eggs, transport, salvage, educational display.	Harass, harm, and capture.	Renew/Amend.
PER0087313	Owen, Victoria; San Antonio, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys	Harass and, harm.	New.
PER0104851	Prescott National Forest; Camp Verde, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*), Gila chub (*Gila intermedia*), razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus lucius*), desert pupfish (*Cyprinodon macularius*), Gila topminnow (*Poeciliopsis occidentalis*), spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*).	Arizona	Presence/absence surveys	Harass and, harm.	Renew/Amend.
PER0116611	Carreon, Sarah; Helotes, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys	Harass and, harm.	New.
PER0115496	Aecom Technical Services, Inc.; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*), Houston Toad (*Bufo houstonensis*).	Texas	Presence/absence surveys, habitat assessment, capture.	Harass, harm, and capture.	Renew/Amend.
PER0115497	Frost, Steve; Helotes, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*).	Texas	Presence/absence surveys	Harass and, harm.	New.
PER0116336	Bureau of Land Management—Tucson Field Office; Tucson, Arizona.	Mexican long-nosed bat (*Leptonycteris nivalis*), southwestern willow flycatcher (*Empidonax traillii extimus*), Gila chub (*Gila intermedia*), Gila topminnow (*Poeciliopsis occidentalis*), desert pupfish (*Cyprinodon macularius*), spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*).	Arizona	Presence/absence surveys, nest monitoring, banding, capture, handle, voucher specimen.	Harass, harm, capture, and kill.	Renew.
PER0192207	Hicks & Company; Austin, Texas.	Golden-cheeked warbler (*Setophaga chrysoparia*), northern aplomado falcon (*Falco femoralis septentrionalis*), red-cockaded woodpecker (*Picoides borealis*), southwestern willow flycatcher (*Empidonax traillii extimus*), Houston Toad (*Bufo houstonensis*).	Arizona, New Mexico, Texas.	Presence/absence surveys, habitat assessment, capture.	Harass, harm, and capture.	Renew.
PER0441990	Weiberg, Garrett; Grand Prairie, Texas.	Peppered chub (*Macrhybopsis tetranema*), sharpnose shiner (*Notropis oxyrhynchus*), smalleye shiner (*Notropis buccula*).	Kansas, New Mexico, Oklahoma, Texas.	Presence/absence surveys, habitat assessment, capture, handle, tag, translocate.	Harass, harm, and capture.	New.
PER0658674	SWCA Flagstaff; Flagstaff, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona	Capture, tag	Harass, harm, and capture.	Amend.
PER0666399	The Nature Conservancy Arizona; Phoenix, Arizona.	Southwestern willow flycatcher (*Empidonax traillii extimus*).	Arizona	Presence/absence surveys	Harass and, harm.	New.
PER0018550	Mowad, Gary; Scottsdale, Arizona.	Ocelot (*Leopardus pardalis*), Gulf Coast jaguarundi (*Puma yagouaroundi cacomitli*).	Arizona, New Mexico, Texas.	Camera monitoring using scents/attractants.	Harass and, harm.	New.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, National Environmental Policy Act, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Amy Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2023–04156 Filed 2–28–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/ A0A501010.999900]

Land Acquisitions; Oneida Indian Nation, Madison and Oneida Counties, New York

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire in trust 269.543 acres, more or less, of land located within the Nation's Reservation, in Madison County and Oneida County, New York, for the Oneida Indian Nation (Nation or OIN) for gaming and other purposes.

DATES: This final determination was made on February 17, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Mailstop 3543, 1849 C Street NW, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs made a final agency determination to acquire lands consisting of 269.543 acres, more or less, in trust for the Nation under the authority of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. 5108.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the lands in the name of the United States of America in trust for the Nation upon fulfillment of all Departmental requirements. The 269.543 acres, more or less, are described as follows:

Real Property in the Counties of Madison and Oneida, State of New York, Described as Follows

OIN Parcels 75–81

DESCRIPTION: ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Canastota and Town of Lenox, County of Madison and State of New York, being part of Lot Number 83, 84, 86, 87 and 88 of the Canastota Tract, bounded and described as follows: TAX MAP# 36.5–1–20, TAX MAP# 36.6–1–1, TAX MAP# 36.6–1–3, TAX MAP# 36.6–1–4, TAX MAP# 36.38–1–32, TAX MAP# 36.38–1–34 and TAX MAP# 36.-3–2 PARCEL A Beginning at an iron pin on the easterly highway boundary of North Peterboro Street (New York State Route #13), said iron pin standing at the intersection of the easterly highway boundary of North Peterboro Street with the northerly boundary of Albert W. Tucci and George Tucci (Now or Formerly), as described in a Warranty Deed dated June 20, 1988 and filed in the Madison County Clerk's Office in Liber 863 of Deeds at page 278; thence N 09°23′58″ W 66.69 feet along the easterly highway boundary of North Peterboro Street to a point standing on the southerly boundary of Richard G. Clark and Donald E. Clark (Now or Formerly); thence N 77°58′02″ E 8.10 feet along the southerly boundary of Clark to an iron pin; thence N 53°12′02″ E 143.90 feet continuing along the southerly boundary of Clark to an iron pin standing on the easterly boundary of Clark; thence N 08°31′58″ W 72.15 feet along the easterly boundary of Clark to an iron pin; thence N 22°35′58″ W 140.45 feet continuing along the easterly boundary of Clark to a concrete monument standing on the southerly highway boundary of the lands of the New York State Thruway; thence N 46 °42′00″ E 1151.00 feet along the southerly highway boundary of the lands of the New York State Thruway to a point; thence N 37°34′00″ E, 525.37 feet continuing along the southerly highway boundary of the lands of the New York State Thruway to a point; thence N 11°30′00″ E 465.37 feet to a concrete monument; thence N 24° 00′50″ E 278.68 feet to a concrete monument; thence N 36°03′25″ E 1.06 feet still along the southerly highway boundary of the lands of the New York State Thruway to a point standing on the westerly boundary of the lands of the Niagara Mohawk Power Corporation (Reputed Owner) (Adirondack Power and Light Corporation—Formerly); thence S 06°36′20″ E 1805.51 feet along the westerly boundary of the lands of the Niagara Mohawk Power Corporation to an iron pin standing on the northerly boundary of the lands of the Canastota Central School District (Reputed Owner); thence S 52°30′43″ W 804.51 feet along the northerly boundary of the lands of the Canastota Central School District to an iron pin standing on the easterly boundary of Robert J. Regis (Now or Formerly); thence N 34°44′54″ W 233.39 feet along the easterly boundary of Regis and then along the easterly boundary of Elizabeth Paver, Et al. (Now or Formerly) to an iron pin standing on the northerly boundary of Paver; thence S 62°14′06″ W 216.60 feet along the northerly boundary of Paver to an iron pin standing on the easterly boundary of Paver; thence N 29°59′54″ W 169.50 feet along the easterly boundary of Paver to an iron pin standing on the northerly boundary of Paver; thence S 58°09′37″ W 463.27 feet along the northerly boundary of Paver to an iron pin; thence S 74°23′02″ W 34.68 feet continuing along the northerly boundary of Paver to an iron pin standing on the easterly boundary of Tucci; thence N 05°21′58″ W 52.00 feet along the easterly boundary of Tucci to an iron pin standing on the northerly boundary of Tucci; thence S 80°06′02″ W 142.56 feet along the northerly boundary of Tucci to the point and place of beginning. The above described parcel containing 34.7090 acres of land, more or less. PARCEL B Beginning at a point on the southerly highway boundary of the lands of the New York State Thruway, said point standing at the intersection of the southerly highway boundary of the lands of the New York State Thruway with the easterly boundary of the lands of Niagara Mohawk Power Corporation (Reputed Owner) (Adirondack Power and Light Corporation—Formerly), as described in a Full Covenant Deed dated August 25, 1925 and filed in the Madison County Clerk's Office in Liber 278 of Deeds at page 289; thence N 48°18′37″ E 80.66 feet along the southerly highway boundary of the lands of the New York State Thruway to a point standing on the westerly boundary of the lands of Niagara Mohawk Power Corporation (Now or Formerly); thence S 06°36′20″ E 61.10 feet along the westerly boundary of the lands of the Niagara Mohawk Power Corporation to a point; thence N 48°18′37″ E 36.01 feet along the southerly boundary of the lands of the Niagara Mohawk Power Corporation to a point; thence N 47°15′57″ E 214.01 feet continuing along the southerly boundary of the lands of the Niagara Mohawk Power Corporation to a point; thence N 51°26′35″ E 120.16 feet to a point; thence N 57°41′16″ E 1014.09 feet to a point; thence N 76°16′05″ E 398.07 feet still along the southerly boundary of the lands of the Niagara Mohawk Power Corporation to an iron pin standing on the westerly boundary of Michael Fusillo and Linda Fusillo (Now or Formerly); thence S 38°40′27″ E 447.93 feet along the westerly boundary of Fusillo to an iron pin standing on the southerly boundary of Fusillo; thence N 50°19′34″ E 594.66 feet along the southerly boundary of Fusillo to a corner fence post standing on the southerly boundary of Jeffrey L. Barley (Now or Formerly); thence N 51°19′34″ E 346.25 feet along the southerly boundary of Barley and then along the southerly boundary of Robert P. Stager and Dianne M. Bunnell (Now or Formerly) to a point standing on the

southerly boundary of the lands of the Niagara Mohawk Power Corporation (Reputed Owner) (Adirondack Power and Light Corporation—Formerly); thence N 76°16′05″ E 35.71 feet along the southerly boundary of the lands of the Niagara Mohawk Power Corporation to a point standing on the westerly boundary of Susan A. Giacobbi (Now or Formerly); thence S 39°51′12″ E 809.27 feet along the westerly boundary of Giacobbi to an iron pin standing on the northerly boundary of Giacobbi; thence S 51°22′49″ W 1327.18 feet along the northerly boundary of Giacobbi to a corner fence post standing on the easterly boundary of Giacobbi; thence N 39° 51′12″ W 21.56 feet along the easterly boundary of Giacobbi to a corner fence post standing on the northerly boundary of Giacobbi; thence S 51°05′15″ W 2170.75 feet along the northerly boundary of Giacobbi, the northerly boundary of Robert J. and Frieda B. Phoenix (Now or Formerly) and thence along the northerly boundary of John v. and Nancy J. James (Now or Formerly) to a point; thence S 51°51′34″ W 151.14 feet to a point standing on the northerly boundary of Maude F. Wollaber (Now or Formerly); thence S 82°26′28″ W 106.97 feet along the northerly boundary of Wollaber to a point standing on the easterly boundary of the lands of the Niagara Mohawk Power Corporation (Reputed Owner) (Adirondack Power and Light Corporation—Formerly); thence N 05°40′17″ W 610.34 feet along the easterly boundary of the lands of the Niagara Mohawk Power Corporation to a point standing on the southerly boundary of the lands of the Niagara Mohawk Power Corporation; thence N 51°51′34″ E 11.73 feet along the southerly boundary of the lands of the Niagara Mohawk Power Corporation to a point standing on the easterly boundary of the lands of the Niagara Mohawk Power Corporation; thence N 06°36′20″ W 1168.80 feet along the easterly boundary of the lands of the Niagara Mohawk Power Corporation to the point and place of beginning. The above described parcel containing 95.734 acres of land, more or less. PARCEL C Beginning at a point on the southerly highway boundary of the lands of the New York State Thruway, said point standing at the intersection of the southerly highway boundary of the lands of the New York State Thruway with the northerly boundary of the lands of the Niagara Mohawk Power Corporation (Reputed Owner) (Adirondack Power and Light Corporation—Formerly), as described in a Full Covenant Deed dated October 7, 1924, and filed in the Madison County Clerk's Office in Liber 275 of Deeds at Page 49; thence N 57°45′18″ W 195.22 feet along the southerly highway boundary of the lands of the New York State Thruway to a point standing on the westerly boundary of Michael Fusillo and Linda Fusillo (Now or Formerly); thence S 38°40′27″ E 68.36 feet along the westerly boundary of Fusillo to a point standing on the northerly boundary of the lands of the Niagara Mohawk Power Corporation; thence S 76°16′05″ W 213.94 feet along the northerly boundary of the lands of the Niagara Mohawk Power Corporation to the point and place of beginning. The above described parcel of land containing 0.152 acre of land, more or less.

OIN Parcel 87

DESCRIPTION: EXHIBIT A ALL THAT TRACT OR PARCEL OF LAND situate in the Village of Canastota, County of Madison and State of New York, lying on the east side of North Peterboro Street and being a part of Lot No. 83 of the Canastota Tract, bounded and described as follows, to wit: Beginning at an iron stake on the east side of said street 66.40 feet north of an iron stake in the southwest corner of the homestead lot of Wallace E. Heintz; and running thence N 78°47′ E a distance of 8.10 feet to an iron stake; thence running N 54°01′ E a distance of 143.90 feet to an iron pipe in the southeast corner of the village lot formerly owned by Ralph Balducci; thence running N 7°43′ W along the east line of said Balducci lot 72.15 feet to an iron stake in the northeast corner of said Balducci lot; thence running N 21°47′ W a distance of 140.45 feet to a concrete monument in the southerly line of the State of New York Thruway lands; thence running S 20°39′ W along said State lands 161.02 feet to a concrete monument; thence running S 82°48′ W along said State lands 26.50 feet to the east line of said North Peterboro Street; thence S 8°36′ E along said east line 135.63 feet to the place of beginning. The premises hereby conveyed are a part of the premises described in an Administrator's Deed from Julius Heintz, as Administrator of the goods, chattels and credits of Julius Heintz, deceased to Wallace E. Heintz, dated February 11, 1947 and recorded in Madison County Clerk's Office on February 17, 1947 in Liber 381 of Deeds at page 55. ALSO ALL THAT TRACT AND PARCEL OF LAND situated in the Village of Canastota, Madison County, New York, commencing at the intersection of the southwest corner of the premises of Michael G. Corbett, being the premises described in the first parcel in this deed, on the east line of North Peterboro Street and extending thence northerly 78°47′ east a distance of 8.1 feet; thence running southerly and parallel to the east line of Peterboro Street 18 feet to a point in the south line of the driveway formerly of Wallace Heintz; thence westerly and parallel to the first described line 8.1 feet to the east line of Peterboro Street; thence northerly along the east line of Peterboro Street 18 feet to the place of beginning, being the quantity of land more or less. This conveyance made in and by this paragraph is made for the purpose of enabling the grantees herein to use the said strip of land in common with Wallace Heintz for the purpose of ingress and egress only and the grantees shall have no other right or interest in and to the said parcel of land and at no time shall the grantees use the premises herein conveyed for parking or other purposes. The right to use the right of way in common shall not be restricted to the grantees or Wallace Heintz personally but is intended to include their agents, servants, employees, invitees, customers and clients; but the restriction as to the parking shall remain in full force and effect irrespective of the person using the same. The use of the above described right of way, as aforesaid, is likewise intended to inure to the benefit of the heirs at law, next of kin, assignees, devisees, grantees of the grantees herein and of Wallace Heintz. The premises herein conveyed are the same premises as were conveyed to Michael G. Corbett by the following deeds: deed from Wallace E. Heintz dated December 1, 1954, recorded in the Madison County Clerk's Office December 2, 1954, in Book of Deeds 503, at page 428; deed from Ralph Balducci and Gasper and Katherine Sicilia dated November 30, 1954, recorded in said Clerk's Office on December 2, 1954 in Book of Deeds 503 at page 418 as corrected by a deed dated December 21, 1954, recorded in said clerk's office on December 23, 1954 in Book of Deeds 504 at page 204; and by deed from Wallace Heintz and Dorothy T. Heintz dated January 10, 1955, recorded in said Clerk's Office on January 11, 1955 in Book of Deeds 504, at page 449. SUBJECT to any easements, covenants or restrictions of record. BEING the same premises as described in a Warranty Deed from Michael G. Corbett to Richard G. Clark and Donald E. Clark dated October 25, 1972 and recorded in the Madison County Clerk's Office on October 25, 1972 in Book of Deeds 667 at Page 470.

OIN Parcels 343, 344, and 345

DESCRIPTION: LANDS OF ONEIDA INDIAN NATION, A SOVEREIGN INDIAN NATION, ONEIDA INDIAN NATION OF NEW YORK, BEING TAX MAP#, TAX MAP # 48.8–1–1.l, 48.8–1–2 AND 48.8–1–1.3, OIN PARCELS 344, 343 AND 345, RESPECTIVELY ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE VILLAGE OF CHITTENANGO, TOWN OF SULLIVAN, COUNTY OF MADISON AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS: Beginning at a point on the centerline of New York State Route #5, (Fayettville-Chittenango Pt. 2 S.H. 5120), said point standing at the intersection of the centerline of New York State Route 5 with the westerly boundary of Hickory Hills Apartments Inc. (Now or Formerly) as described in a Warranty Deed dated November 29, 1993 and filed in the Madison County Clerk's Office on February 3, 1994 in Liber 984 of Deeds at Page 269; said point being further described as having Grid Coordinate N 1,110,877.73/E 1,005,014.23 (NAD 83, Central Zone 3102 Projection); thence N 67°46′00″ W 1330.84 feet along the centerline of New York State Route 5 to a point standing on the easterly boundary of other lands of Oneida Nation of New York (Now or Formerly); thence N 11°24′22″ E 222.39 feet along the easterly boundary of other lands of Oneida Nation of New York to a point standing on the northerly boundary of other lands of Oneida Nation of New York; thence N 84°58′30″ W 536.60 feet along the northerly boundary of other lands of Oneida Nation of New York to a point standing on the northerly highway boundary of New York State Route 5; thence N 66°37′00″ W 1074.89 feet along the northerly highway boundary of New York State Route 5 to an iron pin standing on the easterly highway boundary of Tom-Tom Street; thence N 17°18′00″ E 177.56 feet along the easterly highway boundary of Tom-Tom Street to an iron pin; thence N 02°52′40″ E 289.63 feet continuing along the easterly highway boundary of Tom-Tom Street to a iron pin standing on the southerly boundary of C,C,LF Senior Housing, LP (Now or Formerly); thence S 67° 13′10″ E 274.82 feet along the southerly boundary of C,C,LF Senior Housing, LP to an iron pin standing on the easterly boundary of C,C,LF Senior Housing, LP; thence N 22°46′50″ E 45.00 feet along the easterly boundary of C,C,LF Senior Housing, LP to a point standing on the southerly boundary of C,C,LF Senior Housing, LP; thence S 67°13′10″ E 432.00 feet along the southerly boundary of C,C,LF Senior Housing, LP and the southerly boundary of even other lands of Oneida Nation of New York (Now or Formerly) to a point standing on the westerly boundary of even other lands of Oneida Nation of New York; thence S 22°46′50″ W 45.00 feet along the westerly boundary of even other lands of Oneida Nation of New York to a point standing on the southerly boundary of even other lands of Oneida Nation of New York; thence S 67°13′10″ E 2208.46 feet along the southerly boundary of even other lands of Oneida Nation of New York, the southerly boundary of Village Of Chittenango (Now or Formerly), the southerly boundary of Patricia Collins (Now or Formerly), the southerly boundary of Amanda Shawn Mari and Peter J. Welker (Now or Formerly), the southerly boundary of Steven M. Patricia and Alexia R. Cooper (Now or Formerly), the southerly boundary of Daniel F. Holtz and Sandra J. Holtz (Now or Formerly), the southerly boundary of Richard G. Ireland and Kirsten J. Ireland (Now or Formerly), the southerly boundary of Elizabeth J. Marsh (Now or Formerly), the southerly boundary of Dmitriy Tarasevich and Jennifer Tarasevich (Now or Formerly), the southerly boundary of Jason Scianablo (Now or Formerly), the southerly boundary of Anthony M. Dicesare and Michelle M. Dicesare (Now or Formerly), the southerly boundary of Tullio A. Palleschi Jr. and Cynthia A. Palleschi (Now or Formerly), the southerly boundary of Jeffrey D. Pitt and Sheila F. Pitt (Now or Formerly), the southerly boundary of Gary Mantz and Lisa Mantz (Now or Formerly), the southerly boundary of Richard K. Cullen and Roberta K. Cullen (Now or Formerly), the southerly boundary of Christopher A. Titus and Linda M. Titus (Now or Formerly), the southerly boundary of Brett M. Mowers and Laura R. Mowers (Now or Formerly), the southerly boundary of Robert J. Perriello and Madelyn M. Perriello (Now or Formerly), the southerly highway boundary of Talbert Drive and the southerly boundary of Melissa L. Barbano and Ryan J. Youngs (Now or Formerly) to a point standing on the westerly boundary of Raymond C. Miller and Jennifer D. Dresher-Miller (Now or Formerly); thence S 05°01′20″ W 527.17 feet along the westerly boundary of Miller, the westerly boundary of Robert J. Khammar and Miranda Lynn Khammar (Now or Formerly), the westerly boundary of Carlo L. Panetta (Now or Formerly) and the westerly boundary of Hickory Hills Apartments, Inc. to the point and place of beginning. The above described parcel containing 31.571 acres of land, more or less. Subject to a water easement as set forth in a Deed from Pyramid Investors Company to Village of Chittenango dated May 10, 1971 and filed in the Madison County Clerk's Office in Liber 710 of Deeds at Page 33, to which deed reference is made for certainty of description, terms and conditions. Also subject to a sanitary sewer easement as set forth in a Deed from Pyramid Investors Company to Village of Chittenango dated May 10, 1971 and filed in the Madison County Clerk's Office in Liber 710 of Deeds at Page 33, to which deed reference is made for certainty of description, terms and conditions. Further subject to a drainage easement as set forth in a Deed from Pyramid Investors Company to Village of Chittenango dated May 10, 1971 and filed in the Madison County Clerk's Office in Liber 710 of Deeds at Page 33, to which deed reference is made for certainty of description, terms and conditions. Further subject to a permanent right of way as set forth in a Deed from Pyramid Investors Company to Village of Chittenango dated May 10, 1971 and filed in the Madison County Clerk's Office in Liber 710 of Deeds at Page 33, to which deed reference is made for certainty of description, terms and conditions. Further subject to a right of way and easement as set forth in a Deed from Pyramid Investors Company to Chittenango Housing For Elderly dated October 1, 1981 and filed in the Madison County Clerk's Office in Liber 731 of Deeds at Page 21, to which deed reference is made for certainty of description, terms and conditions. Further subject to a permanent easement to the People of the State of New York by Notice of Appropriation, Fayetteville-Chittenango, Pt. 2, S.H. #5120 Map #2228 as set forth in a Deed dated March 13, 1973 and filed in the Madison County Clerk's Office on June 4, 1973 in Liber 671 of Deeds at Page 924, to which deed reference is made for certainty of description, terms and conditions. Further subject to the rights of the public to that portion of the above described premises lying within the bounds of New York State Route 5. Further subject to any other easements, covenants or restrictions of record.

OIN Parcel 346

DESCRIPTION: LANDS OF ONEIDA INDIAN NATION, A SOVEREIGN INDIAN NATION, ONEIDA INDIAN NATION OF NEW YORK, BEING TAX MAP# 40.20–1–40, OIN Parcel 346; ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Chittenango,

Town of Sullivan, County of Madison and State of New York, bounded and described as follows: BEGINNING at a point on the easterly highway boundary of Tom-Tom Street, said point standing at the intersection of the easterly highway boundary of Tom-Tom Street with the southerly boundary of lands of Vera B. Alley (now or formerly) as described in a Warranty Deed dated May 3, 2001 and filed in the Madison County Clerk's Office in Liber 1190 at Page 308; said point of beginning being further described as having Grid Coordinate N1113962.761/E682341.557 (NAD 27, Central zone 3102 Projection); thence S 05°46′00″ W 100.00 feet along the easterly highway boundary of Tom-Tom Street to a point standing ·on the northerly boundary of lands of Chittenango Housing For Elderly (now or formerly); thence northeasterly 39.27 feet on a curve to the right along the northerly boundary of Chittenango Housing For Elderly having a radius of 25 feet to an iron pin; thence S 84°14′00″ E 323.00 feet continuing along the northerly boundary of Chittenango Housing For Elderly to an iron pin standing on the easterly boundary of Chittenango Housing For Elderly; thence S 05°46′′00″ W 412.32 feet along the easterly boundary of Chittenango Housing For Elderly to a point standing on the northerly boundary of lands of North Atlantic Development, Inc. (now or formerly); thence S 67°13′10″ E 356.63 feet along the northerly boundary of North Atlantic Development, Inc. to a point standing on the easterly boundary of North Atlantic Development, Inc.; thence S 22°46′50″ W 45.00 feet along the easterly boundary of North Atlantic Development, Inc. to a point standing on the northerly boundary of North Atlantic Development, Inc.; thence S 67°13′10″ E 135.00 feet along the northerly boundary of North Atlantic Development, Inc. to a point standing on the westerly boundary of lands of The Village of Chittenango (now or formerly); thence N 22°46′50″ E 200.00 feet along the westerly boundary of The Village of Chittenango to a point standing on the northerly boundary of The Village of Chittenango; thence S 67°13′10″ E 30.76 feet along the northerly boundary of The Village of Chittenango to a point standing on the westerly boundary of lands of Thomas W. and Patti McGee (now or formerly); thence N 22°46′50″ E 122.50 feet along the westerly boundary of McGee to an iron pin standing on the southerly boundary of lands of Thomas M. and Laura Carfagno (now or formerly); thence N 51°26′19″ W 239.01 feet along the southerly boundary of Carfagno to an iron pin standing on the westerly boundary of Carfagno; thence N 05°46′00″ E 170.38 feet along the westerly boundary of Carfagno and the westerly boundary of lands of Giuseppe and Maria Rita Cannistra (now or formerly) to an iron pin standing on the northerly boundary of Cannistra; thence S 84°14′00″ E 86.13 feet along the northerly boundary of Cannistra to a point standing on the westerly highway boundary of Margo Avenue; thence N 05°46′00″ E 50.00 feet along the westerly highway boundary of Margo Avenue to an iron pin standing on the southerly boundary of lands of Russell H. Cooper (now or formerly); thence N 84°14′00″ W 789.02 feet along the southerly boundary of Cooper, the southerly boundary of lands of Lawrence J. Lonergan (now or formerly); the southerly boundary of lands of John J. and Virginia H. Nykaza (now or formerly), the southerly boundary of lands of David and Shirley Mills (now or formerly), the southerly boundary of lands of Alan R. and Nora S. Laube (now or formerly), the southerly boundary of lands of Keith and Marcia St. Louis (now or formerly) and the southerly boundary of lands of Alley to an iron pin; thence northwesterly 39.27 feet on a curve to the right in the southerly boundary of Alley having a radius of 25.00 feet to the point and place of beginning. The above described parcel contains 6.300 ± acres of land, more or less. BEING THE SAME PREMISES as described in a Warranty Deed from Pyramid Investors Company to North Atlantic Development, Inc. dated July 7, 2003, and recorded in the Madison County Clerk's Office on July 18, 2003, in Book 1263 of Deeds at Page 250.

OIN Parcel 347

DESCRIPTION: LANDS OF ONEIDA INDIAN NATION, A SOVEREIGN INDIAN NATION, ONEIDA INDIAN NATION OF NEW YORK, BEING OIN 347; Tax Map# 48.–1–7.112, ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Sullivan, County of Madison and State of New York, being part of Lot 4 of Varick's Location and being part of lands described in a deed from Benjamin Franklin Metcalf to John J. Benson recorded in the Madison County Clerk's Office April 30, 1912, in Book 235 of Deeds at page 140, being more particularly described as follows: BEGINNING at a point of intersection of the centerline of New York State Route 5 with the easterly boundary of lands described by the above mentioned deed, said point of beginning being about 1815 feet distant easterly, as measured along the centerline of New York State Route 5 from the westerly line of said Lot 4 of Varick's Location; running thence N 66°59′20″ W along the centerline of New York State Route 5 a distance of 725.3 feet to the point of intersection of the centerline of New York State Route 5 with the northerly boundary of lands described by the above mentioned deed; thence S 84°58′30″ E along the northerly boundary of said lands of above mentioned deed a distance of 692.60 feet to the northeast corner of said lands; thence S 5°44′ W along the easterly boundary of said lands a distance of 223.96 feet to the point of beginning. Totaling 1.30 acres, more or less. EXCEPTING those lands lying between the above described centerline of New York State Route 5 and the northerly highway boundary of New York State Route 5, the northerly highway boundary being about 49.5 feet distant northerly, as measured at right angles, from the highway centerline. BEING THE SAME PREMISES as described in a Warranty Deed from Mary Benson, John R. Benson, Betsey Benson and Robert J. Benson to North Atlantic Development, Inc. dated September 30, 2004, and recorded in the Madison County Clerk's Office on October 25, 2004, as Document Number 2004–00009880 (Book 1316 of Deeds at Page 188).

OIN Parcels 363 and 364

DESCRIPTION: LANDS OF ONEIDA INDIAN NATION, ALSO KNOWN AS ONEIDA NATION OF NEW YORK, A SOVEREIGN INDIAN NATION, ONEIDA NATION OF NEW YORK, ONEIDA INDIAN NATION, NEW YORK BRIDGEPORT—KIRKVILLE ROAD. ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE TOWN OF SULLIVAN, COUNTY OF MADISON AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS: TAX MAP# 8.–2–34.1, TAX MAP #8.–2–44 AND TAX MAP# 8.–2–45 Beginning at a point standing on the centerline of Bridgeport-Kirkville Road, said point standing at the intersection of the centerline of Bridgeport-Kirkville Road with the southerly boundary of other lands of Oneida Nation of New York (Now or Formerly) as described in a Warranty Deed dated April 13, 2017 and filed in the Madison County Clerk's Office on April 21, 2017 as Instrument #2017–2044; said point being further described as having a Grid Coordinate N1149620.194/E984083.887 (NAD 83); thence S 89°49′55″ E 244.04 feet along the southerly boundary of other lands of Oneida Nation of New York to a point; thence N01°48′35″ W 159.91 feet along

the easterly boundary of other lands of Oneida Nation of New York to an iron pin standing on the northerly boundary of other lands of Oneida Nation of New York; thence N89°56′27″ W 253.12 feet along the northerly boundary of other lands of Oneida Nation of New York to a point on the centerline of Bridgeport-Kirkville Road; thence N05°09′34″ W 81.35 feet along the centerline of Bridgeport-Kirkville Road to a point standing on the southerly boundary of Kristen A. Hunsicker and Richard L. Allen (Now or Formerly); thence S89 °50′ 33″E 226.53 feet along the southerly boundary of Hunsicker and Allen to an iron pin standing on the easterly boundary of Hunsicker and Allen; thence N00°09′27″ E 201.78 feet along the easterly boundary of Hunsicker and Allen, the easterly boundary of Salprop Inc. (Now or Formerly) to an iron pin standing on the southerly boundary of William Hamman (Now or Formerly); thence S88°56′16″ E 710.00 feet along the southerly boundary of Hamman, the southerly boundary of other lands of William Hamman (Now or Formerly), the southerly boundary of Dzafar Husenovic and Drita Husenovic (Now or Formerly), the southerly boundary of Oneida Indian Nation (Now or Formerly), the southerly boundary of other lands of Oneida Indian Nation (Now or Formerly) and the southerly boundary of even other lands of Oneida Indian Nation (Now or Formerly) to an iron pin standing on the westerly boundary of other lands of Oneida Nation of New York (Now or Formerly); thence S02°25′34″ E 62.48 feet along the westerly boundary of Oneida Nation of New York to an iron pin standing on the southerly boundary of Oneida Nation of New York; thence S89°18′42″ E 126.15 feet along the southerly boundary of Oneida Nation of New York to an iron pin standing on the southerly boundary of Self-Storage Route 31, LLC (Now or Formerly); thence S88° 44′02″ E 231.80 feet along the southerly boundary of Self-Storage Route 31, LLC to an iron pin standing on the southerly boundary of Jennifer L. Abulencia (Now or Formerly); thence S88°02′08″ E 281.10 feet along the southerly boundary of Abulencia and the southerly boundary of other lands of Oneida Nation of New York (Now or Formerly) to an iron pin standing on the westerly boundary of other lands of Oneida Nation of New York; thence S09°33′52″ W 710.69 feet along the westerly boundary of other lands of Oneida Nation of New York to a point standing on the southerly boundary of other lands of Oneida Nation of New York; thence S69°28′49″ E 212.69 feet along the southerly boundary of other lands of Oneida Nation of New York to an iron pin standing on the easterly boundary of other lands of Oneida Nation of New York; thence N20°04′52″ E 794.77 feet along the easterly boundary of other lands of Oneida Nation of New York to an iron pin standing on the southerly boundary of Bridgeport Overseas Veterans Corporation, Inc. (Now or Formerly) ; thence S88°55′08″ E 456 .17 feet along the southerly boundary of Bridgeport overseas Veterans Corporation Inc. to an iron pin standing on the southerly boundary of even other lands of Oneida Indian Nation (Now or Formerly); thence S77°55′08″ E 130.96 feet along the southerly boundary of even other lands of Oneida Indian Nation and the southerly boundary of Paul Gagnon and Janet Gagnon (Now or Formerly) to an iron pin standing on the westerly boundary of Gagnon; thence S20°04′52″W 965.80 feet along the westerly boundary of Gagnon to an iron pin standing on the southerly boundary of Gagnon; thence S69°28′49″ E 1486.69 feet along the southerly boundary of Gagnon, the southerly boundary of Empire 1 Acquisitions, LLC (Now or Formerly), the southerly boundary of Blase Larroca (Now or Formerly) and the southerly boundary of other lands of Blase Larroca (Now or Formerly) to an iron pin standing on the westerly boundary of other lands of Blase Larroca; thence S20°31′11″ W 916.74 feet along the westerly boundary of other lands of Blase Larroca to an iron pin standing on the northerly boundary of William F. Harrington and Linda C. Harrington (Now or Formerly); thence N69°34′36″ W 3182.60 feet along the northerly boundary of Harrington to an iron pin standing on the easterly boundary of Eugene C. Perry, Jr. and Wendy L. Perry (Now or Formerly); thence N05°14′47″ W 115.50 feet along the easterly boundary of Perry to an iron pin standing on the northerly boundary of Perry; thence N69°34′36″ W 188.57 feet along the northerly boundary of Perry to a point standing on the centerline of Bridgeport-Kirkville Road; thence N05°14′47″ W 175.88 feet along the centerline of Bridgeport-Kirkville Road to a point on the southerly boundary of Lawrence C. Jesmore (Now or Formerly); thence S69°28′49″ E 364.62 feet along the southerly boundary of Jesmore to an iron pin standing on the easterly boundary of Jesmore; thence N05°14′47″ W 330.00 feet along the easterly boundary of Jesmore and the easterly boundary of Limestone Ridge, LLC (Now or Formerly) to an iron pin standing on the southerly boundary of even other lands of Oneida Nation of New York (Now or Formerly); thence S88 ° 48° 22″ E 3.47 feet along the southerly boundary of even other lands of Oneida Nation of New York to an iron pin standing on the easterly boundary of even other lands of Oneida Nation of New York; thence N05°12′36″W 100.00 feet along the easterly boundary of even other lands of Oneida Nation of New York to a point standing on the northerly boundary of even other lands of Oneida Nation of New York; thence N88°48′22″ W 333.96 feet along the northerly boundary of even other lands of Oneida Nation of New York to a point standing on the centerline of Bridgeport-Kirkville Road; thence N05 ° 07′4l″ W 229.12 feet along the centerline of Bridgeport-Kirkville Road to the point and place of beginning. The above-described parcel containing 99.434± acre of land, more or less. Subject to that portion of the above-described premises situate within the bounds of Bridgeport-Kirkville Road. Also, subject to an easement granted to New York Telephone Company by Deed dated September 27, 1961 and filed in the Madison County Clerk's Office in Liber 593 of Deeds at Page 537. Further subject to an Easement granted to Town of Sullivan, The North Sullivan Water District and Onondaga County Water Authority by Deed dated June 10, 1972 and filed in the Madison County Clerk's Office on September 19, 1972 in Liber 666 of Deeds at Page 564. Further subject to an Easement granted to The Town of Sullivan, The North Sullivan Water District and Onondaga County Water Authority by Deed dated June 12, 1972 and filed in the Madison County Clerk's Office on November 14, 1972 in Liber 667 of Deeds at Page 944. Further subject to an Easement granted to The Town of Sullivan, The North Sullivan Water District and the Onondaga County Water Authority by deed dated December 11, 1973 and filed in the Madison County Clerk's Office on March 28, 1973 in Liber 670 of Deeds at Page 375. Further subject to an easement granted to New York Telephone Company by Deed dated November 22, 1961 and filed in the Madison County Clerk's Office in Liber 593 of Deeds at Page 371. Further subject to a Right of Way and Easement granted to The Town of Sullivan Water District and Onondaga County Water Authority by Deed dated June 12, 1972 and filed in the Madison County Clerk's Office on November 14, 1972 in Liber 667 of Deeds at Page 945. Further subject to a Right of Way and Easement granted to Niagara Mohawk Power Corporation by Deed dated October 17,

1988 and filed in the Madison County Clerk's Office on January 23, 1989 in Liber 879 of Deeds at Page 33. Further subject to any other easements, covenants or restrictions of record.

OIN Parcel 384

DESCRIPTION: LANDS OF ONEIDA INDIAN NATION, A SOVEREIGN INDIAN NATION OF NEW YORK, BEING TAX MAP# 252.007–5–25, OIN Parcel 384; ALL THAT TRACT OR PARCEL OF LAND SITUATE IN TOWN OF VIENNA, COUNTY OF ONEIDA AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS: Beginning at a concrete monument standing on the nominal westerly highway boundary of Park Avenue, said concrete monument standing at the intersection of the nominal westerly highway boundary of Park Avenue with the southerly boundary o f Edward R. Stewart, Jr. and Leslie F. Stewart (Now or Formerly) as described in a deed filed in the Oneida County Clerk's Office in Liber 2174 of Deeds at Page 161; thence S 14°45′00″ W 172.00 feet along the westerly highway boundary of Park Avenue to a point standing on the northerly boundary of Ontario Realty, Inc. (Now or Formerly); thence N 75°15′00″ W 158.08 feet along the northerly boundary of Ontario Realty, Inc. and also along the northerly boundary of other lands of Ontario Realty, lnc. (Now or Formerly) to a point standing on the easterly boundary of the Village of Sylvan Beach (Now or Formerly); thence N 14°44′10″ E 130.00 feet along the easterly boundary of the Village of Sylvan Beach to a point standing on the southerly boundary of other lands of the Village of Sylvan Beach (Now or formerly); thence S75°15′00″ E 8.11 feet along the southerly boundary of other lands of the Village of Sylvan Beach to a point standing on the easterly boundary of other lands of the Village of Sylvan Beach; thence N 14°45′00″ E 42.00 feet along the easterly boundary of other lands of the Village of Sylvan Beach to a point standing on the southerly boundary of Stewart; thence S75°15′00″ E 150.00 feet along the southerly boundary of Stewart to the point and place of beginning. Totaling 0.616 acres, more or less.

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2023–04166 Filed 2–28–23; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Third Review)]

Certain Polyester Staple Fiber From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on certain polyester staple fiber from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted March 1, 2023. To be assured of consideration, the deadline for responses is March 31, 2023. Comments on the adequacy of responses may be filed with the Commission by May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 1, 2007, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of certain polyester staple fiber from China (72 FR 30545). Commerce issued a continuation of the antidumping duty order on imports of certain polyester staple fiber from China following Commerce's and the Commission's first five-year reviews, effective October 12, 2012 (77 FR 62217) and second five-year reviews, effective April 4, 2018 (83 FR 14415). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Like Product* as all certain polyester staple fiber, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of certain polyester staple fiber.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign

manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 31, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 11, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–562, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/investigations/import_injury,* where one can ''Access responses to Notice of Institution (NOI) worksheets for five-year reviews (for active investigations)'' and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like*

Product, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject*

Country, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–04078 Filed 2–28–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–570 and 731–TA–1346 (Review)]

Aluminum Foil From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on aluminum foil from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted March 1, 2023. To be assured of consideration, the deadline for responses is March 31, 2023. Comments on the adequacy of responses may be filed with the Commission by May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202–708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 19, 2018, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of aluminum foil from China (83 FR 17360 and 83 FR 17362). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* aluminum foil coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of aluminum foil.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is April 19, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9),

who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 31, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 11, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–560, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/investigations/import_injury,* where one can ''Access responses to Notice of Institution (NOI) worksheets for five-year reviews (for active investigations)'' and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for

the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–04071 Filed 2–28–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–893 (Fourth Review)]

Honey From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on honey from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted March 1, 2023. To be assured of consideration, the deadline for responses is March 31, 2023. Comments on the adequacy of responses may be filed with the Commission by May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 10, 2001, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of honey from China (66 FR 63672). Commerce issued a continuation of the antidumping duty order on imports of honey from China following Commerce's and the Commission's first five-year reviews, effective August 2, 2007 (72 FR 42384), second five-year reviews, effective December 13, 2012 (77 FR 74173), and third five-year reviews, effective April 26, 2018 (83 FR 18277). The Commission is now conducting a fourth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first, second, and third five-year review determinations, the Commission found that there was one *Domestic Like Product* consisting of all honey, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first, second, and third five-year review determinations, the Commission defined a single *Domestic Industry* consisting of all U.S. producers of honey, raw and processed, including beekeepers and packers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 31, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 11, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with

respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–561, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/investigations/import_injury,* where one can ''Access responses to Notice of Institution (NOI) worksheets for five-year reviews (for active investigations)'' and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production and/or packing (quantity) and, if known, an estimate of the percentage of total U.S. production and/or packing of the *Domestic Like Product* accounted for by your firm's(s') production and/or packing;

(b) Number of domestic honey producing colonies, including yield per colony (quantity), and/or capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including

antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–04073 Filed 2–28–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On February 22, 2023, the Department of Justice lodged a proposed consent decree agreed to with defendants Honeywell International Inc. (''Honeywell'') and Olin Corporation (''Olin'') in the United States District Court for the Northern District of West Virginia in the lawsuit entitled *United States and State of West Virginia* v. *Honeywell International Inc. and Olin Corporation,* Civil Action No. 5:23–cv–00059. The consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), for the performance of response actions and for payment of response costs incurred in connection with the release of hazardous substances at the Hanlin-Allied-Olin Superfund Site, located in Moundsville, West Virginia. The consent decree also resolves related claims brought by the State of West Virginia, through the West Virginia Department of Environmental Protection. The complaint filed concurrently with the consent decree alleges that Honeywell, through predecessor companies, and Olin owned and operated chemical production facilities at the Site that were sources of hazardous substances that contaminated the Site. The proposed consent decree obligates Honeywell and Olin to pay for all future EPA and WVDEP response costs and reimburse $534,165 of the United States' past response costs. Honeywell and Olin will perform the work at the Site pursuant to the proposed consent decree.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of West Virginia* v. *Honeywell International Inc. and Olin Corporation,* Civil Action No. 5:23–cv–00059, D.J. Ref. No. 90–11–3–12417. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $49.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $8.25.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–04131 Filed 2–28–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given to announce a public meeting of the ACA. All meetings of the ACA are open to the public.

DATES: The meeting will be held on Thursday, March 30, 2023, at the YMCA Early Childhood Impact/Ralph Hawley Early Learning Center located at 1275 61st Street, Emeryville, CA 94608. The meeting will begin at approximately 9 a.m. Pacific Standard Time (PST) and adjourn at approximately 4 p.m. PST. Any updates to the agenda and meeting logistics will be posted on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer, Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room C–5321, Washington, DC 20210; Email: *AdvisoryCommitteeonApprenticeship@dol.gov;* Telephone: (202) 693–2796 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The ACA is a discretionary committee reestablished by the Secretary of Labor on May 4, 2021, in accordance with FACA (5 U.S.C. App. 2 § 10), as amended in 5 U.S.C. App. 2, and its implementing regulations (41 CFR 101–6 and 102–3). The first meeting of the ACA was held on Wednesday, October 6, 2021; the second meeting of the ACA was held on Wednesday, January 26, 2022; the third meeting of the ACA was held on Monday, May 16, 2022; the fourth meeting of the ACA was held on Tuesday, September 27, 2022; and the fifth meeting of the ACA was held on Thursday, January 12, 2023. All past meeting materials are posted here: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.* All meetings are open to the public. To promote greater access, webinar and audio conference technology will be used to support public participation in the meeting. In-person space for the meeting is limited. Please send an email to *advisorycommitteeonapprenticeship@dol.gov* if you plan to attend the meeting in-person, no later than Thursday, March 16, 2023. Members of the public that are unable to join the meeting in-person are encouraged to join the meeting virtually. Both the in-person and virtual participation instructions will be posted prominently on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.* If individuals have special needs and/or disabilities that will require special accommodations, please contact Kenya Huckaby at (202) 693–3795 or via email at *huckaby.kenya@dol.gov* no later than Thursday, March 16, 2023.

Instructions to Attend the Meeting In-Person: Send an email to *advisorycommitteeonapprenticeship@dol.gov* no later than Thursday, March 16, 2023, to request to attend the meeting in-person. As outlined above, the YMCA Early Childhood Impact/Ralph Hawley Early Learning Center is located at 1275 61st Street, Emeryville, CA 94608. To attend the meeting in person, upon arrival at the YMCA, members of the public will need to sign-in and adhere to the following COVID–19 protocols:

1. Upon entrance, on-site staff will take attendees' temperatures.
2. All meeting attendees are required to wear a mask while in the building.

Instructions to Attend the Meeting Virtually: Virtual meeting participants have two options to access the meeting. Virtual meeting participants can access the meeting by computer or by phone. To access the meeting by computer, meeting participants will use the meeting link and event password posted on the website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.* To access the meeting by phone, meeting participants will use the dial-in number also posted on the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.*

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd via email at *AdvisoryCommitteeonApprenticeship@dol.gov* using the subject line ''March 2023 ACA Meeting.'' Such submissions will be included in the record for the meeting if received by Thursday, March 16, 2023. See below regarding members of the public wishing to speak at the ACA meeting.

Purpose of the Meeting and Topics To Be Discussed: The primary purpose of the March meeting is an in-depth focus on non-traditional apprenticeship programs in Tech, Early Childhood Education, and the Care Economy. The ACA will also discuss and finalize the Strategic Framework Statements, a deliverable discussed at the January meeting. Anticipated agenda topics for this meeting include the following:

- Call to Order
- Remarks from ETA Leadership and Other Apprenticeship Stakeholders
- Early Educator Apprentice Panel
- Insights on Tech Apprenticeship Site Visits
- Discussion on Barriers to Expanding Apprenticeship in the Care Economy
- Subcommittee Report Outs:
  - Strategic Framework
  - Draft Issue Papers
- Public Comment
- Adjourn

The agenda and meeting logistics may be updated should priority items come before the ACA between the time of this publication and the scheduled date of the ACA meeting. All meeting updates will be posted to the Office of Apprenticeship's website at: *https://www.apprenticeship.gov/advisory-committee-apprenticeship/meetings.* Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Officer, Mr. John V. Ladd, via email at *AdvisoryCommitteeonApprenticeship@dol.gov,* by Thursday, March 16, 2023. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–04127 Filed 2–28–23; 8:45 am]

BILLING CODE 4510–FR–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0187]

Information Collection: NRC Form 629, Authorization for Payment by Credit Card

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of

Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''NRC Form 629, Authorization for Payment by Credit Card.''

DATES: Submit comments by May 1, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0187. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0187 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0187. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0187 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The supporting statement, NRC Form 629, and NUREG/BR–0254, Rev. 11, are available in ADAMS under Accession Nos. ML23017A133, ML23017A134, and ML22223A222.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0187, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 629, Authorization for Payment by Credit Card.
2. *OMB approval number:* 3150–0190.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 629.
5. *How often the collection is required or requested:* As needed.
6. *Who will be required or asked to respond:* NRC licensees.
7. *The estimated number of annual responses:* 300.
8. *The estimated number of annual respondents:* 300.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 50.
10. *Abstract:* The NRC bills licensees, applicants, and individuals for the payment of civil penalties, full cost licensing fees, inspection fees, and other fees. The five methods used to pay bills owed to the NRC are: (1) Payment by Automated Clearinghouse Network (ACH); (2) Payment by Credit Card; (3) Payment by Electronic Funds Transfer/FedWire; (4) Payment by Check, and (5) Payment by Digital Wallet. NUREG/BR–0254, ''Payment Methods'' provides instructions on how to transfer monies owed to the NRC; no information is collected by the NRC in using this brochure. NRC Form 629, ''Authorization for Payment by Credit Card'' is an optional form used to authorize payment by credit card.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: February 23, 2023.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–04143 Filed 2–28–23; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–473, OMB Control No. 3235–0530]

Submission for OMB Review; Comment Request; Extension: Rule 32a–4

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. 350l *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Section 32(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a 31(a)(2)) (''Act'') requires that the selection of a registered management investment company's or registered face-amount certificate company's (collectively, ''funds'') independent public accountant be submitted to shareholders for ratification or rejection. Rule 32a–4 under the Investment Company Act (17 CFR 270.32a–4) exempts a fund from this requirement if, among other things, the fund has an audit committee consisting entirely of independent directors. The rule permits continuing oversight of a fund's accounting and auditing processes by an independent audit committee in place of a shareholder vote.

Among other things, in order to rely on rule 32a–4, a fund's board of directors must adopt an audit committee charter and must preserve that charter, and any modifications to the charter, permanently in an easily accessible place. The purpose of these conditions is to ensure that Commission staff will be able to monitor the duties and responsibilities of an audit committee of a fund relying on the rule.

Commission staff estimates that on average the board of directors takes 15 minutes to adopt the audit committee charter. Commission staff has estimated that with an average of 9 directors on the board,[1] total director time to adopt the charter is 2.25 hours. Combined with an estimated ½ hour of paralegal time to prepare the charter for board review, the staff estimates a total one-time collection of information burden of 2.75 hours for each fund. Once a board adopts an audit committee charter, the charter is preserved as part of the fund's records. Commission staff estimates that there is no annual hourly burden associated with preserving the charter in accordance with this rule.[2]

Because virtually all existing funds have now adopted audit committee charters, the annual one-time collection of information burden associated with adopting audit committee charters is limited to the burden incurred by newly established funds. Commission staff estimates that fund sponsors establish approximately 120 new funds each year,[3] and that all of these funds will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the annual one-time hour burden associated with adopting an audit committee charter under rule 32a–4 is approximately 330 hours.[4]

When funds adopt an audit committee charter in order to rely on rule 32a–4, they also may incur one-time costs related to hiring outside counsel to prepare the charter. Commission staff estimates that those costs average approximately $1500 per fund.[5] As noted above, Commission staff estimates that approximately 120 new funds each year will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the ongoing annual cost burden associated with rule 32a–4 in the future will be approximately $180,000.[6]

The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collections of information required by rule 32a–4 are necessary to obtain the benefits of the rule. The Commission is seeking OMB approval, because 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 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 March 31, 2023 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: February 23, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04209 Filed 2–28–23; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based on staff experience and on discussions with a representative of an entity that surveys funds and calculates fund board statistics based on responses to its surveys.

[2] This estimate is based on staff experience and discussions with funds regarding the hour burden related to maintenance of the charter.

[3] This estimate is based on the average annual number of notifications of registration on Form N–8A filed from 2019 to 2021.

[4] This estimate is based on the following calculation: (2.75 burden hours for establishing charter × 120 new funds = 330 burden hours).

[5] Costs may vary based on the individual needs of each fund. However, based on the staff's experience and conversations with outside counsel that prepare these charters, legal fees related to the preparation and adoption of an audit committee charter usually average $1500 or less. The Commission also understands that model audit committee charters are available, which reduces the costs associated with drafting a charter.

[6] This estimate is based on the following calculations: ($1500 cost of adopting charter × 120 newly established funds = $180,000).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–481, OMB Control No. 3235–0538]

Proposed Collection; Comment Request; Extension: Form ADV–H

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is ''Form ADV–H under the Investment Advisers Act of 1940.'' Form ADV–H (17 CFR 279.3) under the

Investment Advisers Act of 1940 (''Advisers Act'') is the application that investment advisers use to request a hardship exemption from making Advisers Act filings electronically with the Investment Adviser Registration Depository (''IARD'').

There are two types of hardship exemptions from making Advisers Act filings through IARD: a temporary hardship exemption and a continuing hardship exemption. Advisers Act rule 203–3 (17 CFR 275.203–3) sets forth requirements for both temporary hardship exemptions and continuing hardship exemptions for advisers registered or registering with the Commission. Advisers Act rule 204–4(e) (17 CFR 275.204–4(e)) sets forth requirements for temporary hardship exemptions for exempt reporting advisers.

A temporary hardship exemption is available to advisers registered or registering with the Commission, as well as exempt reporting advisers, if the adviser has unanticipated technical difficulties that prevent it from submitting a filing to the IARD system. To apply for a temporary hardship exemption, the adviser must file Form ADV–H in paper format no later than one business day after the subject filing was due, and submit the subject filing electronically through IARD no later than seven business days after the subject filing was due. The temporary hardship exemption is granted when the adviser files the completed Form ADV–H.

A continuing hardship exemption provides an exemption from electronic filing for no more than one year. It is available to certain advisers registered or registering with the Commission; it is not available to exempt reporting advisers. Such adviser must be a small business and be able to demonstrate that the electronic filing requirements are prohibitively burdensome or expensive. To apply for a continuing hardship exemption, an adviser must file Form ADV–H at least ten business days before a filing is due. The Commission will grant or deny the application within ten business days after the adviser files Form ADV–H. If the Commission approves the application, the adviser may submit filings to FINRA in paper format for the period of time for which the exemption is granted.

The purpose of the collection of information is to enable the Commission to process requests for temporary hardship exemptions and to determine whether to grant a continuing hardship exemption from the requirement for advisers to make Advisers Act filings electronically through IARD.

Respondents are investment advisers registered or registering with the Commission, as well as exempt reporting advisers. Based on our experience and data, we estimate that there are 20,926 respondents, consisting of 15,414 registered investment advisers and 5,512 exempt reporting advisers. Of those respondents, we estimate that we would receive one response annually, and each response would take approximately one hour to complete. Therefore, we estimate an annual aggregate burden of one hour for this collection of information.

The collection of information does not require recordkeeping or records retention. The collection of information requirements are mandatory. The information collected is a filing with the Commission, and is not 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by May 1, 2023.

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.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 23, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04210 Filed 2–28–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96968; File No. SR–BX–2023–005]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 2, BX Options Market-Fees and Rebates

February 23, 2023.

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 February 10, 2023, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 2.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed SR–BX–2023–001 on January 3, 2023. On January 12, 2023, the Exchange withdrew SR–BX–2023–001 and replaced that filing with SR–BX–2023–002. On January 24, 2023, the Exchange withdrew SR–BX–2023–002 and replaced that filing with SR–BX–2023–003. On January 30, 2023, the Exchange withdrew SR–BX–2023–003 and replaced that filing with SR–BX–2023–004. On February 10, 2023, the Exchange is withdrawing SR–BX–2023–004 and replacing it with the instant filing.

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 BX's Pricing Schedule at Options 7, Section 2, BX Options Market-Fees and Rebates. BX proposes to adopt pricing for BX Participants that utilize the Request for PRISM feature.

Today, a BX Participant may elect to utilize FIX[4] to send a message and PRISM Order,[5] as defined within Options 3, Section 13, to all BX Participants that opt in to receive Requests for PRISM requesting that it submit the sender's PRISM Order with responder's Initiating Order,[6] as defined within Options 3, Section 13, into the BX Price Improvement Auction (''PRISM''),[7] pursuant to Options 3, Section 13 (''Request for PRISM'').[8] A Request for PRISM permits a BX Participant to solicit the Initiating Order side of a PRISM Auction Order.[9]

Defined Terms

The Exchange proposes to define a ''Request for PRISM'' as a mechanism to submit orders into a PRISM Auction as described within Options 3, Section 7(e)(1)(A)(1)(b). The Exchange also proposes to define certain terms related to the PRISM Auction within Options 7, Section 2(5) pricing. The Exchange proposes to define a ''PRISM Order'' as one-side of a PRISM Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order. The Exchange proposes to define an ''Initiating Order'' as one-side of a PRISM Auction Order that represents principal or other interest which is paired with a PRISM Order. The Exchange proposes to define a ''PRISM Auction Order'' as a two-sided, paired order comprised of a PRISM Order and an Initiating Order. Finally, the Exchange proposes to define a ''PRISM Response'' as interest that executed against the PRISM Order pursuant to Options 3, Section 13. The Exchange proposes to amend Options 7, Section 2(5) to utilize these terms instead of the terms ''Agency Order'' or ''Contra-Side.'' Also the Exchange proposes to utilize the new term ''PRISM Auction Order'' instead of ''PRISM Order'' where the Exchange refers to the paired order entered into PRISM. Finally, the Exchange proposes to amend the title ''Responded to PRISM Auction'' to ''Response to PRISM Auction'' within Options 7, Section 2(5) for clarity. The Exchange believes these defined terms will make the pricing within Options 7, Section 2(5) more transparent.

Request for PRISM Pricing

At this time, the Exchange proposes to adopt pricing, in lieu of Options 7, Section 2(5) pricing, for PRISM Auction Orders which commenced as a Request for PRISM pursuant to Options 3, Section 7(e)(1)(A)(1)(b) and executed in the PRISM Auction. The pricing described below applies regardless of capacity.

With respect to a PRISM Order, the Exchange proposes to pay a rebate to a PRISM Order that was submitted as a Request for PRISM seeking another BX Participant who would respond to the Request for PRISM Order by submitting the Initiating Order to initiate a PRISM Auction.[10] The Exchange would pay a rebate of $0.35 per contract for a Penny Class and $0.70 per contract for a Non-Penny Class to the PRISM Order when a BX Participant responds to a Request for PRISM with an Initiating Order, provided the PRISM Order trades with an Initiating Order or the PRISM Order trades with a PRISM Response.

With respect to an Initiating Order, the Exchange proposes to assess a fee to the Initiating Order that was submitted in response to the Request for PRISM along with the PRISM Order. The Exchange would assess a fee of $0.49 per contract fee for a Penny Class and $0.94 per contract fee for a Non-Penny Class to the Initiating Order when a BX Participant responds to a Request for PRISM with an Initiating Order, provided the PRISM Order traded with an Initiating Order.[11]

The Exchange proposes to assess responses to a PRISM Auction a fee of $0.49 per contract for Penny Classes and $0.94 per contract for Non-Penny Classes.

Today, the Exchange does not assess a fee or pay a rebate to a BX Participant who submitted a PRISM Order into a Request for PRISM or the BX Participant who responded with an Initiating Order within the Request for PRISM mechanism. Today, the fees and rebates for two-sided orders entered into PRISM are codified within Options 7, Section 2(5). Pursuant to Options 7, Section 2(5), a BX Participant who entered a paired PRISM Auction pays no fee if a Customer were on either or both sides of the PRISM Auction Order, and pays a $0.30 per contract for the PRISM Order and $0.05 per contract for the Initiating Order for Non-Customer orders. Responders to a PRISM Auction pay a $0.49 per contract fee for a Penny Class and a $0.94 per contract fee for a Non-Penny Class. A Customer PRISM Order that traded with a PRISM Response receives a rebate of $0.35 per contract for a Penny Class and a $0.70 per contract for a Non-Penny Class. Non-Customer PRISM Orders that traded with a PRISM Response do not receive a rebate.

The Exchange proposes to incentivize BX Participants to submit PRISM Orders through the Request for PRISM mechanism. With this proposal, a PRISM Order that was submitted as a Request for PRISM and trades with an Initiating Order or a PRISM Response would receive a rebate of $0.35 per contract for Penny Classes and $0.70 per

[4] ''Financial Information eXchange'' or ''FIX'' is an interface that allows members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. *See* Options 3, Section 7(a)(i)(A).

[5] A PRISM Order is a one-sided order entered into the PRISM Auction that represents an agency order on behalf a Public Customer, broker-dealer of other entity.

[6] An Initiating Order is one-sided order entered into the PRISM Auction that represents principal interest or other agency order.

[7] A Participant may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker dealer, or any other entity (''PRISM Order'') against principal interest or against any other order (except as provided in sub-paragraph (i)(F) to Options 3, Section 13) it represents as agent (an ''Initiating Order'') provided it submits the PRISM Order for electronic execution into the PRISM Auction (''Auction'') pursuant to Options 3, Section 13.

[8] *See* Options 3, Section 7(e)(1)(A)(1)(b). The Exchange will set a certain time period up to one second within which a recipient of a Request for PRISM may utilize FIX to submit the sender's PRISM Order, along with an Initiating Order (a ''response'') into the System for execution into PRISM pursuant to Options 3, Section 13. The System will permit the first responder to start a PRISM Auction and will send a reject message to subsequent responders. A response must match the PRISM Order and may not improve the price, or the response will be rejected. A response may be configured to improve the PRISM Order stop price pursuant to Options 3, Section 13(ii)(A)(1)(c); the configuration would apply if this response initiated a PRISM auction. If no BX Participant responds to the Request for PRISM, the PRISM Order would be placed on the Order Book as a Limit Order or cancelled, consistent with the sending Participant's instruction.

[9] A PRISM Auction Order is a two-sided order comprised of a PRISM Order and Initiating Order.

[10] A recipient of a Request for PRISM may utilize FIX to submit the sender's PRISM Order, along with an Initiating Order (a ''response'') into the System for execution into PRISM pursuant to Options 3, Section 13. Requests for PRISM are sent to BX Participants that ''opt in'' to receive Requests for PRISM. *See* Options 3, Section 7(e)(A)(1)(a).

[11] If the PRISM Order trades entirely with a PRISM Response, the Initiating Order would not be assessed a fee because the Initiating Order did not execute as part of the PRISM Order. If the PRISM Order trades partially with a PRISM Response, the Initiating Order would be subject to fees only for contracts traded with the PRISM Order.

contract for Non-Penny Classes, regardless of capacity, instead of paying a fee of $0.30 per contract pursuant to Options 7, Section 2(5), provided the order was for a Non-Customer.[12] If the PRISM Order was for a Customer, the rebate of $0.35 per contract for Penny Classes and $0.70 per contract for Non-Penny Classes remains unchanged pursuant to Options 7, Section 2(5). The BX Participant submitting an Initiating Order through the Request for PRISM mechanism would be assessed a fee of $0.49 per contract for Penny Class and $0.94 per contract for Non-Penny Classes if the PRISM Order trades with the Initiating Order instead of a $0.05 per contract fee pursuant to Options 7, Section 2(5), provided the order was for a Non-Customer.[13]

Responders to a PRISM Auction would pay the same fee of $0.49 per contract fee for Penny Classes and $0.94 per contract fee for Non-Penny Classes regardless of whether the Request for PRISM mechanism was utilized to initiate a PRISM Auction or the PRISM Auction Order was entered directly into the PRISM Auction as a paired order.

The proposed pricing is intended to incentivize BX Participants to utilize the Request for PRISM feature to obtain liquidity, potential price improvement for the PRISM Order, as well as a rebate. Any BX Participant may respond to a PRISM Auction and all BX Participants benefit from the ability to interact with the PRISM Auction Order. The proposed fee to Initiating Orders, who respond to a Request for PRISM and where the PRISM Order traded with an Initiating Order, would enable the Exchange to offer rebates to attract BX Participants to enter PRISM Orders as a Request for PRISM. This proposal does not amend pricing for PRISM Auctions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[15] 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 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 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*[16] (''NetCoalition''), the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[17]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options 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. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

The Exchange's proposal to define a ''PRISM Order'', an ''Initiating Order'', a ''PRISM Auction Order'', a ''PRISM Response'', and a ''Request for PRISM'' for the purpose of Options 7, Section 2(5) pricing and utilize these terms within Options 7, Section 2(5) is reasonable, equitable and not unfairly discriminatory. The Exchange believes that these terms, which align more closely to the terms utilized in Options 3, Section 13 related to PRISM, will make the Options 7, Section 2(5) PRISM pricing more transparent.

The Exchange's proposal to amend Options 7, Section 2(5) to adopt specific pricing for BX Participants that utilize the Request for PRISM mechanism is reasonable because the Exchange believes the proposed pricing will incentivize BX Participants to utilize the Request for PRISM feature to obtain liquidity, potential price improvement, as well as a rebate for the PRISM Order. The proposed pricing for PRISM Auction Orders which commenced as a Request for PRISM and executed in the PRISM Auction would apply in lieu of Options 7, Section 2(5) pricing and regardless of capacity. With respect to a PRISM Order, the Exchange proposes to pay a rebate to a PRISM Order that was submitted as a Request for PRISM seeking another BX Participant who would respond to the Request for PRISM Order by submitting the Initiating Order to initiate a PRISM Auction.[18] With this proposal, a PRISM Order that was submitted as a Request for PRISM and trades with an Initiating Order or a PRISM Response, would receive a rebate of $0.35 per contract for Penny Classes and $0.70 per contract for Non-Penny Classes, regardless of capacity, instead of paying a fee of $0.30 per contract pursuant to Options 7, Section 2(5), provided the order was for a Non-Customer.[19] If the PRISM Order was for a Customer, the rebate of $0.35 per contract for Penny Classes and $0.70 per contract for Non-Penny Classes remains unchanged pursuant to Options 7, Section 2(5). The Exchange believes the proposed PRISM Order rebate is reasonable because it is intended to attract BX Participants to utilize the Request for PRISM mechanism. The BX Participant submitting an Initiating Order through the Request for PRISM mechanism would be assessed a fee of $0.49 per contract for Penny Class and $0.94 per contract for Non-Penny Classes if the PRISM Order trades with the Initiating Order, instead of a $0.05 per contract fee pursuant to Options 7, Section 2(5), provided the order was for a Non-Customer.[20] The Exchange believes it is reasonable to assess a higher fee for the Initiating Order that was submitted with the Request for PRISM mechanism, where fees are the same as those assessed to responders in the PRISM Auction, because BX Participants are able to obtain immediate liquidity. The Request for PRISM mechanism is utilized by Participants as a liquidity seeking tool that if not available would require a BX Participant to source liquidity from third parties, expending time and potential additional cost. The Request for PRISM mechanism offers Participants the opportunity to

[12] Today, Customers pays no PRISM Order fee.

[13] Today, Customers pays no Initiating Order fee.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[17] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[18] A recipient of a Request for PRISM may utilize FIX to submit the sender's PRISM Order, along with an Initiating Order (a ''response'') into the System for execution into PRISM pursuant to Options 3, Section 13. Requests for PRISM are sent to BX Participants that ''opt in'' to receive Requests for PRISM. *See* Options 3, Section 7(e)(A)(1)(a).

[19] Today, Customers pays no PRISM Order fee.

[20] Today, Customers pays no Initiating Order fee.

immediately commence a PRISM Auction without the need to source liquidity. Liquidity providers that enter orders directly into PRISM and do not utilize the Request for PRISM mechanism have expended time sourcing liquidity with third parties outside of the Exchange. The Exchange believes that BX Participants benefit from the liquidity seeking mechanism that is being offered by the Exchange to allow certain market participants to compete with other market participants whose business model is designed to source liquidity. The proposed fee for Initiating Orders who respond to a Request for PRISM, when the PRISM Order trades with an Initiating Order, would enable the Exchange to offer rebates to BX Participants submitting PRISM Orders into the Request for PRISM mechanism. The Exchange believes the fees for responders are reasonable because responders to a PRISM Auction would pay the same fee of $0.49 per contract fee for Penny Classes and $0.94 per contract fee for Non-Penny Classes regardless of whether the Request for PRISM mechanism was utilized to initiate a PRISM Auction or the PRISM Auction Order was entered directly into PRISM as a paired order.

The Exchange's proposal to amend Options 7, Section 2(5) to adopt specific pricing for BX Participants that utilize the Request for PRISM mechanism is equitable and not unfairly discriminatory because any BX Participant may utilize the Request for PRISM feature. Also, any BX Participant may respond to a PRISM Auction and all BX Participants benefit from the ability to interact with additional order flow.[21] The Request for PRISM mechanism provides greater flexibility for Participants submitting orders into PRISM, specifically providing an avenue for BX Participants desiring to send orders to the PRISM mechanism to locate an Initiating Order to pair their PRISM Order with and participate in a PRISM Auction. All Participants that enter a PRISM Order into the Request for PRISM mechanism are uniformly entitled to a rebate if the PRISM Order trades with the Initiating Order or if the PRISM Order trades with a PRISM Response. Also, all Participants that enter Initiating Orders into the Request for PRISM mechanism are uniformly assessed a fee provided the PRISM Order trades with the Initiating Order. The proposed fees for an Initiating Order entered into the Request for PRISM mechanism that trade with a PRISM Response are equivalent to the pricing for responders pursuant to Options 7, Section 2(5) because BX Participants benefit from the liquidity seeking mechanism that is being offered. The mechanism allows certain market participants to compete with other market participants whose business model is designed to source liquidity.

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.

Intermarket Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice to initiate a price improvement auction. 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 Exchange must continually adjust its fees to remain competitive with other 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. The Exchange's Request for PRISM pricing would allow the Exchange to compete for order flow by incentivizing BX Participants to utilize the Request for PRISM to seek liquidity.

Intramarket Competition

The Exchange's proposal to define a ''PRISM Order'', an ''Initiating Order'', a ''PRISM Auction Order'', a ''PRISM Response'', and a ''Request for PRISM'' for the purpose of Options 7, Section 2(5) pricing and utilize these terms within Options 7, Section 2(5) does not impose an undue burden on competition because the defined terms will more closely align the pricing within Options 7, Section 2(5) to the terms utilized in Options 3, Section 13 related to PRISM.

The Exchange's proposal to amend Options 7, Section 2(5) to adopt specific pricing for BX Participants that utilize the Request for PRISM mechanism does not impose an undue burden on competition because any BX Participant may utilize the Request for PRISM feature. Also, any BX Participant may respond to a PRISM Auction and all BX Participants benefit from the ability to interact with additional order flow.[22] The Request for PRISM mechanism provides greater flexibility for Participants submitting orders into PRISM, specifically providing an avenue for BX Participants desiring to send orders to the PRISM mechanism to locate an Initiating Order to pair their PRISM Order with and participate in a PRISM Auction. All Participants that enter a PRISM Order into the Request for PRISM mechanism are uniformly entitled to a rebate if the PRISM Order trades with the Initiating Order or if the PRISM Order trades with a PRISM Response. Also, all Participants that enter Initiating Orders into the Request for PRISM mechanism are uniformly assessed a fee provided the PRISM Order trades with the Initiating Order. The proposed fees for an Initiating Order entered into the Request for PRISM mechanism that trade with a PRISM Response are equivalent to the pricing for responders pursuant to Options 7, Section 2(5) because BX Participants benefit from the liquidity seeking mechanism that is being offered. The mechanism allows certain market participants to compete with other market participants whose business model is designed to source liquidity.

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.[23]

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.

[21] The identity of the sender and the recipients are not known to any party.

[22] The identity of the sender and the recipients are not known to any party.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2023–005 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–BX–2023–005. 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 (*https://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–BX–2023–005 and should be submitted on or before March 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04124 Filed 2–28–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96969; File No. SR–NASDAQ–2022–077]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 4702 To Establish New "Contra Midpoint Only" and "Contra Midpoint Only With Post-Only" Order Types

February 23, 2023.

On December 22, 2022, The Nasdaq Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 4702 to establish new "Contra Midpoint Only" and "Contra Midpoint Only with Post-Only" order types. The proposed rule change was published for comment in the **Federal Register** on January 11, 2023.[3] The Commission received comment on the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 25, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and comment received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates April 11, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2022–077).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04125 Filed 2–28–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34841; File No. 812–15411]

Tidal Trust II, et al.

February 23, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order ("Order") that permits: (a) ActiveShares ETFs (as described in the Reference Order (as defined below)) to issue shares ("Shares") redeemable in large aggregations only ("creation units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; and (c) certain affiliated persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as

---

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96601 (Jan. 5, 2023), 88 FR 1616.

[4] Comment received by the Commission on the proposed rule change is available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2022-077/srnasdaq2022077.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

that order may be amended from time to time (''Reference Order'').[1]

APPLICANTS: Tidal Trust II, Toroso Investments, LLC, Foreside Fund Services, LLC.

FILING DATES: The application was filed on November 28, 2022, and amended on January 26, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on March 20, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Eric W. Falkeis, Tidal Trust II, *efalkeis@tidalfg.com;* Michael Pellegrino, Toroso Investments, LLC, *mpellegrino@tidalfg.com;* Teresa Cowan, Foreside Fund Services, LLC, *teresa.cowan@acaglobal.com;* Domenick Pugliese, Sullivan & Worcester LLP, *dpugliese@sullivanlaw.com.*

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For applicants' representations, legal analysis, and conditions, please refer to applicants' amended application, dated January 26, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04134 Filed 2–28–23; 8:45 am]

BILLING CODE 8011–01–P

[1] Precidian ETFs Trust, *et al.,* Investment Company Act Rel. Nos. 33440 (April 8, 2019) (notice) and 33477 (May 20, 2019) (order).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0009]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new information collection for OMB-approval.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA. Comments: *https://www.reginfo.gov/public/do/PRAMain.* Submit your comments online referencing Docket ID Number [SSA–2023–0009].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833–410–1631, Email address: *OR.Reports.Clearance@ssa.gov*.

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2023–0009].

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than May 1, 2023. Individuals can obtain copies of the collection instrument by writing to the above email address.

eSubmit—20 CFR 404.704; 404.1512, 416.912, and 422.505—0960–NEW

Background

From March 17, 2020, through April 7, 2022, because of the Coronavirus (COVID–19) public health emergency, SSA encouraged the public to use our online and automated telephone services while we offered limited in-person services in field offices. The increased volume of documents sent to our field offices presented an enormous challenge to SSA, as we had limited staff on site to process the mail at that time. This limited the time the field office staff had to review and process those submissions or work directly with the public. To lessen the burden on front-line employees and managers, allow staff more time to work with the public and process the information we receive, and to modernize form submission and document intake, we are creating a new service called eSubmit.

eSubmit

SSA is introducing eSubmit, a new way individuals can submit evidence and forms to SSA online. In the digital age, individuals expect to complete transactions online, including submission of documents and forms to government agencies. The agency already offers several self-service specific options for individuals to submit forms and other documents online, including the Electronic Protective Filing Tool, ePFT (OMB No. 0960–0826), internet Social Security Benefits Application, iClaim (OMB No. 0960–0618), and iAppeals (OMB No. 0960–0269 & 0960–0622).

eSubmit is a secure upload portal which respondents will use to submit documents and forms to SSA. To ensure the success of eSubmit, we will roll out the new application in several phases. The first phase will allow respondents to provide select documents (evidence that does not need to be certified or evidence which the agency does not require to be an original, also known collectively as ''non original documentation,'' and first-party forms that do not require a signature) to SSA electronically. Individuals must provide this information themselves since they will have to authenticate with their own information through one of several authentication methods (*i.e., Login.gov, ID.me,* or SSA's Public Credentialing and Authentication Process).

During this initial phase for eSubmit, we will ask the individual to be in contact, via a telephone or face-to-face interview, with SSA for a business matter (*e.g.,* filing a claim, performing a

redetermination, or updating their personal information). During the interaction, the SSA technician will inform the individual verbally that SSA requires additional information to support their request and will offer the opportunity to provide the information electronically via the eSubmit application. After the individual grants consent to receive an email from SSA, the technician will send an email with the link to eSubmit along with instructions on how to access eSubmit. The system will only make the electronic submission process available for up to 30 days from the date of the email. Concurrently, the system will generate a paper notice containing more details about the request, and the SSA technician will send it through postal mail to the respondent. Once the respondent authenticates and arrives at the eSubmit dashboard, the system will present the respondent with information regarding the items SSA requested for submission (examples of the documentation SSA may request includes forms or non-standardized evidence to support the request [*e.g.,* pay stubs, bank statements, pension award letters, tax documents, child support payment history, etc.]). From this screen, the individual will be able to upload the corresponding files from an electronic device. Once they finish uploading the documents, the respondents must select the Submit button to complete the action and the system will present them with an indicator of success or failure. The system will also notify the technician who requested the document that the document is available for review and consideration. Respondents are first-party individuals who choose to use the internet to conduct business with us.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice center (minutes) **	Total annual opportunity cost (dollars) ***
Internet version	1,107,658	1	7	129,227	* $28.01	** 19	*** $13,444,380

* We based these figures on average U.S. worker's hourly wages (based on *BLS.gov* data, *https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on average FY 2023 wait times for teleservice centers (approximately 19 minutes per respondent), based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: February 23, 2023.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2023–04133 Filed 2–28–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority No. 538]

Delegation of Authority; Deputy Secretary of State as Final Appeal Authority for Payment Decisions Under the HAVANA Act

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and § 901 of the Further Consolidated Appropriations Act, 2020 (Div. J, Title IX, Pub. L. 116–94), as amended (the Act), and codified in 22 U.S.C. 2680b, I hereby delegate to the Deputy Secretary of State, to the extent authorized by law, the authority to act as the final appeal authority for payment decisions by the Under Secretary of Management as provided under 22 CFR 135.3(f)–(g).

Any act, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, regulation, or procedure as amended from time to time.

The Secretary and the Deputy Secretary for Management and Resources may also exercise the authorities delegated herein. Nothing in this delegation shall be deemed to supersede the provisions of 22 CFR 135.3 or any other delegation of authority.

This delegation is in effect only when there is no confirmed and appointed Deputy Secretary for Management and Resources.

This document shall be published in the **Federal Register**.

Dated: February 13, 2023.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2023–04126 Filed 2–28–23; 8:45 am]

BILLING CODE 4710–10–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from University of Nevada, Las Vegas (UNLV) (WB23–07—2/24/23) for permission to use data from the Board's annual 2021 masked Carload Waybill Samples. A copy of this request may be obtained from the Board's website under docket no. WB23–07.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2023–04203 Filed 2–28–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36669]

Massachusetts Bay Transportation Authority—Acquisition Exemption—CSX Transportation, Inc.

The Massachusetts Bay Transportation Authority (MBTA) [1] has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT), approximately 8.86 miles of track, which includes: (1) an 8.4-mile segment of railroad track between milepost QVG 0.0, at Franklin, Norfolk County, Mass., and milepost QVG 8.4, at Milford, Worcester County, Mass., generally known as the Milford Secondary Line; and (2) a roughly 0.46-mile segment of the Franklin Industrial Track, contiguous with the Milford Secondary, extending between valuation station 1456+00 and valuation station 1480+40

[1] In its verified notice, MBTA states that it is a common carrier by virtue of its ownership of lines of railroad not directly involved in this proceeding. *See, e.g., Boston & Me. Corp.—Discontinuance of Service Exemption—in Middlesex Cnty., Mass.,* AB 32 (Sub-No. 56X) (STB served Feb. 10, 1994).

within Franklin, Norfolk County, Mass. (collectively, the Line).[2]

MBTA states that, under the proposed transaction, it will acquire the Line subject to one freight common carrier service easement that will be retained by CSXT (the Easement). According to MBTA, CSXT will operate over the Franklin Industrial segment pursuant to the Easement and the Grafton & Upton Railroad Company (G&U), a Class III carrier, will operate over the Milford Secondary Line via assignment of CSXT's retained easement over that portion of the Line.[3] MBTA states that the proposed transaction has been agreed upon pursuant to a contract for sale dated April 11, 2022. According to MBTA, the agreements governing the subject asset sale and post-transaction railroad operations prohibit MBTA from providing freight common carrier service, and from unreasonably interfering with the common carrier operations of the freight service provided over the Line. MBTA asserts, however, that it will possess the right to provide commuter rail service over the Line. MBTA also states that the agreements that underly the acquisition do not contain any provision or agreement limiting future interchange with a third-party connecting carrier.

MBTA certifies that, because it does not currently operate freight common carrier service over the Line (and thus generates no freight common carrier service revenues), MBTA's prospective annual common carrier revenues will not result in the creation of a Class I or Class II carrier.

MBTA states that it will consummate the proposed transaction once the Board has rendered a favorable decision on the concurrently filed motion to dismiss, and upon the effectiveness of an anticipated notice of exemption to be filed by G&U in a separate proceeding. The earliest this transaction may be consummated is March 15, 2023, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 8, 2023 (at least seven days before the exemption becomes effective). All filings in response to this notice must refer to Docket No. FD 36669 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 Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3268.

Board decisions and notices are available at *www.stb.gov.*

Decided: February 23, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–04145 Filed 2–28–23; 8:45 am]

BILLING CODE 4915–01–P

[2] MBTA also filed a motion to dismiss its notice of exemption on the grounds that its transaction does not require authorization from the Board. The motion to dismiss will be addressed in a subsequent Board decision.

[3] MBTA states that G&U currently holds an easement for the Milford Secondary pursuant to a transaction authorized in *Grafton & Upton Railroad—Acquisition & Operation Exemption—CSX Transportation, Inc.,* FD 36444 (STB served Sept. 28, 2020). However, according to MBTA, that easement is set to terminate upon the closing of the present transaction. MBTA asserts that, contemporaneously with its acquisition of the Line, CSXT intends to assign the portion of the Easement over the Milford Secondary to G&U. In *Grafton & Upton Railroad—Acquisition & Operation Exemption—CSX Transportation, Inc.,* Docket No. FD 36670, G&U filed a verified notice of exemption for operation over the Milford Secondary, pursuant to 49 CFR part 1150.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Proposed Release From the Grant Assurance Obligations To Allow a Portion of Airport Property To Be Used for Non-Aeronautical Purposes at Syracuse Hancock International Airport (SYR), Syracuse, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport land to be used for non-aeronautical purposes through a long term lease.

SUMMARY: The FAA proposes to rule and invites public comment on the application for a release of approximately 20.24 acres of federally obligated airport property at Syracuse Hancock International Airport, Syracuse, New York, from conditions, reservations, and restrictions contained in Airport Improvement Program (AIP) grants. This acreage is composed of portions of three parcels. The first two parcels consists of 11.75 acres and 6.29 acres that were acquired without federal assistance. The third parcel consists of 2.20 acres that was acquired by the City of Syracuse through AIP Grant 3–36–0114–02–83. The release will allow the airport to enter into a long-term non-aeronautical lease for mixed-use commercial development. The proposed use of land after the release will be compatible with the airport and will not interfere with the airport or its operation.

DATES: Comments must be received on or before March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Comments on this application may be submitted to Janine Abyad, Federal Aviation Administration, New York Airports District Office via phone at (718) 995–5793 or at the email address *Janine.Abyad@faa.gov.* Comments on this application may also be mailed or delivered to the FAA at the following address: Evelyn Martinez, Manager, Federal Aviation Administration, New York Airports District Office, Federal Register Comment, 1 Aviation Plaza, Jamaica, New York 11434.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements. The following is a brief overview of the request.

The City of Syracuse requested a release from grant assurances to allow a change in use for approximately 20.24 acres of airport property at Syracuse Hancock International Airport to enable the mixed-use commercial development. Specifically, the release request seeks approval to allow for the permanent non-aeronautical use of the property, and a long-term non-aeronautical lease to be entered into for the property.

The airport will retain ownership of the 20.24 acres and will receive fair market value rent for the length of the agreement. The rental income will be devoted to airport operations and capital projects. The proposed use of the property will not interfere with the airport or its operation; and will thereby, serve the interests of civil aviation.

Issued in Jamaica, New York on February 24, 2023.

Sukhbir Gill,

Acting Manager, New York Airports District Office.

[FR Doc. 2023–04158 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2013–0124; FMCSA–2014–0102; FMCSA–2014–0103; FMCSA–2014–0104; FMCSA–2014–0106; FMCSA–2014–0107; FMCSA–2015–0328; FMCSA–2016–0003; FMCSA–2018–0135; FMCSA–2018–0136; FMCSA–2018–0137; FMCSA–2020–0027; FMCSA–2020–0028]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 28 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before March 31, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2012–0154, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2014–0102, Docket No. FMCSA–2014–0103, Docket No. FMCSA–2014–0104, Docket No. FMCSA–2014–0106, Docket No. FMCSA–2014–0107, Docket No. FMCSA–2015–0328, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2018–0136, Docket No. FMCSA–2018–0137, Docket No. FMCSA–2020–0027, or Docket No. FMCSA–2020–0028 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0102, FMCSA–2014–0103, FMCSA–2014–0104, FMCSA–2014–0106, FMCSA–2014–0107, FMCSA–2015–0328, FMCSA–2016–0003, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2018–0137, FMCSA–2020–0027, or FMCSA–2020–0028) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0154, Docket No. FMCSA–2013–0124, Docket No. FMCSA–2014–0102, FMCSA–2014–0103, Docket No. FMCSA–2014–0104, Docket No. FMCSA–2014–0106, Docket No. FMCSA–2014–0107, Docket No. FMCSA–2015–0328, Docket No. FMCSA–2016–0003, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2018–0136, Docket No. FMCSA–2018–0137, Docket No. FMCSA–2020–0027, or Docket No. FMCSA–2020–0028), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0102, FMCSA–2014–0103, FMCSA–2014–0104, FMCSA–2014–0106, FMCSA–2014–0107, FMCSA–2015–0328, FMCSA–2016–0003, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2018–0137, FMCSA–2020–0027, or FMCSA–2020–0028) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2012–0154, FMCSA–2013–0124, FMCSA–2014–0102, FMCSA–2014–0103, FMCSA–2014–0104, FMCSA–2014–0106, FMCSA–2014–0107, FMCSA–2015–0328, FMCSA–2016–0003, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2018–0137, FMCSA–2020–0027, or FMCSA–2020–0028) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The 28 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 28 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 28 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of March and are discussed below. As of March 3, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 14 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Kevin Beacham (MD)
Mark Cole (MD)
Joseph Conversa (IL)
Chauncey Crawford (OH)
Tyjuan Davis (VA)
John Dumars (FL)
Scott Friede (TX)
Calvin Gousby (NV)
Joshua Johnson (CO)
Kimothy McLoed (GA)
Dustin R. Miller, (MI)
Taryn Peterson (IA)
Nolen Soler (NE)
Brandon Veronie (LA)

The drivers were included in docket numbers FMCSA–2012–0154, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2015–0328, FMCSA–2016–0003, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2020–0027, or FMCSA–2020–0028. Their exemptions are applicable as of March 3, 2023 and will expire on March 3, 2025.

As of March 10, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Susan D. Helgerson (WI)
David A. Helgerson (WI)

The drivers were included in docket number FMCSA–2013–0124. Their exemptions are applicable as of March 10, 2023 and will expire on March 10, 2025.

As of March 13, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

John L. Huey (GA)
Scott M. Putnam (FL)

The drivers were included in docket number FMCSA–2014–0107. Their exemptions are applicable as of March 13, 2023 and will expire on March 13, 2025.

As of March 19, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), insert name Victor H. Morales (TX) has satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers.

The driver was included in docket number FMCSA–2014–0106. Their exemption is applicable as of March 19, 2023 and will expire on March 19, 2025.

As of March 22, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

William B. Britt (TN)
Lawrence Hung K. Lam (CA)
Phillip P. Shook (MS)

The drivers were included in docket number FMCSA–2018–0137. Their exemptions are applicable as of March 22, 2023 and will expire on March 22, 2025.

As of March 29, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 6 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Jeremy Brandyberry (NE)
Kenneth Harris (TX)
Joseph Kelly (PA)
Timothy Laporte (SC)
Brandon Londo (TX)
Jesse Shelander (TX)

The drivers were included in docket numbers FMCSA–2013–0124, FMCSA–2014–0102, FMCSA–2014–0103, FMCSA–2014–0104, or FCMSA–2014–0106. Their exemptions are applicable as of March 29, 2023 and will expire on March 29, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR

parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 28 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–04130 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0442; FMCSA–2015–0116; FMCSA–2015–0323; FMCSA–2016–0007; FMCSA–2018–0053]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for six individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2013–0442, FMCSA–2015–0116, FMCSA–2015–0323, FMCSA–2016–0007, or FMCSA–2018–0053) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On January 12, 2023, FMCSA published a notice announcing its decision to renew exemptions for six individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 2160). The public comment period ended on February 13, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the six renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of December and are discussed below.

As of December 3, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 2160):

Ricky Alegre (NJ)
Michael Grant (SC)
Thomas Mitchell (MS)

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

Joseph Thomas (MD)

The drivers were included in docket number FMCSA–2013–0442, FMCSA–2016–0007, or FMCSA–2018–0053. Their exemptions were applicable as of December 3, 2022 and will expire on December 3, 2024.

As of December 16, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 2160):

Charles Gray (OK)
Kyle Loney (WA)

The drivers were included in docket number FMCSA–2015–0116 or FMCSA–2015–0323. Their exemptions were applicable as of December 16, 2022 and will expire on December 16, 2024.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–04128 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2023–0039]

Request for Information: Administration of the Cargo Preference Act of 1954

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice requests information from the public to assist MARAD in assessing the processes used to implement the Cargo Preference Act of 1954, which directs the use of U.S.-flag vessels to transport certain amounts of civilian federal government agencies' cargo.

DATES: Comments must be received on or before May 1, 2023. DOT will consider comments filed after this date to the extent practicable.

ADDRESSES: Your comments should refer to DOT Docket Number MARAD–2023–0039 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Search ''MARAD–2023–0039'' and follow the instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m. E.T., Monday through Friday, except on Federal holidays.

To avoid duplication, please use only one of the above methods. See the ''Public Participation'' section below for instructions on submitting comments.

Unless there is a request for confidential treatment, all comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided.

You may view the public comments at *www.regulations.gov.* When searching for comments, please use the Docket ID: MARAD–2023–0039. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

Note: If you mail or hand-deliver your input, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand-delivery, they must be submitted in an unbound format, no larger than 8½ by 11 inches, single-sided, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Lalit Raina, Supervisory Trade Specialist, Office of Cargo & Commercial Sealift, at (202) 366–4610, or via email at *cargo.marad@dot.gov.* You may send mail to Mr. Raina at Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, W23–469, Washington, DC 20590. If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: The Cargo Preference Act of 1954 (CPA), codified at 46 U.S.C. 55305, and promulgated by regulation under 46 CFR parts 381 and 382, requires that at least 50% of cargoes procured, furnished, or financed by the U.S. Government, which may be transported on ocean vessels, are transported on privately-owned U.S. commercial vessels, to the extent those vessels are available at fair and reasonable rates. Currently, the 50% compliance minimum is calculated by type of vessel (dry bulk carriers, dry cargo liners, and tankers), as well as by geographic area. These requirements are applied to cargoes resulting from civilian federal agency activities, such as, but not limited to, the movement of humanitarian assistance and the household goods of travelling diplomats. Department of Defense cargoes, such as military equipment and fuel, are subject to separate statutory and regulatory requirements and are not the subject of this request for information (RFI). MARAD is required under 46 U.S.C. 55305(d)(2)(A) to conduct an annual review of the administration of cargo preference programs by civilian federal agencies. MARAD may also direct civilian federal agencies, pursuant to 46 U.S.C. 55305(d)(2)(B), to require transport cargo shipments aboard U.S. vessels in equivalent amounts to cargo that were shipped onboard foreign vessels in violation of section 55305 (remediation efforts known as ''make up'' cargo shipments). MARAD may also impose civil penalties on any person who willfully and knowingly violates the cargo preference requirements in 46 U.S.C. 55305, pursuant to 46 U.S.C. 55305(d)(2)(C).

MARAD will continue to support, review, and promote compliance with the CPA by civilian federal agencies and their contractors through collaboration and education. Identifying cargoes resulting from civilian federal agency activities that are subject to cargo preference requirements has proven challenging for MARAD as it includes those derived from within layers of subcontracts, contracts, and grants, as well as any consequential transportation stemming from federal financing programs.

This notice requests comments and information from the public to assist MARAD in understanding individuals' experiences with civilian federal agencies' implementation of CPA requirements. Insights gained from this RFI will assist MARAD in its

communication and coordination with other federal agencies related to cargo preference and enhance federal transparency.

Public Participation

How do I submit comments?

Include the docket number in your comments to ensure that your comments are correctly filed in the Docket. We encourage you to provide concise comments; however, you may attach additional documents as necessary. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above-entitled heading **ADDRESSES**.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date.

For access to the docket to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at *www.regulations.gov.,* keyword search ''MARAD–2023–0039.''

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

Will my comments be made available to the public?

Before including your address, phone number, email address or other personal information in your comment, be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. When you submit comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *www.transportation.gov/privacy.*

Request for Information

DOT seeks information from the public on their experiences with, and views on, the current challenges faced by civilian federal agencies, contractors, and loan and grant recipients (*i.e.,* partners) in complying with cargo preference laws on the following topics:

1. Actions those civilian federal agencies and their partners can take to promote and simplify, compliance with 46 U.S.C. 55305, while helping shipper agencies' make their logistical supply chains more efficient.
2. Technological best practices, including data sharing, that the public sector may use to better delineate cargoes subject to 46 U.S.C. 55305 from those cargoes derived from private funding sources.
3. MARAD's computation and publication of compliance data, including consideration of geographic areas, for purposes of determining whether an agency meets the 50% minimum tonnage requirement under 46 U.S.C. 55305.
4. Actions MARAD and other civilian agencies could take to improve the ability to assess and determine fair and reasonable rates for available U.S.-registered vessels in a manner that is transparent and would maximize the use of U.S. vessels as well as support civilian federal agency supply chain logistical efficiency.
5. Actions MARAD could take to incentivize additional vessels, where appropriate, to enter the U.S.-flag fleet.
6. Actions MARAD could take to work with other civilian federal agencies to identify the programs and cargoes that are subject to CPA requirements.
7. How MARAD can better serve as a resource to civilian federal agencies, their partners, and the public to support compliance with the CPA and ensure greater opportunities for U.S.-registered vessels and improve the efficiency and effectiveness of services provided.
8. How MARAD can improve the use of make-up shipments when programs that administer multi-year projects do not meet the 50% minimum statutory requirement under 46 U.S.C. 55305 during a particular fiscal year.
9. Identifying barriers to MARAD's assignment of civil penalties under 46 U.S.C. 55305(d)(2)(A).
10. Other relevant input related to challenges in achieving government-wide compliance with the CPA.

(Authority: 46 U.S.C. 55305; 49 CFR 1.93)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–04201 Filed 2–28–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: Notice of open season for recruitment of IRS Taxpayer Advocacy Panel (TAP) members.

DATES: February 17, 2023 through March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Fred N. Smith, Jr. at 202–317–3087 (not a toll-free call).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 200 to 300 hours a year, and a desire to help improve IRS customer service. As a federal advisory committee, TAP is required to have a fairly balanced membership in terms of

the points of view represented. Thus, TAP membership represents a cross-section of the taxpaying public with at least one member from each state, the District of Columbia and Puerto Rico, in addition to one member representing international taxpayers. For these purposes, ''international taxpayers'' are broadly defined to include U.S. citizens working, living, or doing business abroad. Potential candidates must be U.S. citizens, not a current employee of any Bureau of the Treasury Department or have worked for any Bureau of the Treasury Department within the three years of December 1 of the current year and must pass a federal tax compliance check and a Federal Bureau of Investigation criminal background investigation. Applicants who practice before the IRS must be in good standing with the IRS (meaning not currently under suspension or disbarment). Federally-registered lobbyists cannot be members of the TAP. The IRS is seeking members or alternates in the following locations: Alaska, Alabama, Arkansas, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Iowa, Illinois, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, North Carolina, North Dakota, New Hampshire, New Jersey, New Mexico, Nevada, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, West Virginia and Wyoming. TAP members are a diverse group of citizens who represent the interests of taxpayers, from their respective geographic locations as well as taxpayers overall. Members provide feedback from a taxpayer's perspective on ways to improve IRS customer service and administration of the federal tax system, by identifying grassroots taxpayer issues. Members should have good communication skills and be able to speak to taxpayers about TAP and its activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP website at *www.improveirs.org* for more information about TAP. Applications may be submitted online at *www.usajobs.gov.* For questions about TAP membership, call the TAP toll-free number, 1–888–912–1227 and select prompt 5. Callers who are outside of the U.S. should call 202–317–3087 (not a toll-free call).

The opening date for submitting applications is February 17, 2023 and the deadline for submitting applications is March 31, 2023. Interviews will be held. The Department of the Treasury will review the recommended candidates and make final selections. New TAP members will serve a three-year term starting in December 2023. (*Note:* highly ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Fred N. Smith, Jr., Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue NW, TA:TAP Room 1509, Washington, DC 20224, or 202–317–3087 (not a toll-free call).

Dated: February 23, 2023.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2023–04146 Filed 2–28–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 637 and IRS Notice 2023–06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 637, Application for Registration (For Certain Excise Tax Activities) and Questionnaires; and IRS Notice 2023–06.

DATES: Written comments should be received on or before May 1, 2023 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 *pra.comments@irs.gov.* Include ''OMB Number 1545–1835'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Registration (For Certain Excise Tax Activities) and Questionnaires; IRS Notice 2023–06.

OMB Number: 1545–1835.

Form Number: 637 and Notice 2023–06.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Revenue code section 4101 for purposes of the Federal excise tax on taxable fuel imposed under Code sections 4041 and 4071; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

IRS Notice 2023–26 provides guidance on the new sustainable aviation fuel credits under §§ 40B and 6426(k) of the Internal Revenue Code (referred the SAF credit) and related credit and payment rules under §§ 34(a)(3), 38, 87, and 6427(e)(1). This notice also provides rules related to the § 4101 registration requirements. The certificate, reseller statement, and declaration created by IRS Notice 2023–06 will allow the IRS to verify that claimants are making proper credit and payment claims with respect to the SAF credit.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, farms, and not-for-profit institutions.

Form 637

Estimated Number of Respondents: 9,255.

Estimated Time per Respondent: 3.43 hours.

Estimated Total Annual Burden Hours: 31,710.

IRS Notice 2023–06

Estimated Number of Respondents: 20.

Estimated Number of Responses: 200.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 22, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–04183 Filed 2–28–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Preauthorization and Request for Payment of Bowel and Bladder Services

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs (VA), 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–NEW.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Preauthorization and Request for Payment of Bowel and Bladder Services, VA Forms 10–314a, 10–314b.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: Legal authority for this information collection is found in 38 U.S.C., chapter 17, for Veterans seeking health care services. Data collected may be used to establish, determine, and monitor eligibility to receive VA benefits and for authorizing and paying Non-VA healthcare services furnished to Veterans and beneficiaries. VA Form 10–314a will be used by physicians to request preauthorization of bowel and bladder services and certify that caregivers have been properly trained and meet all requirements for safely rendering care to Veterans. VA Form 10–314b is required for caregivers to receive reimbursement for bowel and bladder care services. The form is used to list the dates and times the care was rendered to the Veteran and is then submitted monthly to VA to request payment for those services.

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 87 FR 240 on December 15, 2022, page 76695.

Total Annual Number of Responses = 44,200.

Total Annual Time Burden = 7,367 hours.

VA Form 10–314a:

Affected Public: Individuals or households.

Estimated Annual Burden: 567 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once time.

Estimated Number of Respondents: 3,400.

VA Form 10–314b:

Affected Public: Individuals or households.

Estimated Annual Burden: 6,800 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: 12 times per year.

Estimated Number of Respondents: 3,400.

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. 2023–04184 Filed 2–28–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Agency Information Collection Activity: Personalized Career Planning and Guidance

AGENCY: Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: VBA, Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 1, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0265 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688

or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0265 in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. chapter 36.

Title: Personalized Career Planning and Guidance (VA Form 25–8832).

OMB Control Number: 2900–0265.

Type of Review: Revision of a previously approved collection.

Abstract: VA Form 25–8832 is primarily used for the eligibility determination for chapter 36 benefits. If this information is not collected, the eligibility determination for chapter 36 benefit cannot be made. It would affect eligible transitioning Service members, Veterans, and dependents in obtaining educational and vocational counseling. Collection of the information is the only way VA may make a decision in regard to chapter 36 benefits.

VA Form 25–8832 has been updated to include branch of service, component, character of discharge, a question to determine if the applicant is attending school/training facility, and the form number has changed from VA Form 28–8832 to VA Form 25–8832.

Affected Public: Individuals and households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 8,000.

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. 2023–04186 Filed 2–28–23; 8:45 am]

BILLING CODE 8320–01–P

Reader Aids

Federal Register

Vol. 88, No. 40

Wednesday, March 1, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

12803–13014 1

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1201 12805

3 CFR

Proclamations:

10521 12803

7 CFR

1710 12806

9 CFR

Proposed Rules:

410 12870

12 CFR

748 12811

14 CFR

39 (2 documents) 12817, 12820

Proposed Rules:

71 (2 documents) 12870, 12872

21 CFR

Proposed Rules:

130 12870
1300 (2 documents) 12875, 12890
1304 (2 documents) 12875, 12890
1306 (2 documents) 12875, 12890

24 CFR

203 12822
206 12822

Proposed Rules:

202 12906

33 CFR

165 (2 documents) 12829, 12831

40 CFR

52 (3 documents) 12831, 12833, 12835

41 CFR

60–1 12842

48 CFR

212 (2 documents) 12861, 12862
225 12861
232 12862
242 12864
252 (2 documents) 12861, 12862

50 CFR

660 12865
679 12868

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 10, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/*__layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2023

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
March 1	Mar 16	Mar 22	Mar 31	Apr 5	Apr 17	May 1	May 30
March 2	Mar 17	Mar 23	Apr 3	Apr 6	Apr 17	May 1	May 31
March 3	Mar 20	Mar 24	Apr 3	Apr 7	Apr 17	May 2	Jun 1
March 6	Mar 21	Mar 27	Apr 5	Apr 10	Apr 20	May 5	Jun 5
March 7	Mar 22	Mar 28	Apr 6	Apr 11	Apr 21	May 8	Jun 5
March 8	Mar 23	Mar 29	Apr 7	Apr 12	Apr 24	May 8	Jun 6
March 9	Mar 24	Mar 30	Apr 10	Apr 13	Apr 24	May 8	Jun 7
March 10	Mar 27	Mar 31	Apr 10	Apr 14	Apr 24	May 9	Jun 8
March 13	Mar 28	Apr 3	Apr 12	Apr 17	Apr 27	May 12	Jun 12
March 14	Mar 29	Apr 4	Apr 13	Apr 18	Apr 28	May 15	Jun 12
March 15	Mar 30	Apr 5	Apr 14	Apr 19	May 1	May 15	Jun 13
March 16	Mar 31	Apr 6	Apr 17	Apr 20	May 1	May 15	Jun 14
March 17	Apr 3	Apr 7	Apr 17	Apr 21	May 1	May 16	Jun 15
March 20	Apr 4	Apr 10	Apr 19	Apr 24	May 4	May 19	Jun 20
March 21	Apr 5	Apr 11	Apr 20	Apr 25	May 5	May 22	Jun 20
March 22	Apr 6	Apr 12	Apr 21	Apr 26	May 8	May 22	Jun 20
March 23	Apr 7	Apr 13	Apr 24	Apr 27	May 8	May 22	Jun 21
March 24	Apr 10	Apr 14	Apr 24	Apr 28	May 8	May 23	Jun 22
March 27	Apr 11	Apr 17	Apr 26	May 1	May 11	May 26	Jun 26
March 28	Apr 12	Apr 18	Apr 27	May 2	May 12	May 30	Jun 26
March 29	Apr 13	Apr 19	Apr 28	May 3	May 15	May 30	Jun 27
March 30	Apr 14	Apr 20	May 1	May 4	May 15	May 30	Jun 28
March 31	Apr 17	Apr 21	May 1	May 5	May 15	May 30	Jun 29