FEDERAL REGISTER

Vol. 88 Wednesday,
No. 90 May 10, 2023

Pages 30025–30212

OFFICE OF THE FEDERAL REGISTER

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

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Presidential Documents

Title 3—

The President

Proclamation 10572 of May 5, 2023

National Teacher Appreciation Day and National Teacher Appreciation Week, 2023

By the President of the United States of America

A Proclamation

In schools across America, teachers are arriving early to set up classrooms, spending long hours educating students, and staying late to prepare tomorrow's lesson plans. Their devotion to our children embodies the best of America—ready to serve and eager to see others thrive. Today and during this week, we celebrate our Nation's remarkable teachers and early childhood educators, and we recommit to having their backs, just as they have ours.

In the words of the First Lady, a lifelong educator, teaching is a calling—a way to live out the belief that we can shape our corner of the world, one student at a time. But shaping that world demands a lot. Teaching happens inside and outside the classroom. It often includes spending extra time coaching teams, supporting student clubs, and helping kids catch up when they have fallen behind. It means giving young children the foundational skills for success during a critical period of their development. It also demands being endlessly adaptable, like at the height of the COVID–19 pandemic, when many classes went online and teachers had to find new ways to keep students engaged and learning. When Jill and I recently hosted the 2023 National Teacher of the Year ceremony at the White House, we were deeply inspired again by the dedication, creativity, and loving strength of our Nation's educators.

We owe our teachers and early childhood educators so much. We need to pay them better, improve their working conditions, and focus on recruitment and retention. My Administration's American Rescue Plan supported early childhood programs and helped K–12 schools across the country reopen, hire more educators, boost salaries, increase mental health services, and expand afterschool and summer programs. Thanks to our investments, public schools across the country have added more than 500,000 educators and staff. Compared with before the pandemic, the number of school social workers nationwide is up 48 percent, the number of school nurses is up 42 percent, and the number of school counselors is up 10 percent.

My Fiscal Year 2024 Budget calls for $600 billion to provide access to high-quality child care and preschool programs so all families can afford to enroll their children and so early childhood educators have higher wages. It would also increase funding for Title I schools—which serve some of the most disadvantaged communities in our Nation—to give teachers a raise and expand their ranks. And it calls on the Congress to increase salaries for Head Start staff and invest $300 million to help address shortages of special education teachers across America.

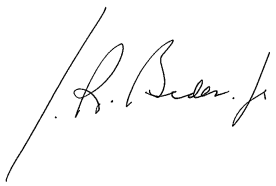
My Administration has worked to fix the Public Service Loan Forgiveness program—a key step in meeting our commitment to those who have chosen this vital profession and other areas of public service. To date, we have helped over 450,000 public service employees, including teachers, get nearly $31 billion in student loan forgiveness. In many cases, educators have had their entire student debt wiped out.

Supporting our teachers also demands that we keep them and their students safe at school. Last year, I signed the most significant gun safety law in nearly three decades, which includes enhanced background checks for individuals under the age of 21 and funding for States to enact red flag laws that can help keep guns from people who are a danger to themselves and others. This law also authorized more than $1 billion to improve student mental health, enabling schools to hire and train thousands of new mental health professionals. Schools should be places to learn, make friends, and feel the support of a real community. No teacher or student should have to wonder whether the goodbye hug they give their loved ones before going to school one day will be their last.

The greatness of a nation is measured in part by how it prepares the next generation to succeed. On National Teacher Appreciation Day and during National Teacher Appreciation Week, we honor the remarkable educators entrusted with this responsibility. As I have traveled the country and met so many of our teachers—and seen their passion and dedication—I have never been more confident in the future of America.

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 May 9, 2023, as National Teacher Appreciation Day and May 7 through May 13, 2023, as National Teacher Appreciation Week. I call upon all Americans to recognize the hard work and dedication of our Nation's teachers and to observe this day and this week by supporting teachers through appropriate activities, events, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, 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. 2023–10086
Filed 5–9–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10573 of May 5, 2023

Public Service Recognition Week, 2023

By the President of the United States of America

A Proclamation

Every day, more than 20 million dedicated public servants in small towns and big cities across our Nation go to work to make sure that America works for all of us. From teaching our children and delivering the mail to controlling air traffic in our skies, overseeing our elections, fighting fires, keeping our streets safe, and defending our country in uniform, these remarkable Americans are the lifeblood of our democracy. This week, we honor them and celebrate all they give to this country.

I have had the great privilege of working with public servants who lift up others and so seldom seek recognition or personal acclaim in return. I have also witnessed the sacrifices of families who serve alongside them, like those who uproot their lives every few years when a family member's job calls on them to find a new home, and law enforcement families who wait bravely for loved ones to come back from their shifts. Public servants embody the timeless creed of this Nation found in the words of President John F. Kennedy: ''Ask not what your country can do for you—ask what you can do for your country.''

At a time when public servants are facing threats and hostility simply for doing their jobs, their continued willingness to serve is even more meaningful and important. We have an obligation to support them and to recognize and value their commitment and sacrifice. Our Nation's future depends on ensuring our public servants have good jobs with competitive pay and benefits, along with the resources they need to accomplish their work. It also depends on the next generation of smart, dedicated people answering the call of public service and joining their ranks, helping deliver the promise of America to more of our citizens. That is why my American Rescue Plan provided $350 billion to State, Tribal, and local governments to keep public servants on the payroll and make vital new hires—including first responders, teachers, and public works employees. My Safer America Plan calls on the Congress to provide our law enforcement officers with more mental health and wellness resources and to recruit and hire 100,000 more police officers for safe, effective, and accountable community policing, consistent with the standards of my policing Executive Order.

Meanwhile, my Administration is taking steps to protect, empower, and rebuild the career Federal workforce. I issued Executive Orders increasing the minimum wage for Federal employees to $15 per hour, making Government jobs more competitive and giving hardworking Americans more breathing room. To ensure public servants reflect the diversity of the communities they serve and to draw on the full range of talent we have across our Nation, I took executive action to protect Federal employees against discrimination on the basis of gender identity or sexual orientation, and launched a Government-wide initiative to advance diversity, equity, inclusion, and accessibility in the Federal workforce. And I established a White House Task Force on Worker Organizing and Empowerment, led by Vice President Harris, to strengthen the right to unionize among Federal Government workers. To ensure that employment in the Federal workforce continues to be

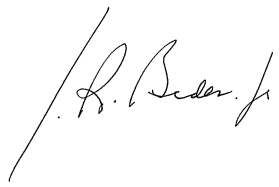
based on merit, skill, and experience—and does not become politicized—I have also called for legislation to protect the integrity of the civil service.

Public servants so often come out of school with debt that can take more than a decade to pay off, so my Administration has also worked to fix the Public Service Loan Forgiveness program. To date, we have helped over 450,000 public servants—including teachers, first responders, nurses, and members of the military—get nearly $31 billion in loan forgiveness.

These actions are all part of my plan to build a country that rewards work and not just wealth, especially for those who dedicate their lives to improving the lives of others. These are investments in America's future. When we support our public servants with the recognition and resources they deserve, our loved ones are safer in their communities, our families are more likely to get the high-quality services they need in a timely manner, our economy is stronger, and we put ourselves on a path to win the race for the future.

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 May 7 through May 13, 2023, as Public Service Recognition Week. I call upon all Americans to celebrate public servants and their contributions this week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, 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. 2023–10087
Filed 5–9–23; 8:45 am]
Billing code 3395–F3–P

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

[Docket No. USDA–2023–0001]

RIN 0503–AA77

Civil Monetary Penalty Inflation Adjustments for 2023

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's civil monetary penalty regulations by making inflation adjustments as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: Effective May 10, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen O'Neill, Office of Budget and Program Analysis, USDA, 1400 Independence Avenue SW, Washington, DC 20250–1400, (202) 720–0038.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, was signed into law to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to adjust for inflation annually.

This rule amends 7 CFR part 3 to update the amount of civil monetary penalties that may be levied by U.S. Department of Agriculture (USDA) agencies to reflect inflationary adjustments for 2023 in accordance with the 2015 Act. As required by the 2015 Act, the annual adjustment was made for inflation based on the Consumer Price Index for the month of October 2022 and rounded to the nearest dollar after an initial adjustment. The civil monetary penalties are listed according to the applicable administering agency.

II. Notice and Comment Not Required

This rule is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, with no issue of policy discretion. Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this action are not necessary. We also find good cause for making this action effective less than 30 days after publication in the **Federal Register**.

III. Procedural Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this regulatory action does not meet the criteria for significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review.

This rule contains inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The great majority of individuals, organizations, and entities participating in the programs affected by this regulation do not engage in prohibited activities and practices that would result in civil monetary penalties being incurred. Accordingly, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only the limited number of program participants that may engage in prohibited behavior in violation of the statutes.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Claims, Government employees, Income taxes, Loan programs—agriculture, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, we are amending 7 CFR part 3, subpart I, as follows:

PART 3—DEBT MANAGEMENT

■ 1. The authority citation for part 3, subpart I, continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. Section 3.91 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 3.91 Adjusted civil monetary penalties.

(a) * * *

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after May 10, 2023.

* * * * *

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i–1(d), has: A maximum of $1,116 in the case of the first offense, and a minimum of $2,168 in the case of subsequent offenses, except that the penalty will be less than $2,168 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $6,075.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of $1,939 for each such offense and not more than $484 for each day it continues, or a maximum of $484 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of $3,878 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of $176 and a maximum of $17,718.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $338 and a maximum of $33,902.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $3,391. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of $338.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $115 and a maximum of $2,312.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $3,391.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $1,520 and a maximum of $14,017.

(xii) Civil penalty for failure to obey a cease-and-desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $1,520. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $1,757 and a maximum of $17,571.

(xiv) Civil penalty for failure to obey a cease-and-desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $1,757. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of $13,707.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $3,391.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of $1,596 and a maximum of $15,954.

(xviii) Civil penalty for failure to obey a cease-and-desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $1,596. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $2,949.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of $886 and a maximum of $9,086.

(xxi) Civil penalty for failure to obey a cease-and-desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of $908. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $2,742.

(xxiii) Civil penalty for failure to obey a cease-and-desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $1,372. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $1,372 and a maximum of $13,707.

(xxv) Civil penalty for failure to obey a cease-and-desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $1,372. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of $2,232 and a maximum of $22,313.

(xxvii) Civil penalty for failure to obey a cease-and-desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of $2,230.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of $1,085 and a maximum of $10,846.

(xxix) Civil penalty for failure to obey a cease-and-desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of $1,085. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of $1,085 and a maximum of $10,846.

(xxxi) Civil penalty for failure to obey a cease-and-desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of $1,085. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified a 7 U.S.C. 6307(c)(1)(A), has a maximum of $2,232.

(xxxiii) Civil penalty for failure to obey a cease-and-desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $11,109. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $1,085 and a maximum of $10,846, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $21,313 and a maximum of $216,892.

(xxxv) Civil penalty for failure to obey a cease-and-desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $11,162. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of $21,689.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of $1,023 and a maximum of $10,226.

(xxxviii) Civil penalty for failure to obey a cease-and-desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of $10,226. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of $1,993.

(xl) Civil penalty for failure to obey a cease-and-desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of $996. Each day the violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,881 and a maximum of $18,825 for each violation.

(xlii) Civil penalty for failure to obey a cease-and-desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,881 and a maximum of $18,825. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of $1,881 for each violation.

(xliv) Civil penalty for failure to obey a cease-and-desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $9,413. Each day the violation continues is a separate violation.

(xlv) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $942 and a maximum of $9,413 for each violation.

(xlvi) Civil penalty for failure to obey a cease-and-desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $942. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of $1,881 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $10,846 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of $1,711 and a maximum of $17,110 for each violation.

(l) Civil penalty for failure to obey a cease-and-desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of $17,127 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(a)(1), has a maximum of $17,718 for each violation.

(lii) Civil penalty for failure to obey a cease-and-desist order under the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(g)(3), has a maximum of $17,718 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of $17,127 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of $1,376 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 and 4510(b), has a maximum of $2,949 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of $33,896.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of $2,311 and not more than $115 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of $2,312 and not more than $115 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of $33,896.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of $2,312.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of $98,605.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of $331,249.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of $42,818 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $115 and a maximum of $2,312.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $13,760, and knowing failure to obey a cease-and-desist order has a civil penalty of $2,063.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by USDA, codified at 7 U.S.C. 2279e(a), has a maximum of $17,127.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $34,422.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document

provided for in the PPA, codified a 7 U.S.C. 7734(b)(1), has a maximum of the greater of: $85,636 in the case of any individual (except that the civil penalty may not exceed $1,712 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), $428,175 in the case of any other person for each violation, $688,012 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,376,023 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: $82,187 in the case of any individual, except that the civil penalty may not exceed $1,644 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, $410,933 in the case of any other person for each violation, $688,012 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,376,023 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of $410,933 in the case of an individual and $821,869 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $6,781.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $13,252.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g), as specified at 16 U.S.C. 1540(a)(1), has a maximum of $61,984 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $29,683 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $1,564 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of $195 and a maximum of $996.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as specified in 9 CFR 88.6, has a maximum of $5,891. Each horse transported in violation of 9 CFR part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of $30,822 for each violation, as specified in 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than $412, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty will not exceed the maximum provided for violation of said law, treaty, or regulation, or $30,822, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as specified in 16 U.S.C. 3373(a)(2), has a maximum of $770.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of $137,603 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $49,585 for each violation, except that the maximum penalty for violations occurring during a single investigation is $89,289.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $44,645 for each violation, except that the maximum penalty for violations occurring during a single investigation is $89,289.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $210,161,878.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $18,171 for each violation, except that the maximum penalty for violations occurring during a single investigation is $72,686.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $17,725 for each violation, except that the maximum penalty for violations occurring during a single investigation is $72,686.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $10,846 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of $1,116,140 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of $167,442 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of $111,614 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of $1,116,140.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of $24,393.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.* (i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified in 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or $14,478.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified in 42 U.S.C. 1490p(e)(2), has a maximum of $237,267 in the case of an individual, and a maximum of $2,372,677 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified in 42 U.S.C. 1490s(a)(2), has a maximum of $42,818.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights laws and regulations, codified in 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages USDA, guaranteed lender, or project that is secured for a loan under Title V suffered or would have suffered as a result of the violation; or $85,636 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $18,825 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $18,825 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $18,825 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of $13,760 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of $16,952 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of $13,509.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of $13,509.

John Rapp,

Director, Office of Budget and Program Analysis.

[FR Doc. 2023–09912 Filed 5–9–23; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

RIN 1601–ZA20

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

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

ACTION: Notification of termination of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (''Secretary''), after consulting with interagency partners, to terminate temporary restrictions on travel by certain noncitizens into the United States at land ports of entry (''land POEs''), including ferry terminals, along the United States-Canada border. Under the latest (April 22 2022) notice of the temporary restrictions, which applied only to noncitizens who are neither U.S. nationals nor lawful permanent residents (''noncitizen non-LPRs''), DHS allowed the processing for entry into the United States of only those noncitizen non-LPRs who were fully vaccinated against COVID–19 and could provide proof of being fully vaccinated against COVID–19 upon request at arrival. DHS is terminating these restrictions.

DATES: The restrictions will cease to have effect as of 12:01 a.m. Eastern Daylight Time (EDT) on May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Stephanie E. Watson, Office of Field

Operations, U.S. Customs and Border Protection, 202–255–7018.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (''DHS'') published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Canada border to ''essential travel,'' as further defined in that document.[1] From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month.

On October 21, 2021, DHS extended the restrictions until 11:59 p.m. EST on January 21, 2022.[2] In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID–19—as well as then-recent increases in case levels, hospitalizations, and deaths due to the Delta variant—COVID–19 vaccines are effective against Delta and other known COVID–19 variants. These vaccines protect people from becoming infected with, and severely ill from, COVID–19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID–19 Response Coordinator's September 2021 announcement regarding the United States' plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID–19 beginning in early November 2021.[3] DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to align the treatment of different types of travel and allow those who are fully vaccinated against COVID–19 to travel to the United States, whether for essential or non-essential reasons.[4]

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,[5] DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status upon request.[6] DHS also announced in October 2021 that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs—whether for essential or non-essential reasons—would be required to be fully vaccinated against COVID–19 and provide proof of full COVID–19 vaccination status. In making this announcement, the Department provided fair notice of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to become fully vaccinated against COVID–19.[7]

On January 24, 2022, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United States at land POEs along the United States borders with Mexico and Canada by requiring proof of COVID–19 vaccination upon request at arrival, largely consistent with the limited exceptions then available with respect to COVID–19 vaccination in the international air travel context.[8] On April 22, 2022, DHS announced the continuation of such restrictions until further notice.[9] DHS cautioned that the restrictions addressed temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes with respect to Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.[10] DHS indicated that in conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.[11]

On January 30, 2023, the Administration announced its intention to ''extend the [COVID–19 national emergency and public health emergency] to May 11, [2023] and then end both emergencies on that date.'' [12] Consistent with the Administration announcement, DHS has continued to closely monitor the travel requirements at land POEs, and the Secretary has considered the appropriate termination of those travel requirements pursuant to 19 U.S.C. 1318 in light of intervening changes to related Presidential and interagency assessments of COVID–19.

Termination of the Public Health Emergency and Air Travel Restrictions

On February 10, 2023, the White House announced that ''we are in a different phase'' of the response to the COVID–19 pandemic precipitating an orderly transition to end the national emergency declared in March 2020.[13] While the spread of SARS–CoV–2, the virus that causes COVID–19, remains a

[1] 85 FR 16548 (Mar. 24, 2020) That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Mexico border to ''essential travel,'' as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

[2] *See* 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border); 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border).

[3] *See* Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), *https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/* (''As was announced in a call earlier today . . . [w]e—starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID–19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.'').

[4] *See* 86 FR 58218; 86 FR 58216.

[5] Changes to requirements for travel by air were implemented by, *inter alia,* Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (''Presidential Proclamation 10294''), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (''CDC Order''). *See also* CDC, *Requirement for Proof of Negative COVID–19 Test or Recovery from COVID–19 for All Air Passengers Arriving in the United States, https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf* (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. See CDC, Requirement for Proof of Negative COVID–19 Test Result or Recovery from COVID–19 for All Airline Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf* (Dec. 2, 2021).

[6] *See* 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada); 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico).

[7] *See* DHS, DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings, *https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-us-land-and-ferry* (Oct. 29, 2021); DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, *https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals* (updated Jan. 20, 2022); *see also* DHS, Frequently Asked Questions: Guidance for Travelers to Enter the U.S., *https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us* (updated Jan. 20, 2022).

[8] *See* 87 FR 3429 (Jan. 24, 2022) (Canada notice); 87 FR 3425 (Jan. 24, 2022) (parallel Mexico notice).

[9] *See* 87 FR 24048 (Apr. 22, 2022) (Canada notice); 87 FR 24041 (Apr. 22, 2022) (parallel Mexico notice).

[10] *Id.*

[11] *Id.*

[12] Office of Mgmt. & Budget, Exec. Office of the President, Statement of Administration Policy (Jan. 30, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf.*

[13] White House Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic (Feb. 10, 2023), *available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/10/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-3/; see also* 88 FR 9385 (Feb. 14, 2023) (providing **Federal Register** notice of same).

public health priority, based on current COVID–19 trends, the Department of Health and Human Services is planning for the federal Public Health Emergency for COVID–19, declared under Section 319 of the Public Health Service Act, to expire at the end of the day on May 11, 2023.[14] On May 1, 2023, the White House announced the impending termination of COVID–19 air travel restrictions, effective at the end of the day on May 11, 2023.[15] This Notification ensures that applicable restrictions at the land POEs terminate concurrent with the parallel air travel restrictions.

Notice of Action

In light of intervening changes in Presidential and interagency assessments of current trends in COVID–19, I have determined that it is no longer necessary to impose temporary restrictions on the processing of travelers to the United States at the United States-Canada border. I intend for this Notification to be given effect to the fullest extent allowed by law. In the event a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. In addition, it is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and Mexico on how best to control COVID–19 transmission over our shared borders and therefore directly ''involve[s] . . . a . . . foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–09948 Filed 5–8–23; 8:45 am]

BILLING CODE 9112–FP–P

[14] Fact Sheet: COVID–19 Public Health Emergency Transition Roadmap (Feb. 9, 2023), *available at https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html.*

[15] *See* The White House, Statements and Releases, The Biden-Harris Administration Will End COVID–19 Vaccination Requirements for Federal Employees, Contractors, International Travelers, Head Start Educators, and CMS-Certified Facilities (May 1, 2023), *available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/* (last visited May 1, 2023).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

RIN 1601–ZA21

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

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

ACTION: Notification of termination of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (''Secretary''), after consulting with interagency partners, to terminate temporary restrictions on travel by certain noncitizens into the United States at land ports of entry (''land POEs''), including ferry terminals, along the United States-Mexico border. Under the latest (April 22, 2022) notice of the temporary restrictions, which applied only to noncitizens who are neither U.S. nationals nor lawful permanent residents (''noncitizen non-LPRs''), DHS allowed the processing for entry into the United States of only those noncitizen non-LPRs who were fully vaccinated against COVID–19 and could provide proof of being fully vaccinated against COVID–19 upon request at arrival. DHS is terminating these restrictions.

DATES: The restrictions will cease to have effect as of 12:01 a.m. Eastern Daylight Time (EDT) on May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Stephanie E. Watson, Office of Field Operations, U.S. Customs and Border Protection, 202–255–7018.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (''DHS'') published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Mexico border to ''essential travel,'' as further defined in that document.[1] From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month.

On October 21, 2021, DHS extended the restrictions until 11:59 p.m. EST on January 21, 2022.[2] In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID–19—as well as then-recent increases in case levels, hospitalizations, and deaths due to the Delta variant—COVID–19 vaccines are effective against Delta and other known COVID–19 variants. These vaccines protect people from becoming infected with, and severely ill from, COVID–19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID–19 Response Coordinator's September 2021 announcement regarding the United States' plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID–19 beginning in early November 2021.[3] DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to align the treatment of different types of travel and allow those who are fully vaccinated against COVID–19 to travel to the United States, whether for essential or non-essential reasons.[4]

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,[5] DHS announced that

[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Canada border to ''essential travel,'' as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

[2] *See* 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border); 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border).

[3] *See* Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), *https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/* (''As was announced in a call earlier today . . . [w]e—starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID–19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.'').

[4] *See* 86 FR 58218; 86 FR 58216.

[5] Changes to requirements for travel by air were implemented by, *inter alia,* Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (''Presidential Proclamation 10294''), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (''CDC Order''). *See also* CDC, *Requirement for Proof of Negative COVID–19 Test or Recovery from COVID–19 for All Air Passengers Arriving in the United States, https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf* (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States, https://*

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beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status upon request.[6] DHS also announced in October 2021 that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs—whether for essential or non-essential reasons—would be required to be fully vaccinated against COVID–19 and provide proof of full COVID–19 vaccination status. In making this announcement, the Department provided fair notice of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to become fully vaccinated against COVID–19.[7]

On January 24, 2022, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United States at land POEs along the United States borders with Mexico and Canada by requiring proof of COVID–19 vaccination upon request at arrival, largely consistent with the limited exceptions then available with respect to COVID–19 vaccination in the international air travel context.[8] On April 22, 2022, DHS announced the continuation of such restrictions until further notice.[9] DHS cautioned that the restrictions addressed temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes with respect to Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.[10] DHS indicated that in conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.[11]

On January 30, 2023, the Administration announced its intention to ''extend the [COVID–19 national emergency and public health emergency] to May 11, [2023] and then end both emergencies on that date.'' [12] Consistent with the Administration announcement, DHS has continued to closely monitor the travel requirements at land POEs, and the Secretary has considered the appropriate termination of those travel requirements pursuant to 19 U.S.C. 1318 in light of intervening changes to related Presidential and interagency assessments of COVID–19.

Termination of the Public Health Emergency and Air Travel Restrictions

On February 10, 2023, the White House announced that ''we are in a different phase'' of the response to the COVID–19 pandemic precipitating an orderly transition to end the national emergency declared in March 2020.[13] While the spread of SARS–CoV–2, the virus that causes COVID–19, remains a public health priority, based on current COVID–19 trends, the Department of Health and Human Services is planning for the federal Public Health Emergency for COVID–19, declared under Section 319 of the Public Health Service Act, to expire at the end of the day on May 11, 2023.[14] On May 1, 2023, the White House announced the impending termination of COVID–19 air travel restrictions, effective at the end of the day on May 11, 2023.[15] This Notification ensures that applicable restrictions at the land POEs terminate concurrent with the parallel air travel restrictions.

Notice of Action

In light of intervening changes in Presidential and interagency assessments of current trends in COVID–19, I have determined that it is no longer necessary to impose temporary restrictions on the processing of travelers to the United States at the United States-Mexico border. I intend for this Notification to be given effect to the fullest extent allowed by law. In the event that a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. In addition, it is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and Mexico on how best to control COVID–19 transmission over our shared borders and therefore directly ''involve[s] . . . a . . . foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–09949 Filed 5–8–23; 8:45 am]

BILLING CODE 9112–FP–P

www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. See CDC, Requirement for Proof of Negative COVID–19 Test Result or Recovery from COVID–19 for All Airline Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf (Dec. 2, 2021).

[6] *See* 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico); 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada).

[7] *See* DHS, DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings, *https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-us-land-and-ferry* (Oct. 29, 2021); DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, *https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals* (updated Jan. 20, 2022); *see also* DHS, Frequently Asked Questions: Guidance for Travelers to Enter the U.S., *https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us* (updated Jan. 20, 2022).

[8] *See* 87 FR 3425 (Jan. 24, 2022) (Mexico notice); 87 FR 3429 (Jan. 24, 2022) (parallel Canada notice).

[9] *See* 87 FR 24041 (Apr. 22, 2022) (Mexico notice); 87 FR 24048 (Apr. 22, 2022) (parallel Canada notice).

[10] *Id.*

[11] *Id.*

[12] Office of Mgmt. & Budget, Exec. Office of the President, Statement of Administration Policy (Jan. 30, 2023), *available at https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf.*

[13] White House Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic (Feb. 10, 2023), *available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/10/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-3/; see also* 88 FR 9385 (Feb. 14, 2023) (providing **Federal Register** notice of same).

[14] Fact Sheet: COVID–19 Public Health Emergency Transition Roadmap (Feb. 9, 2023), *available at https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html.*

[15] *See* The White House, Statements and Releases, The Biden-Harris Administration Will End COVID–19 Vaccination Requirements for Federal Employees, Contractors, International Travelers, Head Start Educators, and CMS-Certified Facilities (May 1, 2023), *available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/* (last visited May 1, 2023).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1307

[Docket No. DEA–407]

RIN 1117–AB40 and 1117–AB78

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 12

Temporary Extension of COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications

AGENCY: Drug Enforcement Administration, Department of Justice; Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Temporary rule.

SUMMARY: On March 1, 2023 the Drug Enforcement Administration (DEA), in concert with the Department of Health and Human Services (HHS), promulgated two notices of proposed rulemakings (NPRMs) soliciting comments on proposals to allow for prescribing of controlled medications pursuant to the practice of telemedicine in instances where the prescribing practitioner has never conducted an in-person medical evaluation of the patient. Those NPRMs resulted in 38,369 public comments, which are being closely reviewed. DEA, in concert with HHS, is considering revisions to the proposed rules set forth in the NPRMs. In the meantime, and following initial review of the comments received, DEA, jointly with the Substance Abuse and Mental Health Services Administration (SAMHSA), is issuing this temporary rule to extend certain exceptions granted to existing DEA regulations in March 2020 as a result of the COVID–19 Public Health Emergency (COVID–19 PHE), in order to avoid lapses in care for patients. Ultimately, there will be a final set of regulations permitting the practice of telemedicine under circumstances that are consistent with public health, safety, and effective controls against diversion.

DATES: This rule is effective May 11, 2023, through November 11, 2024.

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:

I. Background

Overview

Under the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (the Ryan Haight Act), a prescribing practitioner—subject to certain exceptions—may prescribe controlled medications to a patient only after conducting an in-person evaluation of that patient. In response to the COVID–19 Public Health Emergency (COVID–19 PHE) as declared by the Secretary (the Secretary) of the Department of Health and Human Services (HHS) on January 31, 2020, pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247), the Drug Enforcement Administration (DEA) granted temporary exceptions to the Ryan Haight Act and DEA's implementing regulations under 21 U.S.C. 802(54)(D), thereby allowing the prescribing of controlled medications via telemedicine encounters—even when the prescribing practitioner had not conducted an in-person medical evaluation of the patient—in order to prevent lapses in care. These telemedicine flexibilities authorize practitioners to prescribe schedule II–V controlled medications via audio-video telemedicine encounters, including schedule III–V narcotic controlled medications approved by the Food and Drug Administration (FDA) for maintenance and withdrawal management treatment of opioid use disorder via audio-only telemedicine encounters, without requiring an in-person medical evaluation, provided that such prescriptions otherwise comply with the requirements outlined in DEA guidance documents, DEA regulations, and applicable Federal and State law. DEA granted those temporary exceptions to the Ryan Haight Act and DEA's implementing regulations via two letters published in March 2020:

- A March 25, 2020 ''Dear Registrant'' letter signed by William T. McDermott, DEA's then-Assistant Administrator, Diversion Control Division (the McDermott Letter); [1] and
- A March 31, 2020 ''Dear Registrant'' letter signed by Thomas W. Prevoznik, DEA's then-Deputy Assistant Administrator, Diversion Control Division (the Prevoznik Letter).[2]

On March 1, 2023, DEA, in concert with HHS, promulgated two NPRMs in the **Federal Register**—''Telemedicine prescribing of controlled substances when the practitioner and the patient have not had a prior in-person medical evaluation'' [3] (the General Telemedicine Rule) and ''Expansion of induction of buprenorphine via telemedicine encounter'' [4] (the Buprenorphine Rule)—which proposed to expand patient access to prescriptions for controlled medications via telemedicine encounters relative to the pre-COVID–19 PHE landscape. The purpose of the two proposed rules was to make permanent some of the telemedicine flexibilities established during the COVID–19 PHE in order to facilitate patient access to controlled medications via telemedicine when consistent with public health and safety, while maintaining effective controls against diversion. The comment period for these two NPRMs closed on March 31, 2023. Those NPRMs generated a total of 38,369 public comments—35,454 comments on the General Telemedicine Rule and 2,915 comments on the Buprenorphine Rule.

SAMHSA and DEA strongly support policies that promote access to effective and safe treatment for opioid use disorder, including through telemedicine platforms, and ensuring continued access to necessary controlled medications past the COVID–PHE.

After reviewing those comments, DEA, jointly with SAMHSA, is issuing this temporary rule to effectuate the following:

- The full set of telemedicine flexibilities regarding prescription of controlled medications as were in place during the COVID–19 PHE will remain in place through November 11, 2023.
- Additionally, for any practitioner-patient telemedicine relationships that have been or will be established on or before November 11, 2023, the full set of telemedicine flexibilities regarding prescription of controlled medications as were in place during the COVID–19 PHE will continue to be permitted via a one-year grace period through November 11, 2024. In other words, if a patient and a practitioner have established a telemedicine relationship on or before November 11, 2023, the same telemedicine flexibilities that have governed the relationship to that point are permitted until November 11, 2024.

[1] 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.*

[2] 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.*

[3] 88 FR 12,875 (Mar. 1, 2023).

[4] 88 FR 12,890 (Mar. 1, 2023).

In the meantime, DEA is continuing to carefully evaluate the comments received on the NPRMs and anticipates implementation of a final set of regulations permitting the practice of telemedicine under circumstances that are consistent with public health, safety, and effective controls against diversion; the goal of this temporary rule is to ensure a smooth transition for patients and practitioners that have come to rely on the availability of telemedicine for controlled medication prescriptions, as well as allowing adequate time for providers to come into compliance with any new standards or safeguards that DEA and/or SAMHSA promulgate in one or more final rules.

History of This Rulemaking

In the General Telemedicine Rule NPRM, DEA, in concert with HHS, proposed to extend the COVID–19 PHE telemedicine flexibilities for 180 days beyond the end of the COVID–19 PHE for practitioner-patient relationships established via telemedicine encounters during the COVID–19 PHE.[5] Within the ''Request for Comments'' section, DEA requested comments concerning whether any additional regulatory provisions were warranted to ensure appropriate access to care, and noted that the proposed rule was designed to ensure that patients do not experience lapses in care.[6] The ''Request for Comments'' section also explained that the proposed rule was designed to ensure continuity of care under the current telehealth flexibilities in place as a result of the COVID–19 PHE.[7] In response to the proposed rule and these requests for comments, DEA received hundreds of comments in support of further extending, beyond the initial period of 180 days, the telemedicine flexibilities for registrants who established practitioner-patient relationships via telemedicine encounters during the COVID–19 PHE. DEA also received thousands of comments supporting a similar extension of the COVID–19 PHE telemedicine flexibilities, for at least 180 days, for practitioner-patient relationships that will begin after the end of the COVID–19 PHE.

II. Legal Authority

The Ryan Haight Act amended the Controlled Substances Act (CSA) to generally require that the dispensing of controlled medications by means of the internet be predicated on a valid prescription involving at least one in-person medical evaluation. At the same time, it also established excepted categories 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.[8]

One of these categories authorizes the Attorney General and the Secretary of Health and Human Services to jointly promulgate rules that would allow practitioners to prescribe medications for patients via telemedicine without having had an in-person evaluation when such telemedicine practice is in accordance with applicable Federal and State laws, uses an approved telecommunications system, and is ''conducted under . . . circumstances that the[y have] . . . determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.'' [9]

Pursuant to this authority, and in response to comments received on the NPRMs, DEA, jointly with SAMHSA, is hereby promulgating a temporary rule specifying certain circumstances under which practitioners may prescribe controlled medications, for a narrow time period, to patients whom the practitioner has never evaluated in person. This temporary rule covers the portions of the NPRM related to extensions of the telemedicine flexibilities in place during the COVID–19 PHE, and it extends, through November 11, 2023, the telemedicine flexibilities that have been in place since March 2020 for prescribing controlled medications via the practice of telemedicine. This temporary rule also extends the COVID–19 PHE telemedicine flexibilities through November 11, 2024, as applied to any practitioner-patient relationships established via telemedicine encounters on or before November 11, 2023. In other words, as long as a practitioner and patient have established a telemedicine relationship on or before November 11, 2023, the pandemic telemedicine flexibilities will be extended through November 11, 2024, as to that established relationship. These telemedicine flexibilities will not be applicable to any practitioner-patient relationships established after November 11, 2023. As noted previously, DEA and/or SAMHSA anticipate implementing a final set of regulations permitting the practice of telemedicine under circumstances that are consistent with public health, safety, and effective controls against diversion. However, given the impending end of the COVID–19 PHE and in recognition of comments received,[10] DEA, jointly with SAMHSA, has elected to extend those flexibilities to avoid lapses in care.

As explained further below, because this is a temporary extension of flexibilities that existed during the COVID–19 PHE, DEA and SAMHSA have determined that this temporary rule is consistent ''with effective controls against diversion and otherwise consistent with the public health and safety'' as required under 21 U.S.C. 802(54)(G). DEA, jointly with SAMHSA, is promulgating this temporary rule pursuant to 21 U.S.C. 802(54)(G).

DEA is issuing these regulatory changes jointly with SAMHSA. SAMHSA concurs with this rule. SAMHSA also has advised DEA that no additional rulemaking by SAMHSA is necessary as it pertains to the promulgation of these provisions pursuant to 21 U.S.C. 802(54)(G).

III. Purpose and Need for Regulatory Changes

The purpose of this rulemaking is to extend for a limited period of time the telemedicine flexibilities that existed during the COVID–19 PHE in order to:

- Facilitate continuity of care for telemedicine relationships established via telemedicine during the COVID–19 PHE;
- For relationships established both during the COVID–19 PHE and those established shortly after, prevent backlogs with respect to in-person medical evaluations in the months shortly before and after the expiration of the COVID–19 PHE and ensure the availability of telemedicine for practitioners and patients that have come to rely on it;
- Address the urgent public health need for continued access to the initiation of buprenorphine as medication for opioid use disorder in the context of the continuing opioid public health crisis;
- Allow patients, practitioners, pharmacists, service providers, and other stakeholders sufficient time to

[5] 88 FR 12,879, 12888 (Mar. 1, 2023).

[6] *See* 88 FR at 12,882.

[7] *See id.*

[8] 21 U.S.C. 802(54)(A)–(G). The Attorney General has delegated his rulemaking authority under this provision to the Administrator of DEA via 28 CFR 0.100. The Secretary of HHS delegated his rulemaking authority under 21 U.S.C. 802(54)(G) to the Assistant Secretary for Mental Health and Substance Use within the Substance Abuse and Mental Health Services Administration on May 4, 2023.

[9] 21 U.S.C. 802(54)(G).

[10] It is anticipated that the COVID–19 PHE will expire on May 11, 2023.

prepare for the implementation of any future regulations that apply to prescribing of controlled medications via telemedicine;

• Enable DEA, jointly with SAMHSA, to thoroughly review and respond to the 38,369 comments they received in response to the two NPRMs; and

• Enable DEA, jointly with SAMHSA, to conduct a thorough evaluation of regulatory alternatives in order to promulgate regulations that most effectively expand access to telemedicine encounters in a manner that is consistent with public health and safety, while maintaining effective controls against diversion.

IV. Summary of Temporary Rule Changes

This rule adds new 21 CFR 1307.41 and 42 CFR 12.1, effective from the day after the public health emergency ends, which is expected to be May 12, 2023, through November 11, 2024. Paragraph (a) states that this temporary rule is in effect until November 11, 2024, and will expire at the end of that day. It also states that the authorization granted in paragraph (c) expires at the end of November 11, 2023.

Paragraph (b) states that a practitioner and patient have a ''telemedicine relationship established via COVID–19 telemedicine prescribing flexibilities'' if the practitioner issued the patient a prescription for controlled medications pursuant to the telemedicine flexibilities that were available during the COVID–19 PHE and extended through November 11, 2023 by this temporary rule.

Paragraph (c) extends the COVID–19 telemedicine prescribing flexibilities for six months, from May 12, 2023 through November 11, 2023, provided all of the conditions listed in paragraph (e) are met.

Paragraph (d) provides for a partial extension of those telehealth flexibilities through November 11, 2024, but only with respect to patients with whom the prescribing practitioner has a telemedicine relationship established via COVID–19 telemedicine prescribing flexibilities on or before November 11, 2023, as defined in paragraph (b) and provided all the conditions listed in paragraph (e) are met.

Paragraph (e) describes the conditions which must be met for practitioners to issue prescriptions pursuant to paragraphs (c) and (d). All such requirements were in place during the COVID–19 PHE:

• First, the prescription must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.[11]

• Second, the prescription must be issued pursuant to a communication between a practitioner and a patient using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3)—that is, audio and video equipment permitting two-way, real-time interactive communication or, for prescriptions to treat a mental health disorder—which include, but are not limited to, prescriptions for buprenorphine for opioid use disorder—a two-way, real-time audio-only communication if the distant site physician or practitioner is technically capable of using an interactive audio-video telecommunications system, but the patient is not capable of, or does not consent to, the use of video technology.[12]

• Third, the practitioner must be authorized under their registration under 21 CFR 1301.13(e)(1)(iv) to prescribe the basic class of controlled medications specified on the prescription or exempt from obtaining a registration to dispense controlled medications under 21 U.S.C. 822(d).[13]

• Fourth, the prescription must be consistent with all other requirements of 21 CFR part 1306.[14]

V. Discussion of Comments

Comment: DEA received several thousand comments supporting an extension of the COVID–19 PHE telemedicine flexibilities for all practitioner-patient telemedicine relationships, not only those established during the COVID–19 PHE. Commenters raised the following arguments in support of extending the COVID–19 telehealth flexibilities for all practitioner-patient telemedicine relationships:

• If DEA, jointly with SAMHSA, were to extend the telemedicine flexibilities to the dates suggested by commenters, such as until December 31, 2024, it would provide DEA, SAMHSA, and other agencies with a longer timeframe to educate patients, practitioners, and pharmacies about any changes in regulatory requirements and would be consistent with certain other statutory extensions of healthcare-related flexibilities beyond the end of the COVID–19 PHE.[15]

• In the absence of an extension, practitioners could be inundated with in-person evaluation requests and backlogs for in-person medical evaluations might result. Along similar lines, practitioner infrastructure might prove inadequate if practitioners were inundated with in-person evaluation requests over a short period of time.

DEA also received several comments generally opposing an extension of the telemedicine flexibilities. Commenters raised the following arguments in support of this position:

• The telemedicine flexibilities that existed during the COVID–19 PHE increased diversion and overprescribing of some controlled medications, particularly as a result of certain telemedicine companies that do not conduct or require *bona fide* medical evaluations of patients prior to issuance of controlled medication prescriptions.

Response: DEA and SAMHSA largely agree with the arguments asserted in the comments on this issue for broadening the extension to all practitioner-patient relationships for an additional six-month period, not only for those relationships established during the COVID–19 PHE. Accordingly, at this time, DEA, jointly with SAMHSA, has elected to extend the telemedicine flexibilities not only for practitioner-patient relationships established via telemedicine encounters during the COVID–19 PHE, but also for those relationships established via telemedicine encounters after the end of the COVID–19 PHE, for a period of six months, through November 11, 2023. It is planned that one or more final rules will be issued based on the two proposed rules published on March 1, 2023.

DEA and SAMHSA agree that immediately ceasing the COVID–19 telemedicine flexibilities for relationships established both during and following the end of the COVID–19 PHE would jeopardize continuity of patient care. In particular, without a general extension, patients seeking

[11] *See* 21 CFR 1306.04(a); Prevoznik letter at 2. Though not specifically mentioned in the McDermott letter, the McDermott letter did not provide an exemption to the requirement in 21 CFR 1306.04(a) that every prescription must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

[12] *See* 42 CFR 410.78(a)(3); McDermott Letter at 2 (citing 21 U.S.C. 802(54)(D)); Prevoznik Letter at 2.

[13] *See* McDermott Letter at 1.

[14] Both the McDermott Letter and the Prevoznik Letter specified which requirements of Part 1306 from which practitioners were exempted. Requirements not exempted in the letters remained in effect.

[15] Some commenters noted that Section 4113 of the Health Extenders, Improving Access to Medicare, Medicaid, and CHIP, and Strengthening Public Health Act of 2022 (Division FF of the Consolidated Appropriations Act, 2023) has extended some flexibilities to Medicare beneficiaries through December 31, 2024 and asked for a similar extension with respect to telemedicine prescribing flexibilities for controlled medications. *See* Consolidated Appropriations Act, 2023, Public Law 117–328, Div. FF § 4113, Dec. 29, 2022, 136 Stat. 4459, 5898.

prescriptions of controlled medications following expiration of the COVID–19 PHE as a result of existing or new practitioner-patient telemedicine relationships might be met with backlogs, as practitioners might be inundated with requests for in-person medical evaluations. In addition, practitioners might find it difficult to manage the period shortly after the COVID–19 PHE expires with respect to new patients in the absence of a short-term extension of the flexibilities that have existed since March 2020.

DEA and SAMHSA anticipate the issuance of final rules extending certain telemedicine flexibilities on a permanent basis. At this time, DEA does not believe it would be consistent with effective controls against diversion to grant a longer extension—beyond this initial six-month period—for practitioner-patient relationships that begin after the end of the COVID–19 PHE. This is an effort to disincentivize the creation of telemedicine companies that may seek to engage in problematic prescribing practices. By only extending the flexibilities for a short period, the six-month extension would be unlikely to incentivize the investment necessary to develop new telemedicine companies that might encourage or enable problematic prescribing practices. DEA stresses that, while certain telemedicine companies may engage in problematic behavior, many telemedicine companies are engaged in good faith, patient-centered prescribing practices. DEA looks forward to working with them—and future companies in this space—to further enhance patient access to needed medications when telemedicine prescriptions are appropriate and issued in the usual course of professional practice following *bona fide* medical evaluations.[16] In the meantime, DEA is actively investigating certain telemedicine companies that it believes may have engaged in problematic prescribing practices.

In addition, and as noted above, DEA received 38,369 comments on the General Telemedicine Rule and the Buprenorphine Rule. DEA is currently in the process of closely evaluating those comments, as well as all regulatory options available, but anticipates that this review will extend beyond the end of the COVID–19 PHE, which is expected to expire at the end of the day on May 11, 2023. Ultimately, DEA and SAMHSA anticipate implementing a final set of regulations permitting the practice of telemedicine under circumstances that are consistent with public health and safety, while maintaining effective controls against diversion. In the meantime, given the limited duration of this extension of the telemedicine flexibilities and legitimate concerns regarding patient access to care following the end of the COVID–19 PHE, DEA, jointly with SAMHSA, finds that the limited extension of the telemedicine flexibilities that existed during the COVID–19 PHE is consistent with public health, safety, and effective controls against diversion.

Comment: DEA also received several hundred comments supporting a further grace period—beyond 180 days—for requiring an in-person evaluation for practitioner-patient telemedicine relationships established during the COVID–19 PHE. Commenters raised the following arguments in support of this position:

- If DEA, jointly with SAMHSA, were to extend the telemedicine flexibilities for a longer period, such as until December 31, 2024, it would provide DEA, SAMHSA, and other agencies with a longer timeframe to educate patients and practitioners that have already established relationships and come to rely on the COVID–19 PHE flexibilities about any changes in regulatory requirements. Such a date would also be consistent with certain other statutory extensions of healthcare-related flexibilities beyond the end of the COVID–19 PHE.[17]
- In the absence of a grace period, practitioners could be inundated with in-person evaluation requests and backlogs for in-person medical evaluations might result.
- It may prove difficult for patients to obtain in-person medical evaluations within 180 days with practitioners with whom they have established legitimate telemedicine relationships given constraints on such patients' ability to travel, including the distance between the patient and practitioner, the need to request time off from work, or difficulty obtaining childcare.

DEA also received several comments generally opposing a grace period with respect to the telemedicine prescribing flexibilities. Commenters raised the following arguments in support of this position:

- The telemedicine flexibilities that existed during the COVID–19 PHE may have increased diversion and overprescribing of some controlled medications, particularly as a result of for-profit telemedicine companies that do not conduct or require *bona fide* medical evaluations of patients prior to issuance of controlled medication prescriptions.

Response: DEA and SAMHSA largely agree with the arguments asserted in the comments on this issue for lengthening the grace period for relationships that began during the COVID–19 PHE or that will begin during the extension granted for the next six months. DEA and SAMHSA are concerned that a 180-day period would be too brief an exemption for practitioner-patient telemedicine relationships established during the COVID–19 pandemic, as both practitioners and patients may have come to rely on the ability to meet via telemedicine. In addition, with a grace period of only 180 days, practitioners—including those with significant numbers of telemedicine patients—might find it difficult to meet with all patients with whom they had developed a telehealth relationship during the COVID–19 PHE or in the six months after. Accordingly, for those practitioner-patient relationships established between the start of the COVID–19 PHE and November 11, 2023, DEA, jointly with SAMHSA, is permitting a grace period for the COVID–19 PHE telehealth flexibilities through November 11, 2024, as they have determined that doing so would be consistent with public health and safety as required under 21 U.S.C. 802(54)(G).

With respect to the arguments against the grace period, DEA agrees with commenters who noted that there were instances of overprescribing and potentially diversion during the COVID–19 PHE, particularly with respect to certain for-profit telemedicine companies. However, DEA believes that authorizing an initial time-limited grace period for the telemedicine flexibilities as they have existed during the COVID–19 PHE for practitioner-patient telemedicine relationships established during the COVID–19 PHE and for the six months thereafter would be consistent with effective controls against diversion. DEA believes this limited extension through November 11, 2024, would be unlikely to incentivize the investment necessary to further develop telemedicine companies that have already encouraged and enabled

[16] The Ryan Haight Act makes it unlawful for an entity to knowingly or intentionally cause the internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by law. *See* 21 U.S.C. 841(h)(2)(C). In spite of this clear statutory prohibition, DEA is aware of certain rogue websites that were designed primarily to make money by selling prescription drugs containing controlled substances without *bona fide* medical evaluations for patients.

[17] Some commenters noted that Section 4113 of the Consolidated Appropriations Act of 2023 has extended some flexibilities to Medicare beneficiaries through December 31, 2024 and asked for a similar extension with respect to telemedicine prescribing flexibilities for controlled medications. *See* Consolidated Appropriations Act, 2023, Public Law 117–328, Div. FF § 4113, Dec. 29, 2022, 136 Stat. 4459, 5898.

these problematic prescribing practices during the COVID–19 PHE. Accordingly, at this time, DEA, jointly with SAMHSA, finds that the one-year grace period granted herein with respect to relationships established between the start of the COVID–19 PHE and November 11, 2023, is consistent with effective controls against diversion as required under 21 U.S.C. 802(54)(G).

VI. Regulatory Analyses

Administrative Procedure Act

DEA has considered the public comments it received on the two proposed rules, regarding the continuation of the flexibilities that will be implemented by this temporary rule. An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA). Under the APA, agencies must generally provide a 30-day delayed effective date for final rules.[18] An agency may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule'' or for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' [19]

As discussed earlier, DEA, jointly with SAMHSA, is publishing this temporary rule to extend certain exceptions granted to existing DEA regulations in March 2020 as a result of the COVID–19 PHE in order to avoid lapses in care for patients. In particular, if this 30-day delay applied, patients might experience a lapse in care because the existing telemedicine flexibilities would end on May 11, 2023. For these reasons, DEA, jointly with SAMHSA, concludes that such good cause exists to justify an immediate effective date for this temporary rule.

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

This temporary 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 $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); 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, territorial, 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 legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this E.O., as specifically authorized in a timely manner by the Administrator of OIRA in each case.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and DEA has determined that it is a significant regulatory action under E.O. 12866, but not a Section 3(f)(1) significant regulatory action. Accordingly, this rule has been submitted to the OMB for review.

DEA, jointly with SAMHSA, is publishing this temporary rule to extend certain exceptions DEA granted to its existing regulations in March 2020 as a result of the COVID–19 PHE in order to avoid lapses in coverage for patients. DEA and/or SAMHSA anticipate publishing at least one final rule as part of these rulemakings.

Without this temporary rule, COVID–19 PHE telemedicine flexibilities are scheduled to expire on May 11, 2023. This rule extends the expiration of those flexibilities through November 11, 2023 for all telemedicine relationships, and through November 11, 2024, for such telemedicine relationships that were established on or before November 11, 2023. Because this rule does not create or remove any regulatory requirements, DEA and SAMHSA estimate that there is no cost associated with this temporary rule. However, DEA and SAMHSA believe this extension and grace period create a benefit in form of cost savings to prescribers and patients and reduced transfer payments to the federal government, similar to those described in the General Telemedicine Rule.

However, due to the nature of this rule, differing policies between the flexibilities being extended with this temporary rule and the flexibilities still proposed in the General Telemedicine Rule, and the expectation that additional policy will be addressed in a final rule prior to the expiration date of November 11, 2023, DEA is unable to quantify the cost savings and reduction in transfer payments.

Executive Order 12988, Civil Justice Reform

The temporary rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132, Federalism

This temporary rule does not have federalism implications warranting the application of E.O. 13132. The 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 temporary 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 Temporary Rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This Temporary Rule, as discussed above, merely extends for a limited time the status quo with respect to the current flexibilities allowed during the COVID–19 PHE, in order to avoid lapses in coverage for patients.

Without this temporary rule, COVID–19 PHE telemedicine flexibilities would expire on May 11, 2023. While this temporary rule does not create or remove any regulatory requirements, this temporary rule extends the expiration of those flexibilities through November 11, 2023 and provides a grace period for certain telemedicine relationships through November 11, 2024. DEA and SAMHSA believe this extension and grace period create a benefit in form of cost savings to

[18] 5 U.S.C. 553(d).

[19] 5 U.S.C. 553(d)(1), (3).

prescribers and patients and reduced transfer payments to the federal government. However, the benefits have a sunset provision; additionally, this rule is expected to be supplemented by another rule prior to the expiration date of November 11, 2023.

In accordance with the RFA, DEA will be evaluating the impact on small entities at the time the final rule or rules are issued as part of these rulemakings.

Paperwork Reduction Act of 1995

This temporary rule will not impose a new collection or modify an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). Also, this temporary rule does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or other organizations. 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.

Congressional Review Act

This temporary rule is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act or CRA).[20] However, pursuant to the CRA, DEA is submitting a copy of this temporary rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1307

Administrative practice and procedure, Drug traffic control, Prescription drugs.

For the reasons set out above, the Drug Enforcement Administration is amending 21 CFR part 1307 as follows:

PART 1307—MISCELLANEOUS

■ 1. The authority citation for part 1307 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 829, 871(b), 951, 958(f).

■ 2. Add an undesignated center header after § 1307.31, and add § 1307.41 to read as follows:

Special Exceptions Related to Telemedicine

§ 1307.41 Temporary Extension of Certain COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications.

(a) This section is in effect until the end of the day November 11, 2024. The authorization granted in paragraph (c) of this section expires at the end of November 11, 2023.

(b) For purposes of this section, a practitioner and a patient have a *telemedicine relationship established via COVID–19 telemedicine prescribing flexibilities* if:

(1) The practitioner has not conducted an in-person medical evaluation of the patient; and

(2) The practitioner has prescribed one or more controlled substances to the patient

(i) Pursuant to the designation on March 16, 2020, by the Secretary of Health and Human Services, with concurrence of the Acting DEA Administrator, that the telemedicine allowance under 21 U.S.C. 802(54)(D) applies to all schedule II–V controlled substances in all areas of the United States for the duration 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 pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247); or

(ii) Pursuant to paragraph (c) of this section.

(c) During the period May 12, 2023 through November 11, 2023, a DEA-registered practitioner is authorized to prescribe schedule II–V controlled substances via telemedicine, as defined in § 1300.04(i) of this chapter, to a patient without having conducted an in-person medical evaluation of the patient if all of the conditions listed in paragraph (e) of this section are met.

(d) During the period November 12, 2023 through November 11, 2024, a DEA-registered practitioner is authorized to prescribe schedule II–V controlled substances via telemedicine, as defined in § 1300.04(i) of this chapter, to a patient with whom the practitioner has a telemedicine relationship established via COVID–19 telemedicine prescribing flexibilities without having conducted an in-person medical evaluation of a patient if all of the conditions listed in paragraph (e) of this section are met.

(e) A practitioner is only authorized to issue prescriptions for controlled substances pursuant to paragraphs (c) or (d) of this section if all of the following conditions are met:

(1) The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice;

(2) The prescription is issued pursuant to a communication between a practitioner and a patient using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3);

(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); and

(4) The prescription is consistent with all other requirements of 21 CFR part 1306.

Title 42—Public Health

■ For the reasons set out above, the Department of Health and Human Services adds part 12 to title 42 of the Code of Federal Regulations to read as follows:

PART 12—TELEMEDICINE FLEXIBILITIES

Subpart A—Special Exceptions Related to Telemedicine

Sec.

12.1 Temporary Extension of Certain COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications.
12.2 [Reserved]

Authority: 21 U.S.C. 802(54)(G).

Subpart A—Special Exceptions Related to Telemedicine

§ 12.1 Temporary Extension of Certain COVID–19 Telemedicine Flexibilities for Prescription of Controlled Medications.

(a) This section is in effect until the end of the day November 11, 2024. The authorization granted in paragraph (c) of this section expires at the end of November 11, 2023.

(b) For purposes of this section, a practitioner and a patient have a telemedicine relationship established via COVID–19 telemedicine prescribing flexibilities if:

(1) The practitioner has not conducted an in-person medical evaluation of the patient; and

(2) The practitioner has prescribed one or more controlled substances to the patient

(i) Pursuant to the designation on March 16, 2020, by the Secretary of Health and Human Services, with concurrence of the Acting DEA Administrator, that the telemedicine allowance under 21 U.S.C. 802(54)(D) applies to all schedule II–V controlled substances in all areas of the United States for the duration 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 pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247); or

[20] 5 U.S.C. 804(2).

(ii) Pursuant to paragraph (c) of this section.

(c) During the period May 12, 2023 through November 11, 2023, a DEA-registered practitioner is authorized to prescribe schedule II–V controlled substances via telemedicine, as defined in 21 CFR 1300.04(i), to a patient without having conducted an in-person medical evaluation of the patient if all of the conditions listed in paragraph (e) of this section are met.

(d) During the period November 12, 2023 through November 11, 2024, a DEA-registered practitioner is authorized to prescribe schedule II–V controlled substances via telemedicine, as defined in 21 CFR 1300.04(i), to a patient with whom the practitioner has a telemedicine relationship established via COVID–19 telemedicine prescribing flexibilities without having conducted an in-person medical evaluation of a patient if all of the conditions listed in paragraph (e) of this section are met.

(e) A practitioner is only authorized to issue prescriptions for controlled substances pursuant to paragraphs (c) or (d) of this section if all of the following conditions are met:

(1) The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice;

(2) The prescription is issued pursuant to a communication between a practitioner and a patient using an interactive telecommunications system referred to in 42 CFR 410.78(a)(3);

(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); and

(4) The prescription is consistent with all other requirements of 21 CFR part 1306

§ 12.2 [Reserved]

Signing Authority

This document of the Drug Enforcement Administration and the Department of Health and Human Services was signed on May 4, 2023, by Administrator Anne Milgram. Those documents with the original signatures and dates 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.

Miriam E. Delphin-Rittmon,

Assistant Secretary for Mental Health and Substance Use, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2023–09936 Filed 5–9–23; 8:45 am]

BILLING CODE 4410–09–P; 4162–20–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0788; FRL–10880–01–OCSPP]

Cyflufenamid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of cyflufenamid in or on sugar beet. Nippon Soda Co., Ltd. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 10, 2023. Objections and requests for hearings must be received on or before July 10, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0788 is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0788 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 10, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0788, by one of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 22, 2022 (87 FR 16135) (FRL–9410–11–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F8950) by Nippon Soda Co., Ltd., ShinOhtemachi Bldg., 2–1, 2-Chome Ohtemachi, Chiyoda-ku, Tokyo, 100–8165, Japan. The petition requested that 40 CFR 180.667 be amended by establishing a tolerance for residues of the fungicide, cyflufenamid, [*N(Z)*]-*N*-[[(cyclopropylmethoxy)amino][2,3-difluoro-6-(trifluoromethyl)phenyl] methylene]benzeneacetamide, in or on sugar beets at 0.07 parts per million (ppm). That document referenced a summary of the petition prepared by Nippon Soda Co., Ltd., the registrant, which is available in the docket, *https://www.regulations.gov.* One comment was submitted by USDA on the notice of filing which supported this action.

Based upon review of the data supporting the petition, EPA has revised the commodity definition from Sugar beet to Beet, sugar, roots; and amended the proposed tolerance from 0.07 ppm to 0.15 ppm. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyflufenamid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with cyflufenamid follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings and republishing the same sections are unnecessary. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The target organs for cyflufenamid consist of the liver in mice and thyroid in rats. Liver toxicity for mice increased as the duration of exposure increased from subchronic to chronic; increases in toxicity with exposure duration was not observed in rats and dogs. Adverse liver toxicity was only observed in the mouse, with rats and dogs only exhibiting adaptive liver effects.

Thyroid effects observed in the rat included increased follicular cell hypertrophy, increased thyroid weight, and neoplastic thyroid follicular adenomas. There are no concerns for susceptibility associated with cyflufenamid exposure in developing and post-natal animals because the effects observed in the fetal and/or offspring animals in the rat and rabbit developmental and rat two-generation reproduction toxicity studies were at either the same dose or a higher dose than the dose in which effects occurred in the maternal and/or parental animals. Additionally, there are no concerns for neurotoxicity and immunotoxicity.

EPA has classified cyflufenamid as ''suggestive evidence of carcinogenic potential'', based on the presence of liver tumors in male mice. The point of departure (POD) for the chronic dietary exposure scenario (22 mg/kg/day) is protective of these effects, which were observed at much higher doses (325 mg/kg/day); therefore, quantification of risk using a non-linear approach (*i.e.,* reference dose, RfD, approach) is appropriate to adequately account for all chronic toxicity, including potential carcinogenicity. Additionally, there are no concerns for genotoxicity and mutagenicity.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CYFLUFENAMID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure scenario	Point of departure (POD)	Uncertainty/FQPA safety factors	RfD, PAD, level of concern for risk assessment	Study and toxicological effects
Summary of Toxicological Doses and Endpoints for use in Dietary and Residential Human Health Risk Assessments.				
Acute Dietary, General population (including infants and children), Females (13–49 years old).	An acute dietary assessment is not necessary at this time as there were no toxicological effects attributable to a single dose within the cyflufenamid toxicity database.			
Chronic Dietary	NOAEL = 22 mg/kg/day.	UF_A = 10X ..... UF_H = 10X ..... FQPA SF = 1X	cRfD = 0.22 mg/kg/day. cPAD = 0.22 mg/kg/day.	*Chronic Toxicity/Carcinogenicity Study in Rat (MRID 47620511)* LOAEL = 115 mg/kg/day, based on thyroid effects in both sexes (increased thyroid weight, follicular cell hypertrophy, follicular and parafollicular cell hyperplasia, parathyroid hyperplasia) and pancreas (acinar atrophy with chronic inflammation) effect in females.
Incidental Oral Short-Term (1–30 days).	NOAEL = 23 mg/kg/day.	UF_A = 10X ..... UF_H = 10X ..... FQPA SF = 1X	LOC for MOE = 100 ..	*90-day Oral Toxicity Study in Dogs (MRID 47620504)* LOAEL = 71 mg/kg/day, based on decreased bodyweights, brain histopathology, and thymus atrophy in both sexes.
Dermal Short Term (1–30 days) and Intermediate-Term (1–6 months).	A toxicity endpoint was not identified. Systemic toxicity was not seen in 28-day dermal toxicity in rats up to the limit dose (1000 mg/kg/day). There are no concerns for developmental or reproductive toxicity or neurotoxicity in rat and rabbit studies.			
Inhalation Short Term (1–30 days) and Intermediate-Term (1–6 months).	Oral NOAEL = 23 mg/kg/day, Inhalation Absorption = 100% Oral Absorption.	UF_A = 10X ..... UF_H = 10X ..... FQPA SF = 1X	LOC for MOE = 100 ..	*90-day Oral Toxicity Study in Dogs (MRID 47620504)* LOAEL = 71 mg/kg/day, based on decreased bodyweights, bodyweight gain, food consumption, and liver (↑liver weight, ↑ALP, hepatomegaly accompanied by vacuolated hepatocytes and fa deposition), brain histopathology, and thymus atrophy in both sexes.
Cancer	HED classified cyflufenamid as ''suggestive evidence of carcinogenic potential'' and quantification of risk using a non-linear approach (*i.e.,* RfD approach) is appropriate (TXR 0057036, J. Rowland, 12/02/2014).			

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed adverse-effect level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed adverse-effect level. PAD = population-adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyflufenamid, EPA considered exposure under the petitioned-for tolerances as well as all existing cyflufenamid tolerances in 40 CFR 180.667. EPA assessed dietary exposures from cyflufenamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for cyflufenamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America (USDA's NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues and 100% crop treated (100% CT) for all commodities. Anticipated residues and/or percent crop treated (PCT) data were not used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to cyflufenamid. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *Chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residues and/or PCT information in the dietary assessment for cyflufenamid. Tolerance level residues and/or 100% CT were assumed for all food commodities.

2. *Drinking water, non-occupational, and cumulative exposures.* Drinking water and non-occupational exposures are not impacted by the proposed use of cyflufenamid on sugar beet, and thus have not changed since the last assessment. For a summary of the dietary exposures from drinking water, see Unit III.C.2. of the February 9, 2018, rulemaking (87 FR 5711). There are no proposed residential uses for cyflufenamid at this time; however, there are existing uses that result in potential post-application residential exposures which have been previously

assessed using current data and assumptions. The registered uses anticipated to result in post-application dermal exposure to cyflufenamid include commercial treatment of outdoor ornamentals. Because the Agency has not identified a dermal endpoint, a quantitative residential dermal exposure assessment was not necessary and was not conducted. EPA's conclusions concerning cumulative risk remain unchanged from Unit III.C.4. of the February 9, 2018, rulemaking.

D. Safety Factor for Infants and Children.

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There are no concerns for susceptibility associated with cyflufenamid exposure in developing and post-natal animals. Additionally, there are no concerns for neurotoxicity and immunotoxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for cyflufenamid is complete.

ii. There is no indication that cyflufenamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that cyflufenamid results in increased susceptibility *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyflufenamid in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by cyflufenamid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, cyflufenamid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyflufenamid from food and water will utilize 1.3% of the cPAD for all infants <1 year old the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyflufenamid is not expected.

3. *Short-term risk.* A short-term adverse effect was identified for inhalation and oral exposures; however, cyflufenamid is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for cyflufenamid.

4. *Intermediate-term risk.* An intermediate-term adverse effect was identified; however, cyflufenamid is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for cyflufenamid.

5. *Aggregate cancer risk for U.S. population.* EPA has determined that quantification of risk using the RfD approach is appropriate and will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to cyflufenamid. Based on the conclusions of the chronic dietary assessment, EPA concludes that exposure to cyflufenamid is unlikely to pose an aggregate cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyflufenamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology high-performance liquid chromatography method with tandem mass spectrometry detection (HPLC/MS/MS), Method No. RD–01307 is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to

which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for cyflufenamid.

C. Revisions to Petitioned-For Tolerances

The Agency is establishing a tolerance for beet, sugar, roots at 0.15 ppm, which is higher than what the petitioner requested at 0.07 ppm based on Organization for Economic Cooperation and Development calculation procedures. Additionally, the Agency is establishing the tolerance for ''beet, sugar, roots'' rather than ''sugar beet'' to reflect the common commodity vocabulary currently used by the Agency.

V. Conclusion

Therefore, a tolerance is established for residues of cyflufenamid, [*N(Z)*]-*N*-[[(cyclopropylmethoxy)amino][2,3-difluoro-6-(trifluoromethyl) phenyl]methylene]benzeneacetamide, in or on Beet, sugar, roots at 0.15 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the National Government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.667, amend the table in paragraph (a) by adding a heading to the table and adding in alphabetical order the entry ''Beet, sugar, roots'' to read as follows:

§ 180.667 Cyflufenamid; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Beet, sugar, roots	0.15
* * * * *	

* * * * *

[FR Doc. 2023–09872 Filed 5–9–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2019–0056; FF09E22000 FXES11130900000 201]

RIN 1018–BD65

Endangered and Threatened Wildlife and Plants; Reclassifying Furbish's Lousewort (Pedicularis furbishiae) From Endangered to Threatened Status With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reclassifying (downlisting) Furbish's lousewort (*Pedicularis furbishiae*) from an endangered species to a threatened species under the Endangered Species Act of 1973, as amended (Act), and we finalize a rule under section 4(d) of the Act to promote the conservation of Furbish's lousewort. This information is based on a thorough review of the best available scientific and commercial information, which indicates the threats to the species have been reduced to the point that the species no longer meets the definition of an endangered species under the Act.

DATES: This rule is effective June 9, 2023.

ADDRESSES: This final rule, supporting documents we used in preparing this rule, and public comments we received on the proposed rule are available on the internet at *https://www.regulations.gov* at Docket No. FWS–R5–ES–2019–0056.

FOR FURTHER INFORMATION CONTACT: Amanda Cross, Project Leader, Maine Ecological Services Field Office, 306 Hatchery Road, East Orland, ME 04431; telephone 207–902–1567. 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:

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for Furbish's lousewort. The SSA team was composed of biologists from the Service and the State of Maine Natural Areas Program. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species (Service 2020, entire).

The SSA report can be found at *https://www.regulations.gov* under Docket No. FWS–R5–ES–2019–0056 and on the FWS website at: *https://www.fws.gov/species/st-johns-river-lousewort-pedicularis-furbishiae.*

Previous Federal Actions

Furbish's lousewort was listed as an endangered species on April 26, 1978 (43 FR 17910). We completed a recovery plan in 1983 (Service 1983) and revised it in 1991 (Service 1991). The revised recovery plan presented updated life-history and population information, and updated information on the threats to the species. A second revised recovery plan was signed on September 26, 2019, and on February 21, 2019, a 5-year status review was completed (Service 2019b) and concluded that Furbish's lousewort should be downlisted to a threatened species under the Act.

On January 15, 2021, we proposed to reclassify Furbish's lousewort from an endangered species to a threatened species with a rule issued under section 4(d) of the Act to provide for the conservation of the species, *i.e.,* a ''4(d) rule'' (86 FR 3976).

Summary of Changes From the Proposed Rule

In this rule, we make certain nonsubstantive, editorial changes to some text that we presented in the proposed rule, and we include a minor amount of new information (*e.g.,* some updated population information showing improved conditions and new conservation actions) that we received or that became available since the proposed rule published. However, this new information did not change our analysis, rationales, or determination for either the proposed reclassification of Furbish's lousewort to a threatened species or the proposed 4(d) rule for the species.

I. Reclassification Determination

Background

A thorough review of Furbish's lousewort is presented in the SSA report (Service 2020), found at *https://www.regulations.gov* under Docket FWS–R5–ES–2019–0056, which is briefly summarized here.

Species Information

Furbish's lousewort was first named and described in 1882 (Watson 1882, entire) and is recognized as a valid taxon. A thorough review of the taxonomy, life history, and ecology of Furbish's lousewort is presented in the SSA report.

Furbish's lousewort is an herbaceous perennial plant that occurs on the intermittently flooded, ice-scoured banks of the St. John River. It is endemic to Maine with a few, small subpopulations in northwestern New Brunswick, Canada. The population of Furbish's lousewort comprises 20 subpopulations associated with suitable habitat that occurs along portions of a 225-kilometer (140-mile) section of the St. John River. The plant is recognized early in the growing season by a basal rosette of fern-like leaves. By mid-summer, mature plants produce one or more flowering stems that grow to about 50 to 80 centimeters (20 to 30 inches) in height. The stems have alternate, widely spaced, fern-like leaves along their length and are topped by a tight cluster (inflorescence) of small, yellow, tube-like flowers that bloom only a few at a time. Furbish's lousewort has two distinct growth stages: vegetative (immature, nonflowering) individuals that grow as a basal rosette of leaves and reproductive (flowering) plants.

Furbish's lousewort does not spread clonally, and plants are established exclusively by sexual reproduction and seed (Stirrett 1980, p. 23; Menges 1990, p. 53). Flowering occurs at a minimum of 3 years once plants reach a certain size leaf area. Reproductive plants emerge in May and produce an average of 2 to 3 flowering stems; each stem has one or more inflorescences, and each inflorescence has up to 25 flowers. Flowers bloom several at a time from about mid-July to the end of August (Stirrett 1980, p. 24; Menges et al. 1986, p. 1169). Furbish's lousewort is pollinated by a single species of bumble bee, the half-black bumble bee (*Bombus vagans*) (Macior 1978, entire). About 50 percent of flowers produce egg-shaped seed capsules that ripen in late-September after which the tiny (1 millimeter) seeds are dropped (Menges et al. 1986, p. 1169; Gawler 1983, p. 27; Gawler et al. 1986, entire). Seeds lack mechanisms for wind or animal dispersal, and most drop near the parent plant. Each mature plant tends to form a colony around itself. During spring floods, it is conceivable that some seeds may disperse down-river (Stirrett 1980, pp. 26–27; Menges 1990, p. 53). The seeds germinate in moist, cool microhabitats having minimal herbaceous or woody plant competition or leaf litter, such as moss-covered soil or parts of the riverbank that are constantly wet. Furbish's lousewort lacks seed dormancy; seedlings result only from the previous year's reproduction (Menges 1990, p. 54). Seedlings emerge in June through August and have two true leaves during their first growing season (Gawler et al. 1987, entire). Like most species of *Pedicularis,* seedlings of Furbish's lousewort are obligate hemiparasites and obtain part of their nutrition from root attachments with a perennial host plant. The species seems to be a host-generalist, perhaps relying on nitrogen-fixing host plants in the mineral-poor soil in which it grows (Macior 1980, entire). The lifespan of adult flowering plants is uncertain.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove,

and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in downlisting a species from endangered to threatened.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological status review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether Furbish's lousewort should be reclassified under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess Furbish's lousewort viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochastic events (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. In addition, the SSA (Service 2020, entire) and 5-year review (Service 2019a, entire) document our comprehensive biological status review

for the species, including an assessment of the potential threats to the species.

To assess the resiliency of Furbish's lousewort, we reviewed the abundance of flowering and nonflowering individuals and colonization of populations through seed dispersal mechanisms; the dependency of populations on periodic ice scour and flooding; and the effects of climate change, and development. To assess the redundancy of Furbish's lousewort, we evaluated how the distribution and biological status of subpopulations contribute to the species' ability to withstand catastrophic events. Specifically, we examined how climate change and current and future development are likely to affect the number, sizes, and distribution of populations (Service 2020, pp. 38–39; 42–48; 52–59). To assess representation, we evaluated the environmental diversity within and among subpopulations.

Summary of Current Condition

Furbish's lousewort functions as a metapopulation. Unlike a continuous population, a metapopulation has spatially discrete local subpopulations, in which migration between subpopulations is significantly restricted. In the SSA report, we define subpopulations as separated by a mile or more of unsuitable habitat based primarily on the limitations of the species' pollinator, the half-black bumblebee. *Bombus* species typically exhibit foraging distances of less than 1 kilometer (0.62 miles) from their nesting sites (Knight et al. 2005, p. 1816; Wolf and Moritz 2008, p. 422). Based on this criterion, we identify 15 subpopulations of Furbish's lousewort in Maine and 5 in New Brunswick, Canada, that form the basis for our analysis of the current condition of the species. For our analysis, we first qualitatively assessed the subpopulations as ''good,'' ''fair,'' or ''poor,'' including the subpopulation's attributes: abundance, density, and current status as compared to the site history. We designated sites where Furbish's lousewort is currently thought to be absent (locally extirpated) as ''very poor.''

Next, we evaluated each subpopulation according to three habitat criteria: the amount of potential habitat, the condition of the forested riparian buffer, and the prevalence of shoreline erosion. We selected these habitat criteria to describe habitat quality because of their influence on the species' resource needs (Service 2020, p. 11, table 2). We assigned a score of 3 (good), 2 (fair), 1 (poor), or 0 (very poor) to each subpopulation and habitat criterion (Service 2020, pp. 31–32). The rankings presented in the SSA for the 15 subpopulations in Maine are 2 good, 2 fair to good, 3 fair, and 8 poor. Since the SSA was published, the Maine Natural Areas Program (MNAP) updated these rankings for the same subpopulations to 3 good, 3 fair to good, 1 fair, 1 poor to fair, and 7 poor (MNAP 2021, pp. 14–15). On average, the upriver subpopulations rank higher than the downriver subpopulations because of the high-quality habitat and low pressures from development. Six of the 15 subpopulations in Maine are currently extirpated (all downriver subpopulations). In New Brunswick, all five subpopulations rank as poor (Service 2020, pp. 33–36), and there are some differences between habitat conditions upriver and downriver. Upriver habitat is more extensive and occurs in a managed industrial forest. Downriver habitats (including New Brunswick) are smaller and more fragmented.

Risk Factors

Based on the life-history and habitat needs of Furbish's lousewort, and in consultation with species' experts, as well as experts in botany, ice scour and flooding of the St. John River, and landscape ecology, we identify the potential stressors (negative influences), the contributing sources of those stressors, and how conservation measures to address those stressors are likely to affect the species' current condition and viability (Service 2020, pp. 21–31). We evaluate how these stressors may be currently affecting the species and whether, and to what extent, they would affect the species in the future (Service 2020, pp. 40–57). The stressors most likely to affect the viability of Furbish's lousewort are: (1) Development resulting in habitat loss, erosion, and fragmentation; and (2) climate change that causes the current trends of warmer winters that affect the ice dynamics, flooding, and overall disturbance regime of the St. John River.

Historical land use patterns influence Furbish's lousewort habitat today; the land use upriver of the town of Allagash is undeveloped, while the downriver landscapes in Maine and farther downriver in New Brunswick are dominated by agriculture and small villages. Changes in land use on the banks of the St. John River in downriver areas have occurred through the clearing of vegetation, especially trees, for agriculture, individual house lots, and roads. These land use changes within the St. John River valley may have negatively affected habitat of some Furbish's lousewort subpopulations through removal or reduction of forested riparian buffers and subsequent loss of shade critical to the species' growth and reproduction. Areas cleared of forest, and impermeable surfaces associated with development, have led to the erosion and subsidence of the unconsolidated glacial till soils, and caused slumping and erosion of Furbish's lousewort habitat. Modest predicted trends of future development for the St. John River Valley are described in the SSA Report (Service 2020, p. 47). Future development will likely occur in the center of larger towns and expand into some areas currently in agricultural land use; this activity could cause slumping and erosion in Furbish's lousewort habitat.

Furbish's lousewort is identified as one of Maine's plant species most vulnerable to climate change (Jacobson et al. 2009, p. 33). The species depends on periodic disturbance of the riverbank from ice scour that is not too frequent or too infrequent and not too severe. Climate change is expected to affect the ice regime of northern rivers, including the St. John, by increasing the frequency and severity of ice scour and flood events (Service 2020, p. 23). River ice models for the St. John River demonstrate that key variables influencing the frequency and severity of ice scour, jamming, and flooding are caused by midwinter temperatures above freezing, midwinter precipitation in the form of rain, and increasing river flows (Beltaos and Prowse 2009, pp. 134–137). Beltaos (2002, entire) developed a hydroclimatic analysis for the upper St. John River using long-term climate and flow records. He documented that a small rise in winter air temperatures over the past 80 years has resulted in a substantial increase in the number of mild winter days and the amount of winter rainfall, which were previously rare occurrences in this region. These two factors augment river flows, causing increased breakup of ice cover, increased peak flows in late winter, and a higher frequency of spring ice jams and flooding (Service 2020, p. 24). Increasing summer temperatures may also affect Furbish's lousewort. The climate envelope of the species has not been described, but its closest genetic relatives are all arctic plants that require cool, moist environments. We are uncertain about the maximum summer temperatures and moisture deficits that Furbish's lousewort can withstand (Service 2020, p. 27).

Several conservation actions are in place and may reduce some of the stressors to Furbish's lousewort or provide habitat protection (see

Conservation Efforts for Furbish's lousewort, for more information).

Summary of Future Conditions Analysis

We assess two timeframes for characterizing the condition of Furbish's lousewort in the future. We selected the years 2030 and 2060 as a period for which we can reasonably project effects of the stressors and plausible conservation efforts. Climate change information for these timeframes is based on the available information contained in climate predicting models provided through the U.S. Geological Survey (USGS) Climate Change Viewer, Summary of the Upper St. John River Watershed, Aroostook County, Maine (USGS 2017a, b, entire). The timeframes of 2030 and 2060 capture approximately one to two, and four to five, generations of Furbish's lousewort, respectively. Development information for this timeframe is available in municipal comprehensive plans (Town of Fort Kent 2012, entire) and The University of Maine Sustainability Solutions Initiative (Service 2020, p. 41).

For each of the two timeframes, 2030 and 2060, we developed three future scenarios: continuation, best case, and a worst case. We provide a range of reasonable, plausible effects for development and climate change. For climate change scenarios, we use data from representative concentration pathways (RCPs) of greenhouse gas (GHG) concentration trajectories adopted by the International Panel on Climate Change (IPCC). The three RCPs selected, RCP 2.6, RCP 4.5, and RCP 8.5, reflect a wide range of possible changes in future anthropogenic GHG emissions. RCP 2.6 is a scenario that assumes that global GHG emissions have peaked and will decline after 2020. The continuation scenario assumes moderate increases in GHG emissions (RCP 4.5), moderate increases in development downriver, and conservation measures continuing or being reduced slightly. The best-case scenario assumes low GHG emissions (RCP 2.6), conservation measures remaining in place, and no further development downriver. The worst-case scenario assumes high GHG emissions and moderate increases of GHG emissions into the future (RCP 8.5), modest levels of development, and reduced conservation measures (Service 2020, p. 48).

All future predictions are uncertain; therefore, we qualified them using relative terms of likelihood that had been adopted as terminology specified by the IPCC (2014). Based on the future analysis, we predict that by 2030 there is a higher likelihood that, in all three scenarios, the metapopulation of the Furbish's lousewort will continue to decline due to local extirpations of downriver subpopulations. By 2060, we predict that it is likely that the overall viability of the metapopulation will be greatly reduced from current conditions and a few subpopulations will persist upriver in Maine. We predict that there is a high likelihood that in both the continuation and worst-case scenarios the metapopulation will no longer be viable; it will be extirpated throughout most of its range; and the few plants that remain would be concentrated at upriver sites.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

The SSA report contains a more detailed discussion on our evaluation of the biological status of the species and the influences that may affect its continued existence. Our conclusions are based upon the best available scientific and commercial data, including the judgments of the species' experts and peer reviewers. See the SSA report for a complete list of the species' experts and peer reviewers and their affiliations.

Existing Regulatory Mechanisms

Section 4(b)(1)(A) of the Act requires that the Service take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors or otherwise enhance the species' conservation. We give the strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations.

Municipal shoreline zoning in Maine now provides partial protection of Furbish's lousewort habitat (Service 2020, appendix 1). As established by State law in 2013, the shoreline zone extends to 250 feet from the high-water line all along the St. John River. Zoning prohibits clear-cutting within 50 feet of the river; openings located greater than 50 feet from the river (or 75 feet from the river for a few subpopulations in organized towns) are restricted to a maximum of 0.3 acres, and no more than 40 percent of the forest in the 250-foot zone can be harvested in a 10-year period (Maine Department of Environmental Protection Mandatory Shoreland Zoning, title 38, chapter 3, sections 435–449). Organized towns have the option to designate lousewort habitats as resource protection subdistricts, which would provide more stringent measures. Currently, no towns have designated any resource protection subdistricts for the lousewort (Service 2020, p. 28).

The New Brunswick Clean Water Act provides shoreline protections that convey a benefit to the Furbish's lousewort in Canada. The New Brunswick Department of Environmental and Local Government acts as the regulatory entity responsible for issuing all watercourse alteration permits. Guidelines for implementing the regulations specify that no heavy equipment may be operated within 15 meters of the bank of a watercourse, no ground disturbance may occur within 30 meters of a watercourse, and only 30 percent of the total merchantable trees may be removed from a 30-meter buffer zone every 10 years. All activities taking place within 30 meters of a watercourse that is either one hectare or larger in area or that involve the removal, deposit, or disturbance of the water, soil, or vegetation require a permit (Service 2020, p. 29).

Several parcels that support Furbish's lousewort have permanent protection. Since 2001, the New England Forestry Foundation has had a 754,673-acre conservation easement on lands along the St. John River where Furbish's lousewort occurs. The easement protects approximately 6.2 percent of the total population in Maine and restricts development rights in perpetuity. In 2019, The Maine Chapter of The Nature Conservancy purchased several areas of the St. John River corridor. The Maine Bureau of Parks and Lands (Bureau) owns a large unit in the town of

Allagash that provides several hundred feet of Furbish's lousewort habitat, approximately 2 percent of the population in Maine. The Bureau's integrated resource policy requires that the Bureau promote the conservation of federally listed species. One of the five subpopulations in New Brunswick is permanently protected (Service 2020, pp. 29–30).

The Furbish's lousewort was listed on Canada's Schedule 1 of the Species at Risk Act (SARA) in June 2003 and was initially designated as endangered by the Committee on the Status for Endangered Wildlife in Canada (COSEWIC) in 1980. With this proclamation, protection and recovery measures were developed and implemented.

The Furbish's lousewort is protected by New Brunswick's Endangered Species Act. Under this Act, it is prohibited to kill, harm, or collect this species or disturb its habitat on Federal lands (Service New Brunswick 1996, entire).

As discussed, Furbish's lousewort and its habitat receives some protection from regulatory mechanisms in both the United States and Canada. In the United States, the State of Maine and municipal regulations provide partial protection for shorefronts, which includes protections of riparian habitats where the lousewort could be located. These State and municipal regulations are enforced through local and State ordinances. They were not designed to protect Furbish's lousewort from direct take, and as such, the species is not regulated from direct take on private lands in Maine. In Canada, where populations are at historic lows, New Brunswick regulates heavy equipment use and buffer zones and prohibits take of Furbish's lousewort through the New Brunswick Endangered Species Act. Furbish's lousewort is further regulated as a Schedule 1 species at risk under SARA. Collectively these regulations provide protections in Canada for the Furbish's lousewort and its habitat.

Conservation Efforts for Furbish's Lousewort

Since Furbish's lousewort was listed in 1978, various conservation and recovery actions have improved the status of the species. For example:

- In 1986, Congress deauthorized the construction of the Dickey-Lincoln hydropower project (Pub. L. 99–662), which was the primary threat to the species at the time of listing (Service 2020, p. 27).
- St. John River Resource Protection Plan (Plan): Industrial forest landowners voluntarily signed the Plan beginning in 1982, with revisions in 1992, 2002, 2012, and 2022 (Land Use Planning Commission 2022, entire). The intent of the Plan is to protect the natural values and traditional recreational uses of the river. The primary value of the Plan to the conservation of Furbish's lousewort is that it does not allow commercial and residential development, subdivisions, water impoundments, and utility projects on land along the St. John River owned by signatory landowners.
- Since 2009, the Service's Partners for Fish and Wildlife Program has partnered with a small business owner in Aroostook County, Maine, to restore riparian forests that are potential habitat for Furbish's lousewort. Through this partnership, they have collaborated with 37 landowners encompassing 40 parcels. To date, $110,000 has been invested, and trees were planted along 4.6 miles of river, creating 55.2 acres of forested riparian habitat (Service 2020, pp. 30–31).
- At the end of the 2021 growing season, seeds (as flowering scapes) were collected by MNAP and the Service from plants at three sites to send to researchers in New Brunswick, Canada. These researchers hope to propagate the species in anticipation of possible reintroductions. A total of 36 flowering scapes were collected, each with anywhere from one dozen to several dozen flowering capsules (MNAP 2021, p. 17).
- The Furbish's lousewort occurs only on private lands in Canada. Therefore, private landowner stewardship is vitally important. Several nonprofit organizations collaborated to create the George Stirret Nature Preserve, a protected area around one population of lousewort. The Nature Trust of New Brunswick contacted private landowners surrounding the remaining areas where Furbish's lousewort grows and developed 15 voluntary private landowner stewardship agreements to encourage and support stewardship practices (Dowding 2020).

These recovery actions and other supporting data that we analyzed indicate that some of the threats identified at the time of listing have been ameliorated or reduced in areas occupied by Furbish's lousewort, and that the species' status has improved, primarily due to the congressional deauthorization of the Dickey-Lincoln hydropower project. However, more recent threats associated with climate change may impede the plant's ability to recover.

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions [of section 4 of the Act], that the species be removed from the list.''

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

On June 29, 1983, the Service completed the first recovery plan for Furbish's lousewort (Service 1983). Following completion of this recovery

plan, recovery activities enhanced our understanding about the life-history of the plant and about the populations. This information and the removal of the primary threat to the species at the time of listing (the proposed Dickey-Lincoln hydropower project) led to a revised recovery plan for Furbish's lousewort, which was made final on July 2, 1991 (Service 1991). The revised 1991 recovery plan includes criteria for downlisting Furbish's lousewort from endangered to threatened, but it does not provide delisting criteria due to lack of information regarding the species' long-term population dynamics and viability. The 2019 5-year review (Service 2019a, pp. 2–3) states that, given the revised recovery plan is more than 25 years old, the downlisting criteria are no longer considered adequate; recent population data are not incorporated into the recovery criteria, and the plan lacks recent published and unpublished scientific information on Furbish's lousewort and its habitat. In the 2019 5-year review, we concluded that a change in the species' listing status to threatened is warranted because the Dickey-Lincoln hydropower project is no longer a threat, the species' population rebounded from several severe ice-scour events, the population is widely distributed, and a single catastrophic event is unlikely to extirpate the species.

In September 2019, the Service completed the Recovery Plan for the Furbish's Lousewort (*Pedicularis furbishiae*), Second Revision (Service 2019b), which was developed using the information used to inform the SSA report for the species (Service 2020). In light of the recommendation to reclassify Furbish's lousewort to a threatened species, the revised recovery plan includes criteria that describe the conditions indicative of a recovered species (delisting criteria). Specifically, the revised recovery plan contains two recovery criteria for delisting based on population status over a period of at least 30 years (three generations). The first criterion states that the metapopulation is viable, comprising a 30-year median of 4,400 flowering stems or greater, and distributed with a 30-year median of 2,800 flowering stems or greater upriver in at least 6 subpopulations with at least 3 good and 3 fair subpopulations, and a 30-year median of 1,600 flowering stems or greater downriver in at least 9 subpopulations with at least 3 good and 6 fair subpopulations. Once the upriver and downriver criteria are reached, the median number of flowering stems for each respective river section will remain stable or increase over a period of at least 30 years without augmentation, reintroduction, or hand-pollinating of plants. Additionally, in New Brunswick, there is a 30-year median of 1,100 plants distributed among at least 5 subpopulations. The second criterion states there is long-term habitat protection for all subpopulations in Maine that provides for the species' needs throughout its life cycle (Service 2019b, pp. 8–9).

Based on the latest census (2018–2019), for criterion 1, the 30-year median for upriver subpopulations is 1,817 flowering stems and 983 for downriver subpopulations. In 2018–2019 there were six subpopulations, five good and one fair, in the upriver region and three subpopulations, one good and two fair, in the downriver region. In 2018–2019, the Maine population increased by 970 flowering stems (43 percent). Canadian subpopulations remain at or below historic lows of about 150 plants at 5 subpopulations, but few plants are flowering. For criterion 2, in 2019, The Maine Chapter of The Nature Conservancy purchased several areas of the St. John River corridor in three upriver townships. Currently, there is long-term habitat protection in 4 of 15 subpopulations. A total of 9.26 miles of 22.89 miles of Furbish's lousewort habitat is protected, mostly in the upriver region.

Determination of Furbish's Lousewort Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we determined that the Furbish's lousewort no longer meets the definition of an endangered species. This determination is based on the following: the removal of the primary threat at the time of listing, the Dickey-Lincoln hydropower project; the ability of the species to rebound after several severe ice-scouring events; the species continuing to be found at sites beyond its known distribution at the time of the original listing; and more than 25 percent of the overall population being located on protected lands. Additionally, long-term census data demonstrate that the Furbish's lousewort is resilient to stochastic events such as periodic ice scour and flooding. Redundancy in the downriver subpopulations has diminished, though the conditions in the upriver subpopulations have remained constant. Thus, after assessing the best available information, we conclude that the Furbish's lousewort no longer meets the Act's definition of an endangered species. Therefore, we proceed with determining whether Furbish's lousewort meets the Act's definition of a threatened species.

The information indicates that, at the species level, development (Factor A) that causes habitat loss, erosion, and fragmentation and climate change (Factor E) that causes the current trends of warmer winters that affect the ice dynamics, flooding, and the overall disturbance regime of the St. John River are the most influential factors affecting Furbish's lousewort now and into the future. The existing State and Canadian regulations (Factor D) are not considered adequate to alleviate the identified threats. Furbish's lousewort is listed as endangered by the State of Maine; however, the lack of take prohibitions for plants under this law limits its ability to protect the species from the habitat-based threats that it faces. Canada's SARA and New Brunswick's Act have a provision to protect species designated as endangered when found on Federal lands; however, the Furbish's lousewort does not occur on any Federal lands in Canada.

In both future timeframes, 2030 and 2060, under our projected ''continuation'' and ''worst case'' scenarios, we predict the species' resiliency, redundancy, and representation to diminish significantly, indicating that the species is likely to become in danger of extinction within

the next 40 years. While the downriver subpopulations are predicted to experience the most diminishment, even the current upriver stronghold is predicted to decline, indicating an increased risk of extinction of the entire metapopulation beyond the near term. Furbish's lousewort has a particular niche and appears to have very little adaptation potential. Hence, changes to the ice-scour regime, due to climate change, are highly likely to have significant impacts to the species within the foreseeable future. Under both timeframes analyzed, the downriver subpopulations are predicted to be in poor condition, thereby putting extra importance on the upriver subpopulations to maintain the species' viability. After assessing the best available information, we conclude that Furbish's lousewort is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future, throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter ''Final Policy''; 79 FR 37578; July 1, 2014) that provided that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for Furbish's lousewort, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered the time horizon for the threats that are driving the Furbish's lousewort to warrant listing as a threatened species throughout all of its range. We examined the threats of development and climate change, including cumulative effects. As stated in the section *Status Throughout All of Its Range* above, we predict the species is likely to become in danger of extinction within the next 40 years. We recognize that the downriver subpopulations are small, and habitat is less extensive and more fragmented. However, the risk of extinction to the population is low and does not currently meet the threshold of endangered. We selected 40 years for the foreseeable future as a period for which we can reasonably project effects of the stressors and potential conservation efforts. The timeframe of 2060 will capture approximately four to five generations of the Furbish's lousewort. We believe this timeframe will allow projection of changes in the condition of the species without increasing uncertainty about the nature and intensity of stressors beyond a reasonable level.

The best scientific and commercial data available indicate that the time horizon on which the threats of development and climate change to Furbish's lousewort and the responses to those threats are likely to occur is the foreseeable future. In addition, the best scientific and commercial data available do not indicate that any threats of development and climate change to Furbish's lousewort and the response to those threats are more immediate in any portions of the species' range. There is evidence showing that, although downriver populations are smaller and more fragmented, these populations have the ability to rebound from declines stemming from catastrophic ice-scour events (Service 2020, p. 4). Therefore, we determine that the Furbish's lousewort is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This finding does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant and, therefore, did not apply the aspects of the final policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that Furbish's lousewort meets the definition of a threatened species. Therefore, we finalize downlisting Furbish's lousewort as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this

standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), the Service has developed a species-specific 4(d) rule that is designed to address the threats and conservation needs of Furbish's lousewort. Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of Furbish's lousewort. As discussed above in the Determination of Furbish's Lousewort Status section, the Service has concluded that Furbish's lousewort is likely to become in danger of extinction within the foreseeable future primarily due to climate change and development. The provisions of this 4(d) rule promote conservation of Furbish's lousewort by deterring certain activities that could negatively impact the species in knowing violation of any law or regulation of the State of Maine, including any State trespass laws. The provisions of this 4(d) rule are among the many tools that the Service uses to promote the conservation of Furbish's lousewort.

Provisions of the 4(d) Rule

The 4(d) rule provides for the conservation of Furbish's lousewort by prohibiting the following activities, except as otherwise authorized: Removal and reduction to possession from areas under Federal jurisdiction; malicious damage or destruction on any such area; or removal, cutting, digging up, or damage or destruction on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

While removal and reduction to possession from areas under Federal jurisdiction is not identified as an existing threat to Furbish's lousewort, prohibiting this activity would maintain a deterrent that may become necessary in the future to support recovery of the species (*e.g.,* should a Federal agency seek to conserve a population through land or easement acquisition). As discussed above under Summary of Biological Status and Threats, climate change and development are affecting the status of Furbish's lousewort. Indirect effects associated with development, including loss of shade critical to growth and reproduction due to reduction of the forested riparian buffer, and erosion of habitat due to clearing of forested areas and runoff from creation of impermeable surfaces, have the potential to impact Furbish's lousewort. Prohibiting certain activities, when in knowing violation of State law or regulation, would complement State efforts to conserve the species. Providing these protections would help preserve the species' remaining subpopulations; slow its rate of decline; and decrease synergistic, negative effects from other stressors.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits for threatened plants are codified at 50 CFR 17.72, which states that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. That regulation also states that the permit shall be governed by the provisions of § 17.72 unless a special rule applicable to the plant is provided in §§ 17.73 through 17.78. We interpret that second sentence to mean that permits for threatened species are governed by the provisions of § 17.72 unless a species-specific rule provides otherwise. We recently promulgated revisions to § 17.71 providing that § 17.71 will no longer apply to plants listed as threatened in the future. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in § 17.72, or to require that every special rule spell out any permitting provisions that apply to that species and special rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of § 17.72 unless a species-specific rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings § 17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, in which the second sentence states that such permit shall be governed by the provisions of that section unless a special rule applicable to the wildlife, appearing in §§ 17.40 through 17.48, provides otherwise. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, in accordance with 50 CFR 17.71(b), any person who is a qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section (6)(c) of the Act and who is designated by his or her agency for such purposes would be able to conduct activities designed to conserve Furbish's lousewort that may result in otherwise prohibited activities without additional authorization.

Nothing in the 4(d) rule changes in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of Furbish's lousewort. However, interagency cooperation may be further streamlined through planned programmatic

consultations for the species between Federal agencies and the Service.

III. Summary of Comments and Recommendations

Peer Reviewer Comments

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), our August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in the Furbish's lousewort SSA report. We solicited independent peer review of the SSA report by four individuals with expertise in Furbish's lousewort, botany, ice scour and flooding regimes of the St. John River, and landscape ecology; we received comments from three of the four peer reviewers. In addition, we received comments from the State of Maine and Canada.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding Furbish's lousewort. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA report and final rule. Peer reviewer comments are incorporated into the SSA report and this final rule as appropriate; no significant, substantive issues were identified with our analysis and SSA report.

Public Comments

In our proposed rule published on January 15, 2021 (86 FR 3976), we requested that all interested parties submit written comments on the proposal by March 16, 2021. We contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We received one request for a public hearing that was later withdrawn.

During the comment period, we received 10 comments addressing the proposed action. These included comments from one nongovernmental organization and nine individuals. All comments are posted at *https://www.regulations.gov* under Docket No. FWS–R5–ES–2019–0056. We reviewed these comments for substantive issues and new information regarding the proposed rule. A summary of the substantive issues raised in the comments follows:

(1) *Comment:* Several commenters questioned whether the Service should be downlisting a plant species that is pollinated by a single species of bumble bee (the half-black bumble bee [*Bombus vagans*]), when pollinating bumble bees in general are in decline.

Our Response: While the Service acknowledges the potential overall decline of pollinating bumble bees, we determined that the half-black bumble bee is currently widely distributed throughout the Maine range of Furbish's lousewort and decline of the half-black bumble bee was not determined to be a threat to Furbish's lousewort (Service 2020, p. 28).

(2) *Comment:* One commenter questioned whether we should downlist Furbish's lousewort given that it would lose the protections of the Endangered Species Act (ESA).

Our Response: The Service is responsible for determining not only whether a species warrants listing under the ESA, but also if warranted, which status is the most appropriate. Species with endangered status and those with threatened status are both considered to be federally protected. The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered the time horizon for the threats that are driving the Furbish's lousewort to warrant listing and determined that it does not currently meet the threshold of endangered. In addition, with the added provisions of the 4(d) rule outlined above, the species receives much of the same protection it received as an endangered species.

(3) *Comment:* Several commenters questioned whether Furbish's lousewort should be downlisted with the ongoing threats from climate change, highlighting that this species is particularly vulnerable to negative impacts from climate change.

Our Response: As is the case for *Comment 2* (above), the Service is responsible for determining the immediacy and magnitude of threats impacting Furbish's lousewort, including the threats from climate change, and then assigning the appropriate listing status, if warranted. The best scientific and commercial data available indicate that the time horizon on which the threats from climate change to Furbish's lousewort and the responses to those threats are likely to occur is the foreseeable future. Therefore, this species meets the Service's definition of a threatened species.

IV. Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining and implementing a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. There are two federally recognized Tribes in northern Maine; however, no subpopulations of Furbish's lousewort occur on Tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Maine Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are staff members of the U.S. Fish and Wildlife Service Northeast Regional Office and Maine Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.12, in paragraph (h), amend the List of Endangered and Threatened Plants by revising the entry for ''*Pedicularis furbishiae*'' under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	*	*	*
Pedicularis furbishiae	Furbish's lousewort	Wherever found	T	43 FR 17910, 4/26/1978; 88 FR [INSERT **FEDERAL REGISTER** PAGE WHERE THE DOCUMENT BEGINS], 5/10/2023; 50 CFR 17.73(d).[4d]
*	*	*	*	*

■ 3. Amend § 17.73 by adding paragraph (d) to read as follows:

§ 17.73 Special rules—flowering plants.

* * * * *

(d) *Pedicularis furbishiae* (Furbish's lousewort)—(1) *Prohibitions.* Except as provided under paragraph (d)(2) of this section, you may not remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy the species on any such area; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

(2) *Exceptions from prohibitions.* The following exceptions from the prohibitions apply to this species:

(i) You may conduct activities authorized by permit under § 17.72.

(ii) Qualified employees or agents of the Service or a State conservation agency may conduct activities authorized under § 17.71(b).

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–09847 Filed 5–9–23; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 88, No. 90
Wednesday, May 10, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108054–21]

RIN 1545–BQ07

Information Reporting and Transfer for Valuable Consideration Rules for Section 1035 Exchanges of Life Insurance and Certain Other Life Insurance Contract Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance on the application of the transfer for valuable consideration rules and associated information reporting requirements for reportable policy sales of interests in life insurance contracts to exchanges of life insurance contracts qualifying for nonrecognition of gain or loss, as well as to certain acquisitions of interests in life insurance contracts in transactions that qualify as corporate reorganizations. The proposed regulations affect parties involved in these life insurance contract transactions, including with respect to payments of reportable death benefits. This document also invites comments on these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by July 10, 2023. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–108054–21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:LPD:PR (REG–108054–21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kathryn M. Sneade, (202) 317–6995 (not a toll-free number); concerning submissions of comments or requests for a public hearing, Vivian Hayes, (202) 317–6902 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 101 and 6050Y of the Internal Revenue Code (Code). The proposed regulations under sections 101 and 6050Y (proposed regulations) would provide guidance on the application of the rules for determining the amount of death benefits excluded from gross income following reportable policy sales of interests in life insurance contracts under section 101 and the associated information reporting requirements for reportable policy sales under section 6050Y to the exchange of a life insurance contract for another life insurance contract qualifying for nonrecognition of gain or loss under section 1035 (section 1035 exchange), as well as to certain acquisitions of interests in life insurance contracts in transactions that qualify as reorganizations under section 368(a) (reorganizations). The proposed regulations would amend final regulations under sections 101 and 6050Y (T.D. 9879) published in the **Federal Register** (84 FR 58460) on October 31, 2019, as corrected (84 FR 68042) on December 13, 2019 (final regulations). Following the publication of the final regulations in the **Federal Register**, the Treasury Department and the IRS received letters relating to the application of sections 101 and 6050Y to section 1035 exchanges and reorganizations. The proposed regulations would modify the final regulations to address the issues raised in these letters.

Development of the Final Regulations

The Treasury Department and the IRS published the final regulations to implement legislative changes to the Code made by sections 13520 and 13522 of Public Law 115–97, 131 Stat. 2054, 2148, 2151 (2017), commonly known as the Tax Cuts and Jobs Act (TCJA).

Section 13522 of the TCJA amended section 101 by adding new section 101(a)(3) to the Code, which defines the term ''reportable policy sale'' and provides rules for determining the amount of death benefits excluded from gross income following a reportable policy sale.[1] The final regulations under section 101 provide definitions applicable under sections 101 and 6050Y and guidance for determining the amount of death benefits excluded from gross income. For example, § 1.101–1(c)(1) of the final regulations defines ''reportable policy sale'' to mean, subject to certain exceptions, any direct or indirect acquisition of an interest in a life insurance contract if the acquirer has, at the time of the acquisition, no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in the life insurance contract.

Section 13520 of the TCJA added section 6050Y to chapter 61 (Information and Returns) in subtitle F of the Code. Section 6050Y(a) requires

[1] Generally, under section 101(a)(1), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract if such amounts are paid by reason of the death of the insured. However, the first sentence of section 101(a)(2) (the transfer for value rule) provides that, in the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by section 101(a)(1) cannot exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The second sentence of section 101(a)(2) provides that the transfer for value rule does not apply in the case of transfers described in section 101(a)(2)(A) or (B). Section 101(a)(2)(A) (the carryover basis exception) applies if the contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor. Section 101(a)(2)(B) applies if the transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer. However, section 101(a)(3)(A) provides that the exceptions in the second sentence of section 101(a)(2) do not apply in the case of a transfer of a life insurance contract, or any interest therein, that is a reportable policy sale.

a person who acquires a life insurance contract or any interest in a life insurance contract in a reportable policy sale to report certain information about payments made in the sale. Section 6050Y(b) requires issuers of life insurance contracts to report certain information upon notice of a reportable policy sale or a transfer of a life insurance contract to a foreign person. Section 6050Y(c) requires a payor of reportable death benefits (defined by section 6050Y(d)(4) as amounts paid by reason of the death of the insured under a life insurance contract that has been transferred in a reportable policy sale) to report certain information about such payments. Section 6050Y provides that each of the returns required by section 6050Y is to be made ''at such time and in such manner as the Secretary shall prescribe.'' [2] The final regulations under section 6050Y implement section 6050Y by specifying the manner in which and time at which the information reporting obligations imposed by section 6050Y must be satisfied. The final regulations also provide definitions and rules that govern the application of the information reporting obligations.

The final regulations were adopted after consideration of public comments received on proposed regulations under sections 101 and 6050Y (REG–103083–18) published in the **Federal Register** (84 FR 11009) on March 25, 2019 (2019 proposed regulations), and a public hearing held on June 5, 2019. Additionally, the Treasury Department and the IRS received comments in response to Notice 2018–41, 2018–20 I.R.B. 584, which described the regulations the Treasury Department and the IRS expected to propose under sections 101 and 6050Y, and considered these comments in developing the rules in the 2019 proposed regulations.

Development of the Section 1035 Exchange Provisions of the Final Regulations

Prior to amendment in 2019, the regulations under section 101 did not explicitly address section 1035 exchanges. Comments received on Notice 2018–41 suggested that the person to whom a life insurance contract is issued (that is, the original policyholder) should not be considered an ''acquirer'' for purposes of section 6050Y(a), which imposes reporting obligations on any person who acquires a life insurance contract or any interest in a life insurance contract in a reportable policy sale. See 84 FR 11009, 11016. In response, § 1.101–1(e)(2) of the 2019 proposed regulations clarified that the issuance of a life insurance contract to a policyholder, other than the issuance of a policy in an exchange pursuant to section 1035, is not a transfer of an interest in a life insurance contract.

The preamble to the 2019 proposed regulations requested comments on whether the regulations should include additional provisions regarding the treatment of section 1035 exchanges of life insurance contracts. See 84 FR 11009, 11019. As described in the preamble to the final regulations, one commenter on the 2019 proposed regulations recommended that no additional provisions be added to the regulations for this circumstance, stating that the acquirer of a life insurance contract in a reportable policy sale would be unlikely to meet the state law requirements for an insurable interest in the insured and, consequently, would not be able to make a section 1035 exchange. See 84 FR 58460, 58465. Another commenter recommended that the statement in § 1.101–1(e)(2) of the 2019 proposed regulations regarding section 1035 exchanges be deleted or amended to eliminate any suggestion that such transactions, by themselves, can be reportable policy sales. The commenter acknowledged that in a section 1035 exchange, the new carrier acquires an interest in the old policy, but advocated against treating that acquisition as a reportable policy sale.

As explained in the preamble to the final regulations, the reference in § 1.101–1(e)(2) to section 1035 exchanges was not intended to imply that the transfer of a policy to an insurance company in a section 1035 exchange would be a reportable policy sale. See 84 FR 58460, 58465. Rather, the concern prompting the reference to section 1035 exchanges related to the possibility that a policy transferred in a reportable policy sale subsequently could be exchanged for a new policy in an exchange pursuant to section 1035 and that, absent the reference in § 1.101–1(e)(2), the death benefits paid under the new policy might not be reported under section 6050Y(c).

Section 1.101–1(e)(2) of the 2019 proposed regulations was adopted as proposed in the final regulations, but in response to the comments received on section 1035 exchanges, § 1.101–1(c)(2)(iv) of the final regulations provides that the acquisition of a life insurance contract by an insurance company in an exchange pursuant to section 1035 is not a reportable policy sale. Additionally, § 1.101–1(c)(2)(v) of the final regulations provides that the acquisition of a life insurance contract by a policyholder in an exchange pursuant to section 1035 is not a reportable policy sale if the policyholder has a substantial family, business, or financial relationship with the insured, apart from its interest in the life insurance contract, at the time of the exchange. Based on a comment received on the 2019 proposed regulations, a situation in which the policyholder making a section 1035 exchange does not have a substantial family, business, or financial relationship with the insured should rarely arise due to state law insurable interest requirements. Should this situation arise, however, the final regulations provide certain exceptions to the reporting requirements that generally apply to reportable policy sales. See § 1.6050Y–2(f)(3) of the final regulations (providing that, with respect to the issuance of a life insurance contract in a section 1035 exchange, the acquirer is not required to file the information return required by section 6050Y(a)(1) and § 1.6050Y–2(a) of the final regulations); § 1.6050Y–3(f)(3) of the final regulations (providing that the issuer of a new life insurance contract in a section 1035 exchange is not required to file a return or furnish a statement to the seller under section 6050Y(b) and § 1.6050Y–3 of the final regulations). Additionally, the final regulations provide certain rules applicable to section 1035 exchanges to clarify the reporting required with respect to section 1035 exchanges that are reportable policy sales. See § 1.6050Y–1(a)(8)(ii) (providing that, in the case of the issuance of a life insurance contract to a policyholder in an exchange pursuant to section 1035, the issuer of the new contract is the 6050Y(a) issuer with respect to whom the acquirer has reporting obligations under section 6050Y(a) and § 1.6050Y–2 of the final regulations).

Letters Received on the Section 1035 Exchange Provisions of the Final Regulations

Following the publication of the final regulations in the **Federal Register**, the Treasury Department and the IRS received letters relating to the application of sections 101 and 6050Y to section 1035 exchanges under the final regulations.

One letter indicated that, in at least some cases, the final regulations under section 101 regarding reportable policy sales appear to treat a section 1035 exchange as a transfer for value that can cause the death benefits to become taxable. The letter said that this treatment appears to arise even when neither the contract given in the

[2] Section 7701(a)(11)(B) provides that when used in the Code, the term ''Secretary'' means the Secretary of the Treasury or her delegate.

exchange nor any predecessor contract has been involved in a reportable policy sale. The author of the letter requested guidance that the issuance of a life insurance contract in a section 1035 exchange is not a transfer of an interest in the contract to the owner for purposes of the transfer for value rule and provided support for the position that treating a section 1035 exchange as a transfer for value is inconsistent with the relevant statutes, congressional intent, sound tax policy, and long-standing interpretations of the law.

The author of another letter took a contrary position, stating that a section 1035 exchange has always (before the TCJA was enacted, as well as after) constituted a transfer of a life insurance contract for purposes of section 101(a)(2) that qualifies for the exception set forth in section 101(a)(2)(A) to the transfer for value rule for contracts held with a transferred basis, commonly referred to as the ''carryover basis'' exception. This author advocated against guidance concluding that the issuance of a life insurance contract in a section 1035 exchange is not a transfer of an interest in the contract to the owner for purposes of the transfer for value rule, suggesting that to do so would be to adopt a policy choice that was specifically rejected by Congress with the enactment of section 101(j).[3] The author remarked that section 101(j) was enacted in response to concerns that despite state insurable interest rules, companies were acquiring insurance on persons whose relationship with the company was too attenuated and were doing so without the consent (or even knowledge) of such persons.

Development of Exceptions Related to Ordinary Course Trade or Business Acquisitions in the Final Regulations

Several commenters on Notice 2018–41 suggested that acquisitions of life insurance contracts, or interests therein, in ordinary course business transactions in which one trade or business acquires another trade or business that owns life insurance on the lives of former employees or directors should not be reportable policy sales. The 2019 proposed regulations included provisions that exclude certain of these transactions from the definition of reportable policy sales. Public comments remarked favorably on these provisions, which were adopted by the final regulations. *See* § 1.101–1(d)(2) of the final regulations (defining the term ''substantial business relationship'' to include the relationship between an insured and an acquirer in certain circumstances involving the acquirer's acquisition of an active trade or business with respect to which the insured is an employee within the meaning of section 101(j)(5)[4] or was a director, highly compensated employee, or highly compensated individual); § 1.101–1(d)(4)(i) of the final regulations (providing a special rule for indirect acquisitions that deems the acquirer of an interest in a life insurance contract to have a substantial business or financial relationship with the insured if the direct holder of the interest in the life insurance contract has such a relationship); and § 1.101–1(e)(3)(ii) of the final regulations (defining the term ''indirect acquisition of an interest in a life insurance contract'' to exclude an acquisition through ownership of stock in a C corporation provided that no more than 50 percent of the gross value of the assets of the C corporation consists of life insurance contracts).

As described in the preamble to the final regulations, one commenter on the 2019 proposed regulations remarked that § 1.101–1(e)(3)(ii) results in the disparate treatment of policies transferred directly in asset reorganizations and indirectly in stock reorganizations. See 84 FR 58460, 58466–58468. That is, with respect to policies held by a C corporation, not more than 50 percent of the gross value of the assets of which consists of life insurance contracts, an indirect acquisition of the policies, such as through a stock reorganization under section 368(a)(1)(B), would not result in a reportable policy sale, but a direct acquisition of the policies, such as through an asset reorganization under section 368(a)(1)(A), could result in a reportable policy sale. The commenter asserted that this disparate treatment is inappropriate and not warranted as a matter of good tax policy and requested that the 2019 proposed regulations be revised to provide that any transfer of an interest in a life insurance contract as part of a reorganization of a C corporation conducted in the ordinary course of business is eligible for an exception to being treated as a reportable policy sale under section 101(a)(3)(B), regardless of whether the target C corporation survives the reorganization transaction unless, immediately prior to the acquisition, more than 50 percent of the gross value of the assets of the C corporation consists of life insurance contracts.

The commenter acknowledged that the 2019 proposed regulations provide certain exceptions that could apply to mergers qualifying as reorganizations in which the target goes out of existence and the surviving corporation continues to hold the life insurance contract, but asserted that having to determine in these types of mergers whether a particular exception applies on a contract-by-contract basis is unduly complex and a trap for the unwary. The commenter further asserted that this burdensome exercise does not serve the purpose of the change in the statute.

The commenter's recommendation was not adopted in the final regulations for reasons further described in the preamble to the final regulations. Briefly, the final regulations preserve the different results for stock and asset reorganizations because the Treasury Department and the IRS concluded that significant differences between the two types of reorganization justify different treatment for purposes of sections 101 and 6050Y. For instance, an acquirer of an interest in an entity may have limited ability to determine what types of assets an entity owns, or to obtain from the entity information necessary to report on the entity's assets. Further, the Treasury Department and the IRS had not identified any clear policy reason why the complete exclusion of death benefits from policies held by a corporation should carry over when ownership of the insurance policy is transferred but a substantial business or financial relationship does not exist between the acquirer and insured. Regarding the commenter's remark on the burden of a case-by-case review of policies in certain types of transactions, the preamble to the final regulations noted that, in asset reorganizations, it would in any case be necessary to review the life insurance contracts directly acquired on a contract-by-contract basis in order to update insurance contract ownership and beneficiary information with the relevant insurance company.

Letter Received on Exceptions Related to Ordinary Course Trade or Business Acquisitions in the Final Regulations

Following the publication of the final regulations in the **Federal Register**, the

[3] Section 101(j) generally provides that in the case of an employer-owned life insurance contract, the amount of death benefits excluded from gross income under section 101(a) is limited, unless certain notice and consent requirements are met and either an exception based on the insured's status applies (because the insured was an employee in the twelve months preceding death or the insured was, at the time the life insurance contract was issued, a director, highly compensated employee, or highly compensated individual) or an exception for amounts paid to the insured's heirs applies.

[4] Section 101(j)(5) defines the term ''employee'' to include an officer, director, and highly compensated employee (within the meaning of section 414(q)).

Treasury Department and the IRS received a letter relating to the disparate treatment of different types of ordinary course trade or business acquisitions under the final regulations.

The author noted that, since the issuance of the final regulations, the life insurance industry has seen a number of circumstances in which transactions that are wholly unrelated to the transfer of life insurance are nevertheless subject to negative outcomes under the reportable policy sale rules as a result of the transactions' legal form, even though transactions with identical or nearly identical economic substance but a different legal form would be treated more favorably. The author noted that the ordinary course acquisitive transactions of concern do not in any way turn on tax outcomes pertaining to the meagre amounts of life insurance that are commonly at issue, and asserted that there are a number of legal, economic, and business practice reasons why it is highly unlikely that these same transactions can simply be restructured to meet the form-driven rules of the final regulations. The author suggested the addition of an exception from the reportable policy sale rules for acquisitive transactions involving entities that own a *de minimis* amount of life insurance (for example, as a proportion of the total value of the transaction). More specifically, the author proposed that the Treasury Department and the IRS consider a further exception for transactions in which the amount of life insurance acquired as a result of the acquisitive transaction (and any related acquisitions) is five percent or less of the value of the stock, assets, or both acquired.

Explanation of Provisions

Section 1035 Exchanges

As stated in the preamble to the final regulations, the concern prompting the references to section 1035 exchanges in the 2019 proposed regulations and the final regulations related to the possibility that a policy transferred in a reportable policy sale subsequently could be exchanged for a new policy in an exchange pursuant to section 1035 and that the death benefits paid under the new policy might not be reported under section 6050Y(c). See 84 FR 58460, 58465. The section 1035 exchange provisions were not intended to change the treatment under section 101 of the policyholder's new contract if the policyholder's old contract was never transferred in a reportable policy sale.

However, the Treasury Department and the IRS have determined that such a change was inadvertently effected by the final regulations. Prior to the issuance of the final regulations, the transfer for value rule of section 101(a)(2) did not apply as the result of a section 1035 exchange of a life insurance contract by the original policyholder of the contract. However, under § 1.101–1(e)(2) of the final regulations, the issuance of a new policy in a section 1035 exchange is a transfer of an interest in a life insurance contract. Because the new policy is issued in exchange for an old policy, the exchange is a transfer for valuable consideration under § 1.101–1(f)(5) of the final regulations. Therefore, the new policy is subject to the transfer for value rule of section 101(a)(2), unless one of the exceptions in section 101(a)(2)(A) and (B) applies. For either exception to apply, there must be a substantial business, family, or financial relationship between the insured and the acquirer of the new policy. The Treasury Department and the IRS have determined that the carryover basis exception of section 101(a)(2)(A) would not apply in this case.[5] Therefore, the application of the transfer for value rule would generally limit the amount of death benefits excludable under section 101(a)(1), even in the absence of a reportable policy sale, unless one of the section 101(a)(2)(B) exceptions applies (that is, the transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer). The Treasury Department and the IRS have determined that this result is inconsistent with the prior treatment of new policies issued in section 1035 exchanges.

Accordingly, the proposed regulations are intended to correct the unintended change effected by the final regulations to the treatment under section 101 of a life insurance contract issued to a policyholder in a section 1035 exchange, while continuing to address the concern that the reporting of death benefits paid under section 6050Y(c) could be avoided by exchanging a policy transferred in a reportable policy sale for a new policy in a section 1035 exchange, as well as the concern that a policyholder could attempt to avoid the limitation on the excludability of death benefits resulting from the application of the transfer for value rule through a section 1035 exchange. The proposed regulations would accomplish these objectives by revising the final regulations in four ways.

1. Modify Definition of a Transfer of an Interest in a Life Insurance Contract

First, proposed § 1.101–1(e)(2) would revise the definition of a transfer of an interest in a life insurance contract in § 1.101–1(e)(2) of the final regulations to exclude the issuance of a life insurance contract to a policyholder, without qualification. As such, any issuance of a life insurance contract to a policyholder, including in a section 1035 exchange, is not a transfer of an interest in a life insurance contract and therefore cannot be a reportable policy sale under § 1.101–1(c)(1) of the final regulations. The Treasury Department and the IRS do not view this position as inconsistent with the purpose of section 101(j). See Public Law 109–280, 863(d), 120 Stat. 780, 1024 (2006) (providing that section 101(j) generally applies to life insurance contracts issued after August 17, 2006, ''except for a contract issued after such date pursuant to an exchange described in section 1035 . . . for a contract issued on or prior to that date''); Notice 2009–48, 2009–1 C.B. 1085 (providing that further notice and consent is not required by section 101(j) with regard to a contract received in a section 1035 exchange for an employer-owned life insurance contract issued after August 17, 2006, for which the notice and consent requirements were previously satisfied if either (1) the existing consent remains valid, or (2) the exchange does not result in a material change in the death benefit or other material change in the contract).

The proposed regulations make conforming changes to remove the exception in § 1.101–1(c)(2)(v) of the final regulations (providing that the

[5] The Code recognizes two categories of substituted basis property: transferred basis property and exchanged basis property. See section 7701(a)(42). Property has a ''transferred basis'' for Federal tax purposes when the same property is transferred from one person to another but keeps the same basis. See section 7701(a)(43). Property has an ''exchanged basis'' for Federal tax purposes when a person's basis in new property is determined by reference to other property held by that same person. See section 7701(a)(44). The section 101(a)(2) ''carryover basis'' exception applies to a transfer if the transferred life insurance contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor. That is, the exception applies if the contract is transferred basis property. However, the basis of a new policy issued in a section 1035 exchange to the same taxpayer is the same as the basis of the old policy held by that taxpayer, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. See sections 1035(d)(2) and 1031(d). The new policy is thus exchanged basis property, not transferred basis property. It is therefore ineligible for the carryover basis exception of section 101(a)(2)(A).

acquisition of a life insurance contract by a policyholder in a section 1035 exchange is not a reportable policy sale if the policyholder has a substantial family, business, or financial relationship with the insured, apart from its interest in the life insurance contract, at the time of the exchange); to remove §§ 1.6050Y–2(f)(3) and 1.6050Y–3(f)(3) of the final regulations (providing certain reporting requirement exceptions related to section 1035 exchanges that are no longer necessary); and to remove § 1.6050Y–1(a)(8)(ii) of the final regulations (providing a definitional rule related to section 1035 exchanges that is no longer necessary).

2. New Rule Addressing Section 1035 Exchanges

Second, proposed § 1.101–1(b)(2)(iv) provides a new rule that would apply to the exchange of an interest in a life insurance contract (old interest) in a section 1035 exchange for an interest in a newly issued life insurance contract (new interest) and provides guidance on how to determine the amount of the proceeds attributable to the new interest that is excludable from gross income under section 101(a), provided the new interest is not subsequently transferred or exchanged. If the new interest is subsequently transferred or exchanged, the amount excludable from gross income under section 101(a) would be determined under the rule in § 1.101–1(b) applicable to the type of transfer or exchange involved. The limitation (or lack of any limitation) on the amount of the proceeds attributable to the old interest that is excludable from gross income applies under proposed § 1.101–1(b)(2)(iv) to the new interest for which it is exchanged, just as the basis of the old interest applies to the new interest. See sections 1031(d) and 1035(d)(2) (providing that a contract acquired in a section 1035 exchange has the same basis as the contract for which it was exchanged). The IRS has previously treated certain attributes of contracts exchanged in section 1035 exchanges as applying to the new contracts acquired. See, *e.g.,* Rev. Rul. 92–95, 1992–2 C.B. 43 (for purposes of section 72(q)(2)(I) and 72(u)(4), the ''date of purchase'' of an annuity contract acquired in a section 1035 exchange for another annuity contract is the date of purchase of the annuity contract that was exchanged for the new contract). See also section 7702A(a)(2) (defining a modified endowment contract to include any contract exchanged for a contract that is a modified endowment contract under section 7702A(a)(1)).

Proposed § 1.101–1(b)(2)(iv) ensures that the acquirer of an interest in a life insurance contract in a reportable policy sale cannot avoid any limit imposed by section 101(a)(2) and (a)(3) on the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) by simply exchanging the interest for a new life insurance contract. Under proposed § 1.101–1(b)(2)(iv)(A), if the entire amount of the proceeds attributable to the old interest would have been excludable from gross income under section 101(a) at the time of the section 1035 exchange, the entire amount of the proceeds attributable to the new interest is excludable from gross income. Under proposed § 1.101–1(b)(2)(iv)(B), if less than the entire amount of the proceeds attributable to the old interest would have been excludable from gross income under section 101(a) at the time of the section 1035 exchange, the amount of the proceeds attributable to the new interest that is excludable from gross income is limited to the sum of the amount of the proceeds attributable to the old interest that would have been excludable at the time of the section 1035 exchange, and the premiums and other amounts subsequently paid with respect to the new interest by the policyholder. Proposed § 1.101–1(b)(2)(iv)(B) also provides that, when determining the premiums and other amounts subsequently paid by the policyholder with respect to the new interest, the amounts paid by the policyholder are reduced, but not below zero, by amounts received by the policyholder under the new life insurance contract that are not received as an annuity, to the extent excludable from gross income under section 72(e). The proposed regulations also make conforming changes to § 1.101–1(a)(1) of the final regulations and the headings of § 1.101–1(b) and (b)(2) of the final regulations to reflect the addition of proposed § 1.101–1(b)(2)(iv). The proposed regulations also add two examples to illustrate the application of the rules set forth in proposed § 1.101–1(b)(2)(iv). See proposed § 1.101–1(g)(17) and (18).

3. Modification to Definition of Reportable Policy Sale

Third, the proposed regulations would modify the definition of ''reportable policy sale'' to address section 1035 exchanges. Specifically, proposed § 1.101–1(c)(3) addresses situations in which an old interest is exchanged in a section 1035 exchange for a new interest, and the old interest was previously transferred for valuable consideration in a reportable policy sale or is treated, under proposed § 1.101–1(c)(3), as an interest in a life insurance contract that was previously transferred for valuable consideration in a reportable policy sale. In such cases, the new interest is treated, for purposes of § 1.101–1, as an interest in a life insurance contract that was previously transferred for valuable consideration in a reportable policy sale.

Under the proposed rule, the old interest's attribute of having been previously transferred for valuable consideration in a reportable policy sale applies to the new interest acquired in a section 1035 exchange. Whether or not an interest in a life insurance policy was previously transferred in a reportable policy sale is relevant for the purpose of determining the applicability of certain provisions in the final regulations. See, *e.g.,* § 1.101–1(b)(1)(ii)(B)(*1*) of the final regulations (applies only if the interest was not previously transferred for valuable consideration in a reportable policy sale); § 1.101–1(b)(1)(ii)(B)(*2*) and (*3*) of the final regulations (apply if the interest was previously transferred for valuable consideration in a reportable policy sale); § 1.101–1(b)(2)(i) of the final regulations (includes a special rule for interests that have not previously been transferred for value in a reportable policy sale). The Treasury Department and the IRS have previously treated (and continue to treat) other attributes of contracts exchanged in section 1035 exchanges as applying to the new contracts acquired, so the new contract is treated the same as the old contract. See, *e.g.,* Rev. Rul. 92–95. Similarly, the proposed rule ensures that the new interest is treated the same as the old interest when applying rules that consider whether an interest in a life insurance contract was previously transferred in a reportable policy sale. See proposed § 1.101–1(c)(3).

Proposed § 1.101–1(c)(3) also provides that, for purposes of §§ 1.6050Y–3 and 1.6050Y–4, the section 1035 exchange is treated as the transfer of an interest in the life insurance contract in a reportable policy sale if the old interest previously was transferred for valuable consideration in a reportable policy sale (or is treated, under proposed § 1.101–1(c)(3), as an interest in a life insurance contract that previously was transferred for valuable consideration in a reportable policy sale). Accordingly, the designation of death benefits as reportable death benefits is an attribute that transfers from the old interest to the new interest in a section 1035 exchange. See also proposed § 1.6050Y–1(a)(12). The Treasury Department and the IRS previously have treated other attributes of contracts exchanged in section 1035 exchanges as transferring to the new contracts acquired. In this case, the

proposed rule ensures that death benefits under the new interest are treated the same as under the old interest for purposes of reporting under section 6050Y(c) and § 1.6050Y–4. These rules are necessary to ensure that the acquirer of an interest in a life insurance contract in a reportable policy sale cannot avoid the designation of the death benefits as reportable death benefits and the associated reporting of the payment of the reportable death benefits by simply exchanging the interest for a new life insurance contract. The proposed regulations also make conforming changes to § 1.101–1(c)(1) of the final regulations to reflect the addition of proposed § 1.101–1(c)(3).

4. Conforming Modifications to §§ 1.6050Y–1 Through 1.6050Y–4

Finally, consistent with proposed § 1.101–1(c)(3), the proposed regulations would modify several definitions in § 1.6050Y–1 of the final regulations and modify the reporting rules under §§ 1.6050Y–3 and 1.6050Y–4 of the final regulations to ensure proper reporting of reportable death benefits paid under contracts issued in section 1035 exchanges. Notably, however, the section 1035 exchange rules of proposed § 1.101–1(c)(3) do not apply for purposes of § 1.6050Y–2 of the final regulations, and no reporting is required under § 1.6050Y–2 of the final regulations at the time of a section 1035 exchange, even if the new interest is exchanged for an old interest that was previously transferred for valuable consideration in a reportable policy sale.

Proposed § 1.6050Y–1(a)(14) provides that the term ''reportable policy sale'' has the meaning given to it in § 1.101–1(c)(1), except as otherwise provided in § 1.6050Y–1. Proposed § 1.6050Y–1(a)(12) provides that the term ''reportable death benefits'' means amounts paid by reason of the death of the insured under a life insurance contract that are attributable to an interest in the contract that was transferred in a reportable policy sale described in § 1.101–1(c)(1) of the final regulations or proposed § 1.101–1(c)(3). Accordingly, payors of such amounts are subject to the reporting requirements of section 6050Y(c) and § 1.6050Y–4 of the final regulations. Proposed § 1.6050Y–1(a)(1) and (2) modify the definitions of ''acquirer'' and ''buyer,'' respectively, to treat as a buyer for purposes of reporting under section 6050Y(c) and § 1.6050Y–4 a person to whom an interest in a life insurance contract is issued in a section 1035 exchange treated as the transfer of an interest in the life insurance contract in a reportable policy sale under proposed § 1.101–1(c)(3). See § 1.6050Y–4(a)(5) of the final regulations (requiring a payor of reportable death benefits to report the payor's estimate of investment in the contract with respect to the buyer, limited to the payor's estimate of the buyer's investment in the contract with respect to the interest for which the reportable death benefits payment recipient was paid).

To ensure proper reporting of reportable death benefits paid under contracts issued in section 1035 exchanges, proposed § 1.6050Y–3(a) requires reporting by each ''6050Y(b) issuer'' that is a ''section 1035 issuer'' with respect to each ''seller'' at the time of the exchange. Proposed § 1.6050Y–1(a)(8)(iii)(C) provides that the term ''6050Y(b) issuer'' includes any person that is a section 1035 issuer or the designee of a section 1035 issuer. Proposed § 1.6050Y–1(a)(8)(v) defines the term ''section 1035 issuer'' to include the issuer of the old interest (old issuer) and the issuer of the new interest (new issuer) in a section 1035 exchange that is treated as the transfer of an interest in the life insurance contract in a reportable policy sale under proposed § 1.101–1(c)(3). The old issuer is a section 1035 issuer described in proposed § 1.6050Y–1(a)(8)(v)(A), and the new issuer is a section 1035 issuer described in proposed § 1.6050Y–1(a)(8)(v)(B). However, an issuer is not considered a section 1035 issuer if it never received information indicating that the interest in a life insurance contract with respect to which it is an issuer was transferred in a reportable policy sale under § 1.101–1(c)(1) or (3). See proposed § 1.6050Y–1(a)(8)(v)(A) and (B). Proposed § 1.6050Y–1(a)(18) provides that, for purposes of reporting by both the old issuer and the new issuer, the term ''seller'' includes any person that holds an interest in a life insurance contract that has been transferred in a reportable policy sale under § 1.101–1(c)(1) or (3) and exchanges that interest for an interest in a new life insurance contract in an exchange pursuant to section 1035. The information to be provided by a section 1035 issuer includes the name, address, and taxpayer identification number of the seller, the investment in the contract with respect to the seller, and any other information that is required by the form or its instructions. It is anticipated that this reporting will be completed on Form 1099–SB, ''Seller's Investment in Life Insurance Contract'', and the information to be provided will also include the policy number (old or new, as applicable) and identification of the transaction as a section 1035 exchange. Under proposed § 1.6050Y–3(a)(3), section 1035 issuers are not required to report the amount the seller would have received if the seller had surrendered the life insurance contract.

The proposed regulations make conforming changes to § 1.6050Y–3(c) of the final regulations to provide the time and place for filing returns required to be made by section 1035 issuers. See proposed § 1.6050Y–3(c) (section 1035 issuers file returns at the same time and place as other 6050Y(b) issuers). Proposed § 1.6050Y–3(d)(1) provides that each section 1035 issuer must furnish a statement to each seller who makes a section 1035 exchange, just as other 6050Y(b) issuers are required to furnish a statement to sellers, and proposed § 1.6050Y–3(d)(2) imposes the same deadline for doing so. Additionally, proposed § 1.6050Y–3(d)(1) requires the old issuer to furnish a statement to the new issuer in a section 1035 exchange providing information about the interest being exchanged. This statement serves to provide notice to the new issuer that the old interest was transferred in a reportable policy sale and, therefore, that the new interest will be treated as an interest in a life insurance contract that has been transferred in a reportable policy sale and that death benefits paid under the new interest are reportable death benefits. Proposed § 1.6050Y–3(d)(2) provides that this statement must be furnished within 30 days of the section 1035 exchange.

The proposed regulations also modify the exception to reporting set forth in § 1.6050Y–4(e)(3) of the final regulations. Section 1.6050Y–4(e)(3) of the final regulations provides an exception from reporting under § 1.6050Y–4 of the final regulations if the payor never received, and has no knowledge of any issuer having received, a reportable policy sale statement (RPSS) with respect to the interest in a life insurance contract with respect to which the reportable death benefits are paid. However, death benefits paid with respect to the new interest may be reportable death benefits even though an RPSS was never furnished with respect to the new interest. Accordingly, the existing exception would apply too broadly in the context of section 1035 exchanges. Proposed § 1.6050Y–4(e)(3) therefore imposes an additional requirement if the reportable death benefits are paid with respect to an interest in a life insurance contract issued in a section 1035 exchange. In that case, the exception applies only if the payor also never received, and has no knowledge

of any issuer having received, a statement described in § 1.6050Y–3(d)(1) from a section 1035 issuer or other information indicating that the issuance of the contract is treated as a transfer of an interest in the contract in a reportable policy sale under § 1.101–1(c)(3).

Ordinary Course Trade or Business Acquisitions

As noted in the preamble to the final regulations, C corporations are not frequently used as vehicles for investing in life insurance contracts covering insureds with respect to which the corporation does not have a substantial business, financial, or family relationship at the time the contract is issued because a corporate level income tax applies to corporate earnings in addition to income tax on distributions at the shareholder level. See 84 FR 58460, 58467. After consideration of the comments and letter received on the 2019 proposed regulations and the final regulations, respectively, regarding ordinary course trade or business acquisitions, the Treasury Department and the IRS are proposing an exception for certain direct acquisitions of interests in life insurance contracts from a C corporation.

Proposed § 1.101–1(c)(2)(v) provides that the direct acquisition of an interest in a life insurance contract from a C corporation by a C corporation is not a reportable policy sale if (1) the acquisition results from a transaction that qualifies as a reorganization under section 368(a); (2) immediately before the acquisition, (i) the interest is held by a C corporation that conducts an active trade or business within the meaning of § 1.367(a)–2(d)(2) and (3), (ii) the C corporation does not engage in a trade or business of investing in interests in life insurance contracts, and (iii) no more than 5 percent of the gross value of the assets of the C corporation consists of life insurance contracts; and (3) immediately after the acquisition, (i) the acquiring C corporation does not engage in a trade or business of investing in interests in life insurance contracts, and (ii) not more than 5 percent of the gross value of the assets of the C corporation consists of life insurance contracts. This exception would provide relief from the reportable policy sale rules for acquisitions of interests in life insurance contracts through certain ordinary course trade or business acquisitions while preserving different treatment for direct and indirect acquisitions of interests in life insurance contracts in other cases. The proposed regulations modify Example 11 in § 1.101–1(g)(11) of the final regulations to reflect the addition of the exception in proposed § 1.101–1(c)(2)(v). See proposed § 1.101–1(g)(11).

Applicability Dates

Proposed §§ 1.101–1(b)(2)(iv) and (c)(3) are proposed to apply to section 1035 exchanges occurring on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**, and proposed § 1.101–1(c)(2)(v) is proposed to apply to any acquisition of an interest in a life insurance contract occurring on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. See proposed § 1.101–6(c). However, it is proposed that a taxpayer may choose to apply § 1.101–1(b)(2)(iv), (c)(2)(v), and (c)(3) of the regulations set forth in the Treasury decision adopting these regulations as final regulations to all section 1035 exchanges and acquisitions occurring after December 31, 2017, and before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. See section 7805(b)(7) of the Code. Alternatively, a taxpayer may rely on proposed § 1.101–1(b)(2)(iv), (c)(2)(v), and (c)(3) for all section 1035 exchanges and acquisitions occurring after December 31, 2017, and before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

The reporting obligations under proposed § 1.6050Y–3 are proposed to apply to any section 1035 exchange treated as a reportable policy sale under proposed § 1.101–1(c)(3) if the exchange occurs on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. See proposed § 1.6050Y–1(b)(2). The reporting obligations under proposed § 1.6050Y–4 are proposed to apply to reportable death benefits paid with respect to an interest in a life insurance contract issued in a section 1035 exchange treated as a reportable policy sale under proposed § 1.101–1(c)(3) if the exchange occurs on or after the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**. See proposed § 1.6050Y–1(b)(2). Any person with a reporting obligation under proposed § 1.6050Y–3 or proposed § 1.6050Y–4 may, however, rely on the proposed regulations with respect to all section 1035 exchanges occurring after May 10, 2023, and before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

The proposed regulations are not subject to review under section 6(b) of Executive Order 12866, as amended pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

The additional collection of information relating to this notice of proposed rulemaking will be submitted to the Office of Management and Budget for review under OMB Control Number 1545–2281 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In general, the additional collection of information is required under section 6050Y. When an interest in a life insurance contract that was previously transferred in or is treated as having been previously transferred in a reportable policy sale (original contract) is exchanged by a policyholder under section 1035 for a new life insurance contract (new contract), proposed § 1.6050Y–3(a) would require the issuer of the original contract (original issuer) to notify the issuer of the new contract (new issuer), the policyholder, and the IRS of the status of the original contract as a contract transferred in or treated as having been transferred in a reportable policy sale and to provide the investment in the contract for the original contract. Proposed § 1.6050Y–3(a) would also require any new issuer receiving such notification with respect to a section 1035 exchange to provide the policyholder and the IRS with the policy number of the new contract and the investment in the contract. This information is necessary to carry out the purpose of section 6050Y(c), which requires a payor of reportable death benefits to report certain information about payments of reportable death benefits.

The likely respondents to the collection of information are life insurance companies.

The burden for the additional collection of information contained in proposed § 1.6050Y–3 will be reflected in the burden on Form 1099–SB, ''Seller's Investment in Life Insurance Contract'', when the burden is revised to reflect the additional collection of information in proposed § 1.6050Y–3. The OMB Control Number for this form is 1545–2281.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 10, 2023.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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 control number assigned by the Office of Management and Budget.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to ''prepare and make available for public comment an initial regulatory flexibility analysis,'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605(b) of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the RFA, it is hereby certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities, because any effect on small entities by the rules proposed in this document flows directly from section 13520 of the TCJA. In addition, it is anticipated that requirements in the proposed regulations, which implement the statutory requirements under section 13520 of the TCJA, will fall primarily on financial and insurance firms with annual receipts greater than $41.5 million and, therefore, on no small entities. Therefore, the Commissioner of the IRS hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS request comments on the impacts of this proposed rule on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small entities.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This proposed rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (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, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kathryn M. Sneade, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

Availability of IRS Documents

The revenue rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.101–1 is amended by:

■ 1. Adding a heading for paragraph (a) introductory text.

■ 2. In paragraph (a)(1), adding a sentence after the fourth sentence.

■ 3. In paragraphs (b) introductory text and (b)(2), revising the headings.

■ 4. Adding paragraph (b)(2)(iv).

■ 5. Adding a sentence at the end of paragraph (c)(1).

■ 6. Revising paragraph (c)(2)(v).

■ 7. Adding paragraph (c)(3).

■ 8. In paragraph (e)(2), removing '', other than the issuance of a policy in an exchange pursuant to section 1035'' in the last sentence.

■ 9. In paragraph (g)(11), adding two sentences after the fourth sentence.

■ 10. Adding paragraphs (g)(17) through (g)(19).

The additions and revisions read as follows:

§ 1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a) *Exclusion from gross income*—(1) *In general.* * * * The extent to which this exclusion applies in cases where life insurance policies have been gratuitously transferred or issued in an exchange pursuant to section 1035 (section 1035 exchange) is stated in paragraph (b)(2) of this section. * * *

* * * * *

(b) *Transfers and exchanges of life insurance policies.*

* * * * *

(2) *Other transfers and exchanges*—

* * *

* * * * *

(iv) *Section 1035 exchanges.* When an interest in a life insurance contract (old interest) is exchanged in a section 1035 exchange for an interest in a newly issued life insurance contract (new interest), except as otherwise provided by this section with respect to any portion of the new interest that is transferred or exchanged subsequent to the section 1035 exchange, the amount of the proceeds attributable to the new interest that is excludable from gross income under section 101(a) is determined as follows:

(A) If, at the time of the exchange, the entire amount of the proceeds attributable to the old interest would have been excludable from gross income under section 101(a), the entire amount of the proceeds attributable to the new interest is excludable from gross income; and

(B) If, at the time of the exchange, less than the entire amount of the proceeds attributable to the old interest would have been excludable from gross income under section 101(a), the amount of the proceeds attributable to the new interest that is excludable from gross income is limited to the sum of the amount of the proceeds attributable to the old interest that would have been excludable at the time of the exchange and the premiums and other amounts subsequently paid with respect to the new interest by the policyholder, reduced (but not below zero) by amounts received by the policyholder under the life insurance contract that are not received as an annuity, to the extent excludable from gross income under section 72(e).

* * * * *

(c) * * *

(1) * * * See paragraph (c)(3) of this section for special rules applicable to section 1035 exchanges.

(2) * * *

(v) The direct acquisition of an interest in a life insurance contract by a C corporation if:

(A) Immediately before the acquisition, the interest is held by another C corporation (target C corporation) that actively conducts a trade or business within the meaning of § 1.367(a)–2(d)(2) and (3);

(B) Immediately before the acquisition, the target C corporation does not engage in a trade or business of investing in interests in life insurance contracts;

(C) Immediately before the acquisition, no more than 5 percent of the gross value of the assets (as determined under paragraph (f)(4) of this section) of the target C corporation consists of life insurance contracts;

(D) The acquisition results from a transaction that qualifies as a reorganization under section 368(a) with respect to which the target C corporation and the acquiring C corporation each is a party to the reorganization (within the meaning of section 368(b));

(E) Immediately after the acquisition, the acquiring C corporation does not engage in a trade or business of investing in interests in life insurance contracts, and

(F) Immediately after the acquisition, no more than 5 percent of the gross value of the assets (as determined under paragraph (f)(4) of this section) of the acquiring C corporation consists of life insurance contracts.

(3) *Section 1035 exchanges.* This paragraph (c)(3) applies if an interest in a life insurance contract (old interest) is exchanged in a section 1035 exchange for an interest in a newly issued life insurance contract (new interest), and the old interest previously was transferred for valuable consideration in a reportable policy sale under paragraph (c)(1) of this section or is treated as an interest in a life insurance contract that previously was transferred for valuable consideration in a reportable policy sale under this paragraph (c)(3). For purposes of this section, the new interest is treated as an interest in a life insurance contract that previously was transferred for valuable consideration in a reportable policy sale. For purposes of §§ 1.6050Y–3 and 1.6050Y–4, the section 1035 exchange is treated as the transfer of an interest in the life insurance contract in a reportable policy sale.

* * * * *

(g) * * *

(11) * * * Also, the exception in paragraph (c)(2)(v) of this section applies, provided Corporation X satisfies the requirements of paragraph (c)(2)(v)(A) through (C) of this section immediately before the acquisition by Corporation Y, and Corporation Y satisfies the requirements of paragraph (c)(2)(v)(E) and (F) of this section immediately after the acquisition. This would be the case even if A were no longer employed by Corporation X at the time of the transfer. * * *

* * * * *

(17) *Example 17.* The facts are the same as in *Example 4* in paragraph (g)(4) of this section except that, before A's death, C exchanges the policy on A's life for a new policy on A's life in a section 1035 exchange. The amount of the proceeds C may exclude from C's gross income under this section is limited under paragraph (b)(2)(iv)(B) of this section to $6,000 plus any premiums and other amounts paid by C with respect to the original policy subsequent to the transfer and any premiums and other amounts paid by C with respect to the new policy subsequent to the exchange.

(18) *Example 18.* The facts are the same as in *Example 17* in paragraph (g)(17) of this section except that, before A's death, C sells the new policy to A for fair market value. A's estate receives the proceeds of $100,000 on A's death. Under paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section, the amount of the proceeds A's estate may exclude from gross income is not limited by paragraph (b) of this section.

(19) *Example 19.* A is the initial policyholder of a $100,000 insurance policy on A's life. A transfers the policy for $6,000, its fair market value, to an individual, C, who does not have a substantial family, business, or financial relationship with A at the time of the transfer. The transfer from A to C is a reportable policy sale. C also is the initial policyholder of a $200,000 insurance policy on A's life. Before A's death, C exchanges the two policies on A's life for a single new policy on A's life in a section 1035 exchange. C receives the proceeds from the new policy on A's death. The entire amount of the proceeds attributable to the interest in the new policy that was issued in exchange for the policy originally issued to C is excludable from gross income under paragraph (b)(2)(iv)(A) of this section. The amount of the proceeds attributable to the interest in the new policy that was issued in exchange for the policy originally issued to A that is excludable from gross income is limited under paragraph (b)(2)(iv)(B) of this section to $6,000 plus any premiums and other amounts paid by C with respect to the policy originally issued to A subsequent to the transfer and any premiums and other amounts paid by C with respect to

the interest in the new policy that was issued in exchange for the policy originally issued to A.

■ **Par. 3.** Section 1.101–6 is amended by adding paragraph (c) to read as follows:

§ 1.101–6 Effective date.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, § 1.101–1(b)(2)(iv) and (c)(3) apply to any interest in a life insurance contract issued in a section 1035 exchange occurring on or after the date these regulations are published as final regulations in the **Federal Register**, and § 1.101–1(c)(2)(v) applies to any acquisition of an interest in a life insurance contract occurring on or after the date these regulations are published as final regulations in the **Federal Register**. However, under section 7805(b)(7), a taxpayer may choose to apply the rules in § 1.101–1(b)(2)(iv), (c)(2)(v), and (c)(3) to all exchanges and acquisitions occurring after December 31, 2017, and before the date these regulations are published as final regulations in the **Federal Register**.

■ **Par. 4.** Section 1.6050Y–1 is amended by:

■ 1. In paragraph (a)(1), adding a sentence at the end of the paragraph.

■ 2. In paragraph (a)(2), adding ''under § 1.101–1(c)(1) or treated as such an interest under § 1.101–1(c)(3)'' before the second comma.

■ 3. In paragraph (a)(8)(ii), removing the last sentence.

■ 4. In paragraph (a)(8)(iii)(A), removing ''or'' at the end.

■ 5. In paragraph (a)(8)(iii)(B)(*2*), removing the period at the end of the paragraph and adding in its place ''; or''.

■ 6. Adding paragraph (a)(8)(iii)(C).

■ 7. Adding paragraph (a)(8)(v).

■ 8. In paragraph (a)(12), adding ''under § 1.101–1(c)(1) or (3)'' before the period at the end of the paragraph.

■ 9. In paragraph (a)(14), removing ''§ 1.101–1(c)'' before the period at the end of the paragraph, and adding in its place ''§ 1.101–1(c), except as otherwise provided in this section''.

■ 10. In paragraph (a)(18)(i), removing ''or'' at the end of the paragraph.

■ 11. In paragraph (a)(18)(ii), removing the period at the end of the paragraph and adding in its place ''; or''.

■ 12. Adding paragraph (a)(18)(iii).

■ 13. Redesignating paragraphs (b)(1) through (5) as paragraphs (b)(1)(i) through (v); redesignating paragraph (b) introductory text as paragraph (b)(1); adding a heading to paragraph (b) introductory text; revising the heading for the newly redesignated paragraph (b)(1); revising the first two sentences of newly redesignated paragraph (b)(1); and adding paragraph (b)(2).

The additions and revisions read as follows:

§ 1.6050Y–1 Information reporting for reportable policy sales, transfers of life insurance contracts to foreign persons, and reportable death benefits.

(a) * * *

(1) * * * For purposes of determining the buyer under paragraph (a)(2) of this section, the term *acquirer* also includes any person to whom an interest in a life insurance contract is issued in an exchange pursuant to section 1035 (section 1035 exchange) that is treated as the transfer of an interest in the life insurance contract in a reportable policy sale under § 1.101–1(c)(3).

* * * * *

(8) * * *

(iii) * * *

(C) Any person that is a section 1035 issuer or the designee of a section 1035 issuer.

* * * * *

(v) *Section 1035 issuer.* A section 1035 issuer is any person that, on the date of a section 1035 exchange of an interest in an existing life insurance contract for an interest in a newly issued life insurance contract that is treated as the transfer of an interest in a life insurance contract in a reportable policy sale under § 1.101–1(c)(3), is:

(A) An issuer with respect to the existing life insurance contract, provided the issuer received an RPSS, a statement required by § 1.6050Y–3(d)(1), or other information indicating that the existing life insurance contract or interest therein was transferred in a reportable policy sale under § 1.101–1(c)(1) or (3); or

(B) An issuer with respect to the newly issued life insurance contract, provided the issuer receives the statement required by § 1.6050Y–3(d)(1) or other information indicating that existing life insurance contract or interest therein was transferred in a reportable policy sale under § 1.101–1(c)(1) or (3).

* * * * *

(18) * * *

(iii) For purposes of reporting under § 1.6050Y–3 by both the section 1035 issuer described in paragraph (a)(8)(v)(A) of this section and the section 1035 issuer described in paragraph (a)(8)(v)(B) of this section, holds an interest in a life insurance contract that has been transferred in a reportable policy sale under § 1.101–1(c)(1) or (3) and exchanges that interest for an interest in a new life insurance contract in a section 1035 exchange.

(b) *Applicability date*—(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section, this section and §§ 1.6050Y–2 through 1.6050Y–3 apply to reportable policy sales made after December 31, 2018. Except as otherwise provided in paragraph (b)(2) of this section, this section and § 1.6050Y–4 apply to reportable death benefits paid after December 31, 2018. * * *

* * * * *

(2) *Section 1035 exchanges.* Section 1.6050Y–3 applies to a section 1035 exchange treated as a reportable policy sale under § 1.101–1(c)(3) if the exchange occurs on or after the date these regulations are published as final regulations in the **Federal Register**. Section 1.6050Y–4 applies to reportable death benefits paid with respect to an interest in a life insurance contract issued in a section 1035 exchange treated as a reportable policy sale under § 1.101–1(c)(3) if the exchange occurs on or after the date these regulations are published as final regulations in the **Federal Register**.

§ 1.6050Y–2 [Amended]

■ **Par. 5.** Section 1.6050Y–2 is amended by removing paragraph (f)(3).

■ **Par. 6.** Section 1.6050Y–3 is amended by:

■ 1. In paragraph (a) introductory text, removing ''that receives an RPPS or any notice of a transfer to a foreign person'' in the first sentence and adding in its place ''that receives an RPSS, receives any notice of a transfer to a foreign person, or is a section 1035 issuer''.

■ 2. In paragraph (a)(3), removing ''The'' at the beginning of the paragraph and adding in its place ''For 6050Y(b) issuers other than section 1035 issuers, the''.

■ 3. In paragraph (c), removing ''reportable policy sale or the transfer to a foreign person occurred'' before the period at the end of the first sentence and adding in its place ''reportable policy sale, transfer to a foreign person, or section 1035 exchange occurred''.

■ 4. In paragraph (d)(1), removing ''is a reportable policy sale payment recipient or makes a transfer to a foreign person'' in the first sentence and adding in its place ''is a reportable policy sale payment recipient, makes a transfer to a foreign person, or makes a section 1035 exchange'', and adding a sentence at the end of the paragraph.

■ 5. In paragraph (d)(2), removing ''reportable policy sale or transfer to a foreign person occurred'' before the period at the end of the first sentence and adding in its place ''reportable policy sale, transfer to a foreign person, or section 1035 exchange occurred'', and adding a sentence after the second sentence.

■ 6. In paragraph (f), removing ''paragraph (f)(1), (2), or (3) of this section applies'' before the period at the end of the paragraph and adding in its place ''paragraph (f)(1) or (2) of this section applies''.

■ 7. Removing paragraph (f)(3).

The additions read as follows:

§ 1.6050Y–3 Information reporting by 6050Y(b) issuers for reportable policy sales and transfers of life insurance contracts to foreign persons.

* * * * *

(d) * * *

(1) * * * In addition, every section 1035 issuer described in § 1.6050Y–1(a)(8)(v)(A) filing a return required by paragraph (a) of this section with respect to a section 1035 exchange must furnish to each section 1035 issuer described in § 1.6050Y–1(a)(8)(v)(B) with respect to that exchange a written statement showing the information required by paragraph (a) of this section with respect to the seller in the exchange and the name, address, and phone number of the information contact of the person filing the return.

(2) *Time for furnishing statement.* * * * Each statement required by paragraph (d)(1) of this section to be furnished to any section 1035 issuer described in § 1.6050Y–1(a)(8)(v)(B) must be furnished within 30 days of the date of the section 1035 exchange.

* * *

* * * * *

■ **Par. 7.** Section 1.6050Y–4 is amended by adding a sentence at the end of paragraph (e)(3) to read as follows:

§ 1.6050Y–4 Information reporting by payors for reportable death benefits.

* * * * *

(e) * * *

(3) * * * Additionally, if the reportable death benefits are paid with respect to an interest in a life insurance contract issued in a section 1035 exchange, the payor never received, and has no knowledge of any issuer having received, a statement described in § 1.6050Y–3(d)(1) from a section 1035 issuer or other information indicating that the issuance of the contract is treated as a transfer of an interest in the contract in a reportable policy sale under § 1.101–1(c)(3).

* * * * *

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–09637 Filed 5–9–23; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Custom Declaration Exceptions

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various subsections to remove the ''known mailer'' and ''official mail'' exceptions for customs declarations for mail to or from overseas military and diplomatic post office addresses.

DATES: Submit comments on or before June 9, 2023.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''DMM Custom Declaration Exceptions''. Faxed comments will not be accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Vlad Spanu at (202) 268–4180 or Kathy Frigo at (202) 268–4178.

SUPPLEMENTARY INFORMATION: The Postal Service proposes removing subsection 703.2.3.9, *Customs Declarations—Exceptions,* to help align postal regulations with current customs policy.

The Postal Service also proposes making minor revisions to the text in subsections 608.2.4.4 and 703.2.3.8 to align with the removal of subsection 703.2.3.9.

Associated revisions to the IMM will be published separately.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

608 Postal Information and Resources

* * * * *

2.0 Domestic Mail

* * * * *

2.4 Customs Forms Required

* * * * *

2.4.4 Overseas Military Mail

[Revise the text of 2.4.4 to read as follows:]

For determining customs declarations' required usage when mailing to or from APO, FPO, or DPO addresses, see 703.2.3.6 through 703.2.3.8.

* * * * *

700 Special Standards

* * * * *

703 Nonprofit USPS Marketing Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military and Diplomatic Post Office Mail

* * * * *

2.3 General Restrictions

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2.3.8 Customs Declarations—Required Usage

[Revise the introductory text of 2.3.8 to read as follows:]

In accord with the procedures provided in 2.3.6, customs declarations forms required for use on shipments to or from APO/FPO/DPO locations are as follows:

[Revise the text of item a. to read as follows:]

a. Priority Mail Express mailpieces addressed to or from an APO, FPO, or DPO location must bear a properly completed computer-generated PS Form 2976–B, *Priority Mail Express International Shipping Label and Customs Form,* regardless of weight, value, or contents.

[Revise the introductory text of item b. to read as follows:]

b. All other mailpieces addressed to or from an APO, FPO, or DPO location must bear a properly completed computer-generated PS Form 2976, *Customs Declaration CN22—Sender's Declaration,* or, if the customer prefers, a properly completed computer-generated PS Form 2976–A, *Customs Declaration and Dispatch Note—CP 72,* if either of the following conditions apply:

* * * * *

[Delete 2.3.9 in its entirely and renumber current 2.3.10 through 2.3.13 as 2.3.9 through 2.3.12.]

* * * * *

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–09939 Filed 5–9–23; 8:45 am]

BILLING CODE 7710–12–P

Notices

Federal Register
Vol. 88, No. 90
Wednesday, May 10, 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

Farm Service Agency

[Docket ID FSA–2023–0007]

Notice of Funding Availability (NOFA) for the Rice Production Program

AGENCY: Farm Service Agency, Department of Agriculture (USDA).

ACTION: Notification of funding availability.

SUMMARY: The Farm Service Agency (FSA) is announcing the availability of funding for the Rice Production Program (RPP) to provide financial assistance to rice producers affected by higher production costs during the 2022 crop year. RPP will provide a one-time payment to assist rice producers with additional expenses associated with the 2022 crop year costs for rice. In this document, FSA is providing the eligibility requirements, application process, and payment calculation for RPP.

DATES:

Funding availability: Implementation will begin May 10, 2023.

Applications due date: We will accept applications for assistance through July 10, 2023.

FOR FURTHER INFORMATION CONTACT: Alison Groenwoldt; telephone: (202) 720–4213; or by email: *alison.groenwoldt@usda.gov.* Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) (the CAA, 2023), appropriated $250 million of rescinded unobligated balances from the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), to the Secretary to provide financial assistance to rice producers through RPP. In accordance with section 602 of the CAA, 2023, RPP will provide a one-time payment to assist eligible rice producers with additional expenses associated with 2022 crop production costs for rice. The payment will be issued in two parts that will constitute the 1-time payment authorized in the CAA, 2023, in order to implement the requirement that the funding be fully expended without exceeding available funding.

The $250 million funding for RPP assistance will remain available until expended and RPP payments will be subject to the availability of funding.

Under the authority for RPP, the payment rate per pound is as determined by the Secretary and shall be not less than 2 cents per pound unless there is a need to adjust the payment rate such that the amount of funding made available for RPP is fully expended. A payment rate at or above 2 cents per pound is expected to exceed the available funding. To ensure total payments do not exceed available funding, FSA will make an initial payment to eligible applicants at a payment rate of 1 cent per pound. Any remaining funding available at the conclusion of the application period, will be issued in a second payment to eligible applicants at a payment rate determined by the Secretary such that the funding available for RPP is fully expended, taking into account necessary reserves. Payments will be calculated based on information certified on the FSA–174.

Administration

RPP will be administered under the general supervision of the FSA Deputy Administrator for Farms Programs (Deputy Administrator). RPP will be carried out by FSA State and county committees with instructions issued by the Deputy Administrator.

FSA State committees, FSA county committees, representatives, and their employees do not have authority to modify or waive any of the provisions of RPP, except as discussed below.

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

- Correct or require correction of an action taken by an FSA county committee that is not in compliance with this document; or
- Require an FSA county committee to not take an action or implement a decision that is not in compliance with this document.

The Deputy Administrator or a designee may determine any question arising under RPP or reverse or modify a determination made by an FSA State committee or FSA county committee.

The Deputy Administrator may authorize FSA State committees and FSA county committees to waive or modify non-statutory deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of RPP.

A representative of FSA may execute applications and related documents only under the terms and conditions determined and announced by FSA. Any document not executed under such terms and conditions, including any purported execution before the date authorized by FSA, will be null and void.

Definitions

The following definitions apply to RPP.

Application period means the period starting on May 10, 2023 and ending on July 10, 2023 during which time applicants may apply for RPP payments.

Actual Production History (APH) means the average actual production history for the primary policyholder as calculated by the Risk Management Agency (RMA). For RPP purposes, Substantial Beneficial Interest holders will be assigned an average APH using the primary policy holders APH and the APH from their individual policies, if applicable.

Average Adjusted Gross Farm Income means the average of the portion of the person or legal entity's adjusted gross income derived from farming, ranching, or forestry operations for the 3 taxable years preceding the most immediately preceding complete taxable year. The relevant tax years are 2018, 2019, and 2020.

If the resulting average adjusted gross farm income derived from items 1 through 12 of the definition of income derived from farming, ranching and forestry operations is at least 66.66 percent of the average adjusted gross

income of the person or legal entity, then the average adjusted gross farm income may also take into consideration income or benefits derived from the following:

(1) The sale of equipment to conduct farm, ranch, or forestry operations; and

(2) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

Crop year means the 12-month period following a crop's normal harvest period.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture, or their designee.

Deputy Administrator Established Yield means a national average yield, as determined by the Deputy Administrator to be used when APH data is not available The national average yield is a weighted average yield using FSA eligible rice acres and state average APH data. The Deputy Administrator established yield is 7,694 pounds.

Eligible rice means short, medium, and long grain rice, including temperate japonica and sweet rice. Industrial rice and wild rice are not eligible to receive a RPP payment.

Eligible rice acres means eligible rice reported by the acreage reporting deadline as being planted or prevented from being planted for the 2022 crop year.

Income derived from farming, ranching, and forestry operations means income of an individual or entity derived from:

(1) Production of crops, specialty crops, and unfinished raw forestry products;

(2) Production of livestock, aquaculture products used for food, honeybees, and products derived from livestock;

(3) Production of farm-based renewable energy;

(4) Selling (including the sale of easements and development rights) of farm, ranch, and forestry land, water or hunting rights, or environmental benefits;

(5) Rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;

(6) Processing, packing, storing, and transportation of farm, ranch, forestry commodities including renewable energy;

(7) Feeding, rearing, or finishing of livestock;

(8) Payments of benefits, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;

(9) Sale of land that has been used for agricultural purposes;

(10) Payments and benefits authorized under any program made available and applicable to payment eligibility and payment limitation rules;

(11) Income reported on Internal Revenue Service (IRS) Schedule F or other schedule used by the person or legal entity to report income from such operations to the IRS;

(12) Wages or dividends received from a closely held corporation, and Interest Charge Domestic International Sales Corporation (IC–DISC) or legal entity comprised entirely of family members when more than 50 percent of the legal entity's gross receipts for each tax year are derived from farming, ranching, or forestry activities as defined in this document; and

(13) Any other activity related to farming, ranching, and forestry, as determined by the Deputy Administrator.

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

United States means all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Eligible Applicants

To be eligible for RPP, a producer must have reported to FSA a share interest in eligible rice by the acreage reporting deadline. Late-filed or modified rice acreage reports will not be eligible for RPP. In addition, the applicant must meet one of the following:

- Be a citizen of the United States;
- Be a resident alien, which for purposes of this subpart means ''lawful alien'' as defined in 7 CFR part 1400;
- Be a partnership organized under State law;
- Be a corporation, limited liability company, or other organizational structure organized under State law; or
- Be an Indian Tribe or Tribal organization, as defined in Section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Application Process

FSA will accept applications during the application period. FSA will pre-populate the Rice Production Program (RPP) Application (form FSA–174) using acreage data and ownership shares reported to the FSA and APH data on file with RMA or, if APH data is not available, the Deputy Administrator established yield. The pre-populated form will be mailed to producers at the start of the application period.

To apply for RPP, applicants must return a completed FSA–174 to their recording FSA county office by the close of the application period. Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA.

Producers who reported eligible rice to FSA by the acreage reporting deadline according to 7 CFR 718.102, Acreage Reports, but do not receive a pre-populated form may still apply for RPP by visiting their recording FSA county office by close of the application period and completing an FSA–174.

Each applicant must submit the following forms in person or by mail, email, or facsimile, or other methods announced by FSA, if not already on file with FSA, within 60 days of the application deadline:

- Form AD–2047, Customer Data Worksheet, for existing customers who need to update their customer profile;
- Form CCC–901, Member Information for Legal Entities, if applicable;
- Form CCC–902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- Form FSA–510, Request for an Exception to the $125,000 Payment Limitation for Certain Programs, accompanied by a certification from a certified public accountant or attorney as to the person or legal entity's certification, for a legal entity and all members of that entity, for the 2022 program year, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400, if applicable; and
- Form AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, for the RPP applicant and applicable affiliates as provided in 7 CFR part 12.

Applicants may be required to provide additional documentation to FSA if requested, to verify the accuracy of information provided on the application. Additional documentation must be submitted within 30 calendar days from the requested date or the application will not be processed. Additional information may include, but is not limited to:

- The producer's APH; and
- Evidence, such as seed receipts, custom harvesting receipts, or sales receipts to substantiate the reported share interest in the eligible rice.

Initial RPP payment will be issued after an application is reviewed and eligibility requirements are met. At the

conclusion of the application period, a second payment will be issued to eligible applicants using a payment rate determined by the Secretary such that the funding available for RPP is fully expended, taking into account necessary reserves.

Payment Rates and Calculations

Consistent with section 602(b) of CAA, 2023, the RPP payment will be calculated as described in this section.

Producers will certify on the FSA–174 the producer's share of eligible rice acres and APH, or if APH data is not available, the use of the Deputy Administrator established yield.

FSA will determine an eligible producer's RPP payment by adding the calculated payment for planted acres and the calculated payment for prevented planted acres, which are each calculated as follows:

- For planted acres, the producer's share of planted eligible rice acres multiplied by APH or, if APH data is not available, the Deputy Administrator established yield, multiplied by the payment rate; and
- For prevented planted acres, the producer's share of prevented planted eligible rice acres multiplied by APH or, if APH data is not available, the Deputy Administrator established yield, multiplied by the payment rate, which is then multiplied by a prevented planting factor of 60 percent.

For example, a producer reported 200 acres of planted rice and 100 acres of prevented planted rice for the 2022 crop year, and the producer has an APH of 7,500 pounds per acre. For the initial payment, FSA multiplies $0.01 × 7,500 × the sum of adding 200 planted acres plus 60 percent × 100 prevented planted acres, resulting in the total initial payment of $19,500.

RPP payments are subject to availability of funds. To ensure total payments do not exceed available funding, FSA will make an initial payment to eligible applicants at a payment rate of 1 cent per pound. Any remaining funding available at the conclusion of the application period, will be issued in a second payment to eligible applicants at a payment rate determined by the Secretary such that the funding available for RPP is fully expended, taking into account necessary reserves.

Sharing Payments Between Multiple Producers

Each producer reporting a share interest of eligible rice to the FSA on a Report of Acreage (FSA–578) will be given the opportunity to apply for RPP and the RPP payment will be calculated based on the producer's reported ownership share. If a farm's acres of rice are leased on a share basis, neither the landlord nor the tenant can receive 100 percent of RPP payment for the producers with an ownership share on the farm, as the RPP payment is to be distributed proportionately to the producers according to the landlord's and tenant's share of the eligible rice as reported to FSA on the FSA–578.

FSA will approve an application for shared RPP payments to applicants when all the following, as applicable, have been determined to have occurred:

(1) Landlords, tenants, and sharecroppers each sign their own RPP application and agree to the eligible rice acres recorded on the application, which when added together cannot exceed 100 percent of the eligible rice acres recorded on the FSA–578 for the 2022 crop year;

(2) Upon request from the FSA county committee, if necessary, provide a copy of the lease agreement; and

(3) FSA determines that the payment shares do not circumvent either the provisions of this document or the provisions of 7 CFR part 1400.

Payment Limitation and Attribution

As required by the CAA, 2023, and consistent with 7 CFR 760.1507(b), the payment limitation for RPP is determined by the producer's average adjusted gross farm income (income from activities related to farming, ranching, or forestry). Specifically, if the producer's average adjusted gross farm income is less than 75 percent of the producer's average adjusted gross income (AGI) for the 3 taxable years preceding the most immediately preceding complete tax year, a producer, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than $125,000 in payments for RPP.

If at least 75 percent of the producer's average AGI is derived from farming, ranching, or forestry related activities and the producer provides the required certification and documentation, as discussed below, the producer, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to $250,000 in payments for RPP.

The relevant tax years for establishing a producer's average AGI and percentage derived from farming, ranching, or forestry related activities are 2018, 2019, and 2020 for program year 2022.

To receive more than $125,000 in RPP payments, producers must submit form FSA–510, accompanied by a certification from a certified public accountant or attorney as to the percentage of that person or legal entity's certified average AGI that was derived from farming, ranching, or forestry operations. If a producer requesting the increased payment limitation is a legal entity, all members of that entity must also complete form FSA–510 and provide the required certification according to the direct attribution provisions in 7 CFR 1400.105, Attribution of Payments. If a legal entity would be eligible for the increased payment limitation based on the legal entity's average AGI derived from farming, ranching, or forestry related activities but a member of that legal entity either does not complete a form FSA–510 and provide the required certification or is not eligible for the increased payment limitation, the payment to the legal entity will be reduced by the payment limitation applicable to the share of the RPP payment attributed to that member.

If a producer files form FSA–510 and the accompanying certification after their RPP payment is issued but before the application period, FSA will process the form FSA–510 and issue an additional payment if the producer's initial payment amount was limited by the $125,000 payment limitation.

A payment made to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility. Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as described in § 760.1906.

Like other programs administered by FSA, payments made to an Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), will not be subject to payment limitation.

Provisions Requiring Refund to FSA

In the event any application for an RPP payment resulted from erroneous information or miscalculation, the participant must refund any excess payment to FSA with interest to be calculated from the date of the disbursement to the participant. If, for whatever reason, FSA determines that the applicant misrepresented the information provided, the application will be disapproved and the full RPP payment will be required to be refunded to FSA with interest from the date of disbursement.

Miscellaneous Provisions

General requirements that apply to other FSA-administered commodity programs also apply to RPP, including compliance with the provisions of 7 CFR part 12, ''Highly Erodible Land and Wetland Conservation,'' and the provisions of 7 CFR 718.6, which address ineligibility for benefits for offenses involving controlled substances. Appeal regulations in 7 CFR parts 11 and 780 and equitable relief and finality provisions in 7 CFR part 718, subpart D, apply to determinations under RPP.

Participants are required to retain documentation in support of their application for 3 years after the date of approval. Participants receiving an RPP payment must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the participant's business and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

Applicants have a right to a decision in response to their application. If an applicant files a late RPP application, the application will be considered a request to waive the deadline.

The Deputy Administrator has the authority to waive or modify application deadlines and other requirements or program provisions not specified in law in cases where the Deputy Administrator determines it is (1) equitable to do so and (2) where the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of RPP.

Applicants who request to waive or modify RPP provisions do not have a right to a decision on the requests, and the Deputy Administrator's refusal to exercise discretion on requests to waive or modify RPP provisions will not be considered an adverse decision and is, by itself, not appealable.

The regulations governing offsets in 7 CFR part 3 apply to RPP payments.

In either applying for or participating in RPP, or both, the applicant is subject to laws against perjury (including but not limited to 18 U.S.C. 1621). If the applicant willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the applicant knows or believes not to be true, during either applying for or participating in RPP, or both, then the applicant may be found to be guilty of perjury. Except as otherwise provided by law, if guilty of perjury the applicant may be fined, imprisoned for not more than 5 years, or both, regardless of whether the applicant makes such verbal or written declaration, certification, statement, or verification within or outside the United States.

Paperwork Reduction Act Requirements

In compliance with the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection request has been approved by OMB under the control number of 0503–0028. FSA will collect the information from the rice producers to qualify for the payment to cover the higher production costs. RPP is a one-time funding as described in this NOFA.

Environmental Review

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799).

The purpose of RPP is to provide a one-time payment to assist rice producers with the increased production costs for rice from the 2022 crop year. The limited discretionary aspects of RPP do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the Categorical Exclusions in 7 CFR 799.31(b)(6)(iii) that applies to price support programs.

No Extraordinary Circumstances (7 CFR 799.33) exist. FSA has determined that this action does not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing,[1] to which this document applies is 10.976, Rice Production Program (RPP).

[1] See *https://sam.gov/content/assistance-listings.*

USDA Non-Discrimination Policy

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

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

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

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,

Administrator, Farm Service Agency.

[FR Doc. 2023–09945 Filed 5–8–23; 8:45 am]

BILLING CODE 3411–E2–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: USDA Professional Standards Training Tracker Tool (PSTTT)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is an extension, without change, of a currently approved collection for assisting State agencies and school nutrition professionals in recording, tracking, and managing the required training hours for state and local school district nutrition professionals, in four major areas (Nutrition, Operations, Administration, and Communications and Marketing), to meet the requirements of the Healthy Hunger Free Kids Act (HHFKA) of 2010 Professional Standards Rule. The HHFKA (section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training is required for all individuals involved in preparing school meals.

DATES: Written comments must be received on or before July 10, 2023.

ADDRESSES: Comments may be sent to Kaushalya Heendeniya, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 4th Floor, Alexandria, VA 22314. Comments may also be submitted to the attention of Kaushalya Heendeniya via email to *cnpntab@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kaushalya Heendeniya at 703–305–0037 or *cnpntab@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: USDA Professional Standards Training Tracker Tool (PSTTT).

Form Number: None.

OMB Number: 0584–0626.

Expiration Date: August 31, 2023.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: The Healthy Hunger Free Kids Act (HHFKA) of 2010 (Section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training is required for all individuals involved in preparing school meals. To meet the training requirements and assist in keeping track of the training, USDA's Food and Nutrition Service (FNS) provides a web-based application tool with a Structured Query Language (SQL)-server database, which is available for employees of State agencies, local educational agencies, and school food authorities through the FNS public website, with eAuthentication. While training requirements are mandatory, using the USDA Professional Standards Training Tracker Tool (PSTTT) is voluntary. The tool facilitates compliance with HHFKA requirements and is provided at no cost. In addition, FNS provides a mobile friendly version of the PSTTT application to ensure easy usage and accessibility across mobile devices. The application is compatible with all mobile operating systems (iOS, Android, and Windows).

The user can create a user profile with the following information:

- School District/Address
- School Name/Address
- Individual's Name
- Email Address
- Job Title and Role
- Hiring Date

The user will enter the following information:

- Key Area
- Training Topic
- Learning Objective
- Training Title
- Training Hours/Minutes
- Date of Training
- Training Provider or Organization

The user can enter multiple employee names for one specific training. Users can print certificates of completion for trainings. The tool provides the user with the ability to export and save results in multiple file formats, including portable document format (.pdf), Microsoft Excel (.xlsx), and Word Files versions 2000 or higher (.docx). Streamlined and intuitive navigation is offered to allow for easy access to all functionalities.

Affected Public: State, local, and Tribal government. Respondent groups include State agency personnel and school nutrition professionals.

Estimated Number of Respondents: The total estimated number of respondents is 10,006. This includes 6 State agency personnel and 10,000 school nutrition professionals who voluntarily choose to utilize this tracking tool as registered users. All respondents will be offered a 60-minute training webinar on features of the tool.

Estimated Number of Responses per Respondent: Total estimated number of responses per respondent across the entire collection is seven. The estimated number of responses per respondent for the tracking tool is five. The tracking tool users will first be required to create their user profile, which will be saved for future use. It is estimated that the user will be updating and managing their records on a quarterly basis. The estimated number of responses per respondent for the training webinar is two; one for the live webinar and one for the recorded training.

Estimated Total Annual Responses: 70,042.

Estimated Time per Response: The average estimated time per response for all of the participants, across all of the activities in this collection, is approximately 14 minutes (0.24 hours). For the USDA Professional Standards Training Tracker Tool (PSTTT), the estimated time of response varies from five to 10 minutes depending on familiarity of the tool and the number of reports created, with an average estimated time of 7.5 minutes (0.125 hours) for all participants. The annual training webinar of 60 minutes (1 hour) will be available for all participants. Participants will record trainings into the tracking tool, which is estimated to take 5 minutes (0.083 hours) to complete.

Estimated Total Annual Burden on Respondents: 17,090.25 hours (rounded to 17,090 hours). See the table below for

estimated total annual burden for each type of respondent.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses (col. bxc)	Estimated avg. number of hours per response	Estimated total hours (col. dxe)
Reporting Burden for State, Local, and Tribal Govt					
State agency Personnel	6	5	30	0.125	3.75
Training Webinar	6	1	6	1	6
Recording of Trainings on the Tool	6	1	6	0.083	0.498
School Nutrition Professionals	10,000	5	50,000	0.125	6,250
Training Webinar	10,000	1	10,000	1	10,000
Recording of Trainings on the Tool	10,000	1	10,000	0.083	830
Total reporting burden	10,006	7	70,042	0.244	17,090.25

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–09890 Filed 5–9–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Missoula Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act.

DATES: An in-person and virtual meeting will be held on June 15, 2023, 02:45 p.m.–05:45 p.m., Mountain Standard Time (MST).

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. MST on June 8, 2023. Written public comments will be accepted by 11:59 p.m. MST on June 8, 2023. Comments submitted after this date will be provided to the Agency, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person and virtually at the Missoula Public Library's Blackfoot Communications Room, located on the fourth floor of the building at 455 E Main Street, Missoula, Montana 59802. The public may also join virtually via videoconference on Microsoft Teams. RAC information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/lolo/workingtogether/advisorycommittees/?cid=fseprd898783* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *rachel.santospirito@usda.gov* or via mail (*i.e.,* postmarked) to Rachel Santospirito, 24 Fort Missoula Road, Missoula, Montana 59804. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MST June 8, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *rachel.santospirito@usda.gov* or via mail (*i.e.,* postmarked) to Rachel Santospirito, 24 Fort Missoula Road, Missoula, Montana 59804.

FOR FURTHER INFORMATION CONTACT: Quinn Carver, Designated Federal Officer (DFO), by phone at 406–677–3905 or email at *charles.carver@usda.gov* or Rachel Santospirito, RAC Coordinator, by email at *rachel.santospirito@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals;
2. Make funding recommendations on Title II projects;
3. Approve meeting minutes; and
4. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least eight days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to seven days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: May 4, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–09883 Filed 5–9–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Greater Rocky Mountain Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Greater Rocky Mountain Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Arapaho Roosevelt, Bighorn, Grand Mesa-Uncompahgre-Gunnison, Medicine Bow-Routt, Pike-San Isabel, Rio Grande, San Juan, Shoshone, and White River National Forests within Archuleta, Dolores, Saguache, Conejos, Hinsdale, La Plata, Mineral, Bighorn, Chaffee, Delta, Garfield, Gunnison, Huerfano, Jackson, Larimer, Mesa, Montrose, Park, Routt, Albany, Fremont, Rio Grande, Montezuma, and Carbon Counties consistent with the Federal Lands Recreation Enhancement Act.

DATES: A virtual meeting will be held on June 26, 2023, 8:30 a.m.–5:00 p.m. and June 27, 2023, 8:30 a.m.–5:00 p.m. Mountain Standard Time (MST).

Written and Oral Comments: Anyone wishing to provide virtual oral comments must pre-register by 11:59 p.m. (MST) on June 14, 2023. Written public comments will be accepted by 11:59 p.m. (MST) on June 14, 2023. Comments submitted after this date will be provided to the Agency, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The public may also join virtually via webcast, teleconference, videoconference, and/or Homeland Security Information Network (HSIN) virtual meeting at: *https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting?rtc=1.* Or call in (audio only) 1–970–812–0909 and when prompted enter #973232530. RAC information and meeting details can be found at the following website: *www.fs.usda.gov/detail/r2/home/?cid=fseprd972168* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *nicole.hutt@usda.gov* or via mail (*i.e.,* postmarked) to Nicole Hutt, 2250 South Main Street, Delta, CO 81416. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. (MST) on April 14, 2023, and speakers can only register for one speaking slot. Oral comments must be sent email to *nicole.hutt@usda.gov* or via mail (*i.e.,* postmarked) to Nicole Hutt, 2250 South Main Street, Delta, CO 81416.

FOR FURTHER INFORMATION CONTACT: Chad Stewart, Designated Federal Officer (DFO), by phone at 970–874–6674 or email at *chad.stewart@usda.gov* or Nicole Hutt, RAC Coordinator, at 970–596–9070 or email at *nicole.hutt@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meetings are to:

1. Roll Call to find Quorum;
2. Review the status of funds;
3. Approve previous meeting minutes;
4. Review Project proposals for recommendation to approve;
5. Review Project proposals for recommendation to fund; and
6. Any remaining business.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

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.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: May 4, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–09881 Filed 5–9–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Florida Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 3:00 p.m. ET on Tuesday, June 13, 2023. The purpose of the meeting is to continue discussing the draft report on voting rights in the state. Members of the public may request a copy of the draft report in advance of the meeting. To do so, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov.*

DATES: Tuesday, June 13, 2023, from 3:00 p.m.–5:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1615483123.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 548 3123.

FOR FURTHER INFORMATION CONTACT: David Mussatt, Designated Federal Officer, at *dmussatt@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Mussatt at *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Committee Discussion: Report Draft
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: May 5, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–09924 Filed 5–9–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefings of the West Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the West Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold three public panel briefings via Zoom. The purpose of each panel briefing is to hear testimony on the civil rights impacts that exclusionary and punitive disciplinary policies, practices and procedures have on students of color, students with disabilities and LGBTQ+ students in in West Virginia public schools.

DATES:

Panel Briefing II: Thursday, May 4, 2023 from 2:00 p.m.–4:00 p.m. ET

Panel Briefing III: Friday, May 5, 2023, from 10:00 a.m.–12:00 p.m. ET

Panel Briefing IV: Monday, May 8, 2023, from 10:00 a.m.–12:00 p.m. ET

ADDRESSES: The meetings will be held via Zoom.

Panel Briefing II:
—*Registration Link (Audio/Visual): https://www.zoomgov.com/j/1617821168*
—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll-Free; Meeting ID: 161 782 1168

Panel Briefing III:
—*Registration Link (Audio/Visual): https://www.zoomgov.com/j/1600158807*
—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll-Free; Meeting ID: 160 015 8807

Panel Briefing IV:
—*Registration Link (Audio/Visual): https://www.zoomgov.com/j/1605207064*
—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll-Free; Meeting ID: 160 520 7064

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Designated Federal Officer, at *ero@usccr.gov* or 1–202–539–8468.

SUPPLEMENTARY INFORMATION: These Committee meetings are available to the public through the registration link above. Any interested member of the public may attend these meetings. Immediately after each panel briefing concludes the Committee Chair will recognize members of the public to make a brief statement to the Committee on the panel topic—not to exceed five minutes—as time allows. Per the Federal Advisory Committee Act, public minutes of these meetings will include a list of persons present at the meetings. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be emailed within 30 days following the scheduled meetings.

Written comments may be emailed to attention Ivy Davis at *ero@usccr.gov*.at *svillanueva@usccr.gov.* Persons who desire additional information may call Sarah Villanueva at 1–202–539–8468.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, West Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome and Roll Call
II. Opening Remarks
III. Panelist Testimony
IV. Committee Q&A
V. Public Comment
VI. Closing Remarks
VII. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting as the Committee's project needs to reach completion before their term ends.

Dated: May 5, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–09926 Filed 5–9–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; Pejman Mahmood Kosarayanifard a/k/a Kosarian Fard, P.O. Box 52404, Dubai, United Arab Emirates; Mahmoud Amini, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates; et al.; Order Renewing Order Temporarily Denying Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''), I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order issued in this matter on November 8, 2022. I find that renewal of this order, as modified, is necessary in the public interest to prevent an imminent violation of the Regulations.[1]

I. Procedural History

On March 17, 2008, Darryl W. Jackson, the then-Assistant Secretary of Commerce for Export Enforcement (''Assistant Secretary''), signed an order denying Mahan Airways' export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order also named as denied persons Blue Airways, of Yerevan, Armenia (''Blue Airways of Armenia''), as well as the ''Balli Group Respondents,'' namely, Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., and Blue Sky Six Ltd., all of the United Kingdom. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations, and went into effect on March 21, 2008, the date it was published in the **Federal Register**.

This temporary denial order (''TDO'') was renewed in accordance with section 766.24(d) of the Regulations.[2] Subsequent renewals also have issued pursuant to section 766.24(d), including most recently on November 8, 2022.[3] Some of the renewal orders and the modification orders that have issued between renewals have added certain parties as respondents or as related persons, or effected the removal of certain parties.[4]

The September 11, 2009 renewal order continued the denial order as to Mahan Airways, but not as to the Balli Group Respondents or Blue Airways of Armenia.[5] As part of the February 25, 2011 renewal order, Pejman Mahmood Kosarayanifard (a/k/a Kosarian Fard), Mahmoud Amini, and Gatewick LLC (a/k/a Gatewick Freight and Cargo Services, a/k/a Gatewick Aviation Services) were added as related persons to prevent evasion of the TDO.[6] A

[1] The Regulations, currently codified at 15 CFR parts 730–774 (2022), 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] Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order. Renewal requests may include discussion of any additional or changed circumstances, and may seek appropriate modifications to the order, including the addition of parties as respondents or related persons, or the removal of parties previously added as respondents or related persons. BIS is not required to seek renewal as to all parties, and a removal of a party can be effected if, without more, BIS does not seek renewal as to that party. Any party included or added to a temporary denial order as a respondent may oppose a renewal request as set forth in section 766.24(d). Parties included or added as related persons can at any time appeal their inclusion as a related person, but cannot challenge the underlying temporary denial order, either as initially issued or subsequently renewed, and cannot oppose a renewal request. *See also* note 4, *infra.*

[3] The November 8, 2022 renewal order was effective upon issuance and published in the **Federal Register** on November 14, 2022 (87 FR 68123). Prior renewal orders issued on September 17, 2008, March 16, 2009, September 11, 2009, March 9, 2010, September 3, 2010, February 25, 2011, August 24, 2011, February 15, 2012, August 9, 2012, February 4, 2013, July 31, 2013, January 24, 2014, July 22, 2014, January 16, 2015, July 13, 2015, January 7, 2016, July 7, 2016, December 30, 2016, June 27, 2017, December 20, 2017, June 14, 2018, December 11, 2018, June 5, 2019, May 29, 2020, November 24, 2020, May 21, 2021, November 17, 2021, May 13, 2022, and November 8, 2022, respectively. The August 24, 2011 renewal followed the issuance of a modification order that issued on July 1, 2011, to add Zarand Aviation as a respondent. The July 13, 2015 renewal followed a modification order that issued May 21, 2015, and added Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. Each of the renewal orders and each of the modification orders referenced in this footnote or elsewhere in this order has been published in the **Federal Register**.

[4] Pursuant to sections 766.23 and 766.24(c) of the Regulations, any person, firm, corporation, or business organization related to a denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may be added as a ''related person'' to a temporary denial order to prevent evasion of the order.

[5] Balli Group PLC and Balli Aviation settled proposed BIS administrative charges as part of a settlement agreement that was approved by a settlement order issued on February 5, 2010. The sanctions imposed pursuant to that settlement and order included, *inter alia,* a $15 million civil penalty and a requirement to conduct five external audits and submit related audit reports. The Balli Group Respondents also settled related charges with the Department of Justice and the Treasury Department's Office of Foreign Assets Control.

[6] *See* note 4, *supra,* concerning the addition of related persons to a temporary denial order. Kosarian Fard and Mahmoud Amini remain parties to the TDO. On August 13, 2014, BIS and Gatewick

modification order issued on July 1, 2011, adding Zarand Aviation as a respondent in order to prevent an imminent violation.[7]

As part of the August 24, 2011 renewal, Kerman Aviation, Sirjanco Trading LLC, and Ali Eslamian were added as related persons. Mahan Air General Trading LLC, Equipco (UK) Ltd., and Skyco (UK) Ltd. were added as related persons by a modification order issued on April 9, 2012. Mehdi Bahrami was added as a related person as part of the February 4, 2013 renewal order.

On May 21, 2015, a modification order issued adding Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading as respondents. As detailed in that order and discussed further *infra,* these respondents were added to the TDO based upon evidence that they were acting together to, *inter alia,* obtain aircraft subject to the Regulations for export or reexport to Mahan in violation of the Regulations and the TDO.

Sky Blue Bird Group and its chief executive officer, Issam Shammout, were added as related persons as part of the July 13, 2015 renewal order.[8] On November 16, 2017, a modification order issued to remove Ali Eslamian, Equipco (UK) Ltd., and Skyco (UK) Ltd. as related persons following a request by OEE for their removal.[9]

The December 11, 2018 renewal order continued the denial of the export privileges of Mahan Airways, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Al Naser Airlines, Ali Abdullah Alhay, Bahar Safwa General Trading, Sky Blue Bird Group, and Issam Shammout.

On April 6, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on November 8, 2022. The written request was made more than 20 days before the TDO's scheduled expiration. Notice of the renewal request was provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received. Furthermore, no appeal of the related person determinations made as part of the September 3, 2010, February 25, 2011, August 24, 2011, April 9, 2012, February 4, 2013, and July 13, 2015 renewal or modification orders has been made by Kosarian Fard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, or Issam Shammout.[10]

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue or renew 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 ''lack 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.*

B. The TDO and BIS's Requests for Renewal

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO, and the renewal and modification orders subsequently issued in this matter, including the May 21, 2015 modification order and the renewal order issued on November 8, 2022, and the evidence developed over the course of this investigation, which indicate a blatant disregard of U.S. export controls and the TDO. The initial TDO was issued as a result of evidence that showed that Mahan Airways and other parties engaged in conduct prohibited by the EAR by knowingly re-exporting to Iran three U.S.-origin aircraft, specifically Boeing 747s (''Aircraft 1–3''), items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b, without the required U.S. Government authorization. Further evidence submitted by BIS indicated that Mahan Airways was involved in the attempted re-export of three additional U.S.-origin Boeing 747s (''Aircraft 4–6'') to Iran.

As discussed in the September 17, 2008 renewal order, evidence presented by BIS indicated that Aircraft 1–3 continued to be flown on Mahan Airways' routes after issuance of the TDO, in violation of the Regulations and the TDO itself.[11] It also showed that Aircraft 1–3 had been flown in further violation of the Regulations and the TDO on the routes of Iran Air, an Iranian Government airline. Moreover, as discussed in the March 16, 2009, September 11, 2009 and March 9, 2010 renewal orders, Mahan Airways registered Aircraft 1–3 in Iran, obtained Iranian tail numbers for them (EP–MNA, EP–MNB, and EP–MNE, respectively), and continued to operate at least two of them in violation of the Regulations and the TDO,[12] while also committing an additional knowing and willful violation when it negotiated for and acquired an additional U.S.-origin aircraft. The additional acquired aircraft was an MD–82 aircraft, which subsequently was painted in Mahan Airways' livery and flown on multiple

resolved administrative charges against Gatewick, including a charge for acting contrary to the terms of a BIS denial order (15 CFR 764.2(k)). In addition to the payment of a civil penalty, the settlement includes a seven-year denial order. The first two years of the denial period were active, with the remaining five years suspended conditioned upon Gatewick's full and timely payment of the civil penalty and its compliance with the Regulations during the seven-year denial order period. This denial order, in effect, superseded the TDO as to Gatewick, which was not included as part of the January 16, 2015 renewal order. The Gatewick LLC Final Order was published in the **Federal Register** on August 20, 2014. *See* 79 FR 49283 (Aug. 20, 2014).

[7] Zarand Aviation's export privileges remained denied until July 22, 2014, when it was not included as part of the renewal order issued on that date.

[8] The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') designated Sky Blue Bird and Issam Shammout as Specially Designated Global Terrorists (''SDGTs'') on May 21, 2015, pursuant to Executive Order 13224, for ''providing support to Iran's Mahan Air.'' *See* 80 FR 30762 (May 29, 2015).

[9] The November 16, 2017 modification was published in the **Federal Register** on December 4, 2017. *See* 82 FR 57203 (Dec. 4, 2017). On September 28, 2017, BIS and Ali Eslamian resolved an administrative charge for acting contrary to the terms of the denial order (15 CFR 764.2(k)) that was based upon Eslamian's violation of the TDO after his addition to the TDO on August 24, 2011. Equipco (UK) Ltd. and Skyco (UK) Ltd., two companies owned and operated by Eslamian, also were parties to the settlement agreement and were added to the settlement order as related persons. In addition to other sanctions, the settlement provides that Eslamian, Equipco, and Skyco shall be subject to a conditionally suspended denial order for a period of four years from the date of the settlement order.

[10] A party named or added as a related person may not oppose the issuance or renewal of the underlying temporary denial order, but may file an appeal of the related person determination in accordance with section 766.23(c). *See* also note 2, *supra.*

[11] Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

[12] The third Boeing 747 appeared to have undergone significant service maintenance and may not have been operational at the time of the March 9, 2010 renewal order.

Mahan Airways' routes under tail number TC–TUA.

The March 9, 2010 renewal order also noted that a court in the United Kingdom (''U.K.'') had found Mahan Airways in contempt of court on February 1, 2010, for failing to comply with that court's December 21, 2009 and January 12, 2010 orders compelling Mahan Airways to remove the Boeing 747s from Iran and ground them in the Netherlands. Mahan Airways and the Balli Group Respondents had been litigating before the U.K. court concerning ownership and control of Aircraft 1–3. In a letter to the U.K. court dated January 12, 2010, Mahan Airways' Chairman indicated, *inter alia,* that Mahan Airways opposes U.S. Government actions against Iran, that it continued to operate the aircraft on its routes in and out of Tehran (and had 158,000 ''forward bookings'' for these aircraft), and that it wished to continue to do so and would pay damages if required by that court, rather than ground the aircraft.

The September 3, 2010 renewal order discussed the fact that Mahan Airways' violations of the TDO extended beyond operating U.S.-origin aircraft and attempting to acquire additional U.S.-origin aircraft. In February 2009, while subject to the TDO, Mahan Airways participated in the export of computer motherboards, items subject to the Regulations and designated as EAR99, from the United States to Iran, via the United Arab Emirates (''UAE''), in violation of both the TDO and the Regulations, by transporting and/or forwarding the computer motherboards from the UAE to Iran. Mahan Airways' violations were facilitated by Gatewick LLC, which not only participated in the transaction, but also has stated to BIS that it acted as Mahan Airways' sole booking agent for cargo and freight forwarding services in the UAE.

Moreover, in a January 24, 2011 filing in the U.K. court, Mahan Airways asserted that Aircraft 1–3 were not being used, but stated in pertinent part that the aircraft were being maintained in Iran ''in an airworthy condition'' and that, depending on the outcome of its U.K. court appeal, the aircraft ''could immediately go back into service . . . on international routes into and out of Iran.'' Mahan Airways' January 24, 2011 submission to U.K. Court of Appeal, at p. 25, ¶¶ 108, 110. This clearly stated intent, both on its own and in conjunction with Mahan Airways' prior misconduct and statements, demonstrated the need to renew the TDO in order to prevent imminent future violations. Two of these three 747s subsequently were removed from Iran and are no longer in Mahan Airways' possession. The third of these 747s remained in Iran under Mahan's control. Pursuant to Executive Order 13224, this 747 was designated a Specially Designated Global Terrorist (''SDGT'') by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') on September 19, 2012.[13] Furthermore, as discussed in the February 4, 2013 Order, open source information indicated that this 747, painted in the livery and logo of Mahan Airways, had been flown between Iran and Syria, and was suspected of ferrying weapons and/or other equipment to the Syrian Government from Iran's Islamic Revolutionary Guard Corps.

In addition, as first detailed in the July 1, 2011 and August 24, 2011 orders, and discussed in subsequent renewal orders in this matter, Mahan Airways also continued to evade U.S. export control laws by operating two Airbus A310 aircraft, bearing Mahan Airways' livery and logo, on flights into and out of Iran.[14] At the time of the July 1, 2011 and August 24, 2011 orders, these Airbus A310s were registered in France, with tail numbers F–OJHH and F–OJHI, respectively.[15] The August 2012 renewal order also found that Mahan Airways had acquired another Airbus A310 aircraft subject to the Regulations, with MSN 499 and Iranian tail number EP–VIP, in violation of the Regulations.[16] On September 19, 2012, all three Airbus A310 aircraft (tail numbers F–OJHH, F–OJHI, and EP–VIP) were designated as SDGTs.[17]

The February 4, 2013 renewal order laid out further evidence of continued and additional efforts by Mahan Airways and other persons acting in concert with Mahan, including Kral Aviation and another Turkish company, to procure U.S.-origin engines—two GE CF6–50C2 engines, with MSNs 517621 and 517738, respectively—and other aircraft parts in violation of the TDO and the Regulations.[18] The February 4, 2013 order also added Mehdi Bahrami as a related person in accordance with section 766.23 of the Regulations. Bahrami, a Mahan Vice-President and the head of Mahan's Istanbul Office, also was involved in Mahan's acquisition of the original three Boeing 747s (Aircraft 1–3) that resulted in the original TDO, and has had a business relationship with Mahan dating back to 1997.

The July 31, 2013 renewal order detailed additional evidence obtained by OEE showing efforts by Mahan Airways to obtain another GE CF6–50C2 aircraft engine (MSN 528350) from the United States via Turkey. Multiple Mahan employees, including Mehdi Bahrami, were involved in or aware of matters related to the engine's arrival in Turkey from the United States, plans to visually inspect the engine, and prepare it for shipment from Turkey.

Mahan Airways sought to obtain this U.S.-origin engine through Pioneer Logistics Havacilik Turizm Yonetim Danismanlik (''Pioneer Logistics''), an aircraft parts supplier located in Turkey, and its director/operator, Gulnihal Yegane, a Turkish national who previously had conducted Mahan related business with Mehdi Bahrami and Ali Eslamian. Moreover, as referenced in the July 31, 2013 renewal order, a sworn affidavit by Kosol Surinanda, also known as Kosol

[13] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.*

[14] The Airbus A310s are powered with U.S.-origin engines. The engines are subject to the Regulations and classified under Export Control Classification (''ECCN'') 9A991.d. The Airbus A310s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the Regulations. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations.

[15] OEE subsequently presented evidence that after the August 24, 2011 renewal, Mahan Airways worked along with Kerman Aviation and others to de-register the two Airbus A310 aircraft in France and to register both aircraft in Iran (with, respectively, Iranian tail numbers EP–MHH and EP–MHI). It was determined subsequent to the February 15, 2012 renewal order that the registration switch for these A310s was cancelled and that Mahan Airways then continued to fly the aircraft under the original French tail numbers (F–OJHH and F–OJHI, respectively). Both aircraft apparently remain in Mahan Airways' possession.

[16] *See* note 14, *supra.*

[17] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20120919.aspx.* Mahan Airways was previously designated by OFAC as a SDGT on October 18, 2011. 77 FR 64427 (October 18, 2011).

[18] Kral Aviation was referenced in the February 4, 2013 renewal order as ''Turkish Company No. 1.'' Kral Aviation purchased a GE CF6–50C2 aircraft engine (MSN 517621) from the United States in July 2012, on behalf of Mahan Airways. OEE was able to prevent this engine from reaching Mahan by issuing a redelivery order to the freight forwarder in accordance with section 758.8 of the Regulations. OEE also issued Kral Aviation a redelivery order for the second CF6–50C2 engine (MSN 517738) on July 30, 2012. The owner of the second engine subsequently cancelled the item's sale to Kral Aviation. In September 2012, OEE was alerted by a U.S. exporter that another Turkish company (''Turkish Company No. 2'') was attempting to purchase aircraft spare parts intended for re-export by Turkish Company No. 2 to Mahan Airways. *See* February 4, 2013 renewal order.

On December 31, 2013, Kral Aviation was added to BIS's Entity List, Supplement No. 4 to part 744 of the Regulations. *See* 78 FR 75458 (Dec. 12, 2013). Companies and individuals are added to the Entity List for engaging in activities contrary to the national security or foreign policy interests of the United States. *See* 15 CFR 744.11.

Surinandha, Managing Director of Mahan's General Sales Agent in Thailand, stated that the shares of Pioneer Logistics for which he was the listed owner were ''actually the property of and owned by Mahan.'' He further stated that he held ''legal title to the shares until otherwise required by Mahan'' but would ''exercise the rights granted to [him] exactly and only as instructed by Mahan and [his] vote and/or decisions [would] only and exclusively reflect the wills and demands of Mahan[.]'' [19]

The January 24, 2014 renewal order outlined OEE's continued investigation of Mahan Airways' activities and detailed an attempt by Mahan, which OEE thwarted, to obtain, via an Indonesian aircraft parts supplier, two U.S.-origin Honeywell ALF–502R–5 aircraft engines (MSNs LF5660 and LF5325), items subject to the Regulations, from a U.S. company located in Texas. An invoice of the Indonesian aircraft parts supplier dated March 27, 2013, listed Mahan Airways as the purchaser of the engines and included a Mahan ship-to address. OEE also obtained a Mahan air waybill dated March 12, 2013, listing numerous U.S.-origin aircraft parts subject to the Regulations—including, among other items, a vertical navigation gyroscope, a transmitter, and a power control unit—being transported by Mahan from Turkey to Iran in violation of the TDO.

The July 22, 2014 renewal order discussed open source evidence from the March–June 2014 time period regarding two BAE regional jets, items subject to the Regulations, that were painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MOI and EP–MOK, respectively.[20] In addition, aviation industry resources indicated that these aircraft were obtained by Mahan Airways in late November 2013 and June 2014, from Ukrainian Mediterranean Airline, a Ukrainian airline that was added to BIS's Entity List (Supplement No. 4 to part 744 of the Regulations) on August 15, 2011, for acting contrary to the national security and foreign policy interests of the United States.[21] Open source information indicated that at least EP–MOI remained active in Mahan's fleet, and that the aircraft was being operated on multiple flights in July 2014.

The January 16, 2015 renewal order detailed evidence of additional attempts by Mahan Airways to acquire items subject the Regulations in further violation of the TDO. Specifically, in March 2014, OEE became aware of an inertial reference unit bearing serial number 1231 (''the IRU'') that had been sent to the United States for repair. The IRU is a U.S.-origin item, subject to the Regulations, classified under ECCN 7A103, and controlled for missile technology reasons. Upon closer inspection, it was determined that IRU came from or had been installed on an Airbus A340 aircraft bearing MSN 056. Further investigation revealed that as of approximately February 2014, this aircraft was registered under Iranian tail number EP–MMB and had been painted in the livery and logo of Mahan Airways.

The January 16, 2015 renewal order also described related efforts by the Departments of Justice and Treasury to further thwart Mahan's illicit procurement efforts. Specifically, on August 14, 2014, the United States Attorney's Office for the District of Maryland filed a civil forfeiture complaint for the IRU pursuant to 22 U.S.C. 401(b) that resulted in the court issuing an Order of Forfeiture on December 2, 2014. EP–MMB remains listed as active in Mahan Airways' fleet and has been used on flights into and out of Iran as recently as December 19, 2017.

Additionally, on August 29, 2014, OFAC blocked the property and interests in property of Asian Aviation Logistics of Thailand, a Mahan Airways affiliate or front company, pursuant to Executive Order 13224. In doing so, OFAC described Mahan Airways' use of Asian Aviation Logistics to evade sanctions by making payments on behalf of Mahan for the purchase of engines and other equipment.[22]

The May 21, 2015 modification order detailed the acquisition of two aircraft, specifically an Airbus A340 bearing MSN 164 and an Airbus A321 bearing MSN 550, that were purchased by Al Naser Airlines in late 2014/early 2015 and were under the possession, control, and/or ownership of Mahan Airways.[23] The sales agreements for these two aircraft were signed by Ali Abdullah Alhay for Al Naser Airlines.[24] Payment information reveals that multiple electronic funds transfers (''EFT'') were made by Ali Abdullah Alhay and Bahar Safwa General Trading in order to acquire MSNs 164 and 550.

The May 21, 2015 modification order also laid out evidence showing the respondents' attempts to obtain other controlled aircraft, including aircraft physically located in the United States in similarly-patterned transactions during the same recent time period. Transactional documents involving two Airbus A320s bearing MSNs 82 and 99, respectively, again showed Ali Abdullah Alhay signing sales agreements for Al Naser Airlines.[25] A review of the payment information for these aircraft similarly revealed EFTs from Ali Abdullah Alhay and Bahar Safwa General Trading that follow the pattern described for MSNs 164 and 550, *supra.* MSNs 82 and 99 were detained by OEE Special Agents prior to

[19] Pioneer Logistics, Gulnihal Yegane, and Kosol Surinanda also were added to the Entity List on December 12, 2013. *See* 78 FR 75458 (Dec. 12, 2013).

[20] The BAE regional jets are powered with U.S.-origin engines. The engines are subject to the EAR and classified under ECCN 9A991.d. These aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR. They are classified under ECCN 9A991.b. The export or reexport of these aircraft to Iran requires U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations.

[21] *See* 76 FR 50407 (Aug. 15, 2011). The July 22, 2014 renewal order also referenced two Airbus A320 aircraft painted in the livery and logo of Mahan Airways and operating under Iranian tail numbers EP–MMK and EP–MML, respectively. OEE's investigation also showed that Mahan obtained these aircraft in November 2013, from Khors Air Company, another Ukrainian airline that, like Ukrainian Mediterranean Airlines, was added to BIS's Entity List on August 15, 2011. Open source evidence indicates the two Airbus A320 aircraft may have been transferred by Mahan Airways to another Iranian airline in October 2014, and issued Iranian tail numbers EP–APE and EP–APF, respectively.

[22] *See http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140829.aspx*. *See* 79 FR 55073 (Sep. 15, 2014). OFAC also blocked the property and property interests of Pioneer Logistics of Turkey on August 29, 2014. *Id.* Mahan Airways' use of Pioneer Logistics in an effort to evade the TDO and the Regulations was discussed in a prior renewal order, as summarized, *supra,* at 14. BIS added both Asian Aviation Logistics and Pioneer Logistics to the Entity List on December 12, 2013. *See* 78 FR 75458 (Dec. 12, 2013).

[23] Both of these aircraft are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. Both aircraft contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations.

[24] The evidence obtained by OEE showed Ali Abdullah Alhay as a 25% owner of Al Naser Airlines.

[25] Both aircraft were physically located in the United States and therefore are subject to the Regulations pursuant to section 734.3(a)(1). Moreover, these Airbus A320s are powered by U.S.-origin engines that are subject to the Regulations and classified under Export Control Classification Number ECCN 9A991.d. The Airbus A320s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations.

their planned export from the United States.

The July 13, 2015 renewal order outlined evidence showing that Al Naser Airlines' attempts to acquire aircraft on behalf of Mahan Airways extended beyond MSNs 164 and 550 to include a total of nine aircraft.[26] Four of the aircraft, all of which are subject to the Regulations and were obtained by Mahan from Al Naser Airlines, had been issued the following Iranian tail numbers: EP–MMD (MSN 164), EP–MMG (MSN 383), EP–MMH (MSN 391) and EP–MMR (MSN 416), respectively.[27] Publicly available flight tracking information provided evidence that at the time of the July 13, 2015 renewal, both EP–MMH and EP–MMR were being actively flown on routes into and out of Iran in violation of the Regulations.[28]

The January 7, 2016 renewal order discussed evidence that Mahan Airways had begun actively flying EP–MMD on international routes into and out of Iran. Additionally, the January 7, 2016 order described publicly available aviation database and flight tracking information indicating that Mahan Airways continued efforts to acquire Iranian tail numbers and press into active service under Mahan's livery and logo at least two more of the Airbus A340 aircraft it had obtained from or through Al Naser Airlines: EP–MME (MSN 371) and EP–MMF (MSN 376), respectively.

The July 7, 2016 renewal order described Mahan Airways' acquisition of a BAE Avro RJ–85 aircraft (MSN 2392) in violation of the Regulations and its subsequent registration under Iranian tail number EP–MOR.[29] This information was corroborated by publicly available information on the website of Iran's civil aviation authority. The July 7, 2016 order also outlined Mahan's continued operation of EP–MMF in violation of the Regulations on routes from Tehran, Iran to Beijing, China and Shanghai, China, respectively.

The December 30, 2016 renewal order outlined Mahan's continued operation of multiple Airbus aircraft, including EP–MMD (MSN 164), EP–MMF (MSN 376), and EP–MMH (MSN 391), which were acquired from or through Al Naser Airlines, as previously detailed in pertinent part in the July 13, 2015 and January 7, 2016 renewal orders. Publicly available flight tracking information showed that the aircraft were operated on flights into and out of Iran, including from/to Beijing, China, Kuala Lumpur, Malaysia, and Istanbul, Turkey.[30]

The June 27, 2017 renewal order included similar evidence regarding Mahan Airways' operation of multiple Airbus aircraft subject to the Regulations, including, but not limited to, aircraft procured from or through Al Naser Airlines, on flights into and out of Iran, including from/to Moscow, Russia, Shanghai, China and Kabul, Afghanistan. The June 27, 2017 order also detailed evidence concerning a suspected planned or attempted diversion to Mahan of an Airbus A340 subject to the Regulations that had first been mentioned in OEE's December 13, 2016 renewal request.

The December 20, 2017 renewal order presented evidence that a Mahan employee attempted to initiate negotiations with a U.S. company for the purchase of an aircraft subject to the Regulations and classified under ECCN 9A610. Moreover, the order highlighted Al Naser Airlines' acquisition, via lease, of at least possession and/or control of a Boeing 737 (MSN 25361), bearing tail number YR–SEB, and an Airbus A320 (MSN 357), bearing tail number YR–SEA, from a Romanian company in violation of the TDO and the Regulations.[31] Open source information indicates that after the December 20, 2017 renewal order publicly exposed Al Naser's acquisition of these two aircraft (MSNs 25361 and 357), the leases were subsequently cancelled and the aircraft returned to their owner.

The December 20, 2017 renewal order also included evidence indicating that Mahan Airways was continuing to operate a number of aircraft subject to the Regulations, including aircraft originally procured from or through Al Naser Airlines, on flights into and out of Iran, including from/to Lahore, Pakistan, Shanghai, China, Ankara, Turkey, Kabul, Afghanistan, and Baghdad, Iraq.

The June 14, 2018 renewal order outlined evidence that Mahan began actively operating EP–MMT, an Airbus A340 aircraft (MSN 292) acquired in 2017 and previously registered in Kazakhstan under tail number UP–A4003, on international flights into and out of Iran.[32] It also discussed evidence that Mahan continued to operate a number of aircraft subject to the Regulations, including, but not limited to, EP–MME, EP–MMF, and EP–MMH, on international flights into and out of Iran, including from/to Beijing, China.

The June 14, 2018 renewal order also noted OFAC's May 24, 2018 designation of Otik Aviation, a/k/a Otik Havacilik Sanayi Ve Ticaret Limited Sirketi, of Turkey, as an SDGT pursuant to Executive Order 13224, for providing material support to Mahan, as well as OFAC's designation as SDGTs of an additional twelve aircraft in which

[26] This evidence included a press release dated May 9, 2015, that appeared on Mahan Airways' website and stated that Mahan ''added 9 modern aircraft to its air fleet [,]'' and that the newly acquired aircraft included eight Airbus A340s and one Airbus A321. *See http://www.mahan.aero/en/mahan-air/press-room/44.* The press release was subsequently removed from Mahan Airways' website. Publicly available aviation databases similarly showed that Mahan had obtained nine additional aircraft from Al Naser Airlines in May 2015, including MSNs 164 and 550. As also discussed in the July 13, 2015 renewal order, Sky Blue Bird Group, via Issam Shammout, was actively involved in Al Naser Airlines' acquisition of MSNs 164 and 550, and the attempted acquisition of MSNs 82 and 99 (which were detained by OEE).

[27] The Airbus A340s are powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The Airbus A340s contain controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result are subject to the EAR regardless of their location. The aircraft are classified under ECCN 9A991.b. The export or re-export of these aircraft to Iran requires U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations.

[28] There is some publicly available information indicating that the aircraft Mahan Airways is flying under Iranian tail number EP–MMR is now MSN 615, rather than MSN 416. Both aircraft are Airbus A340 aircraft that Mahan acquired from Al Naser Airlines in violation of the Regulations. Moreover, both aircraft were designated as SDGTs by OFAC on May 21, 2015, pursuant to Executive Order 13224. *See* 80 FR 30762 (May 29, 2015).

[29] The BAE Avro RJ–85 is powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The BAE Avro RJ–85 contains controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result is subject to the EAR regardless of its location. The aircraft is classified under ECCN 9A991.b, and its export or re-export to Iran requires U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations.

[30] Specifically, on December 22, 2016, EP–MMD (MSN 164) flew from Dubai, UAE to Tehran, Iran. Between December 20 and December 22, 2016, EP–MMF (MSN 376) flew on routes from Tehran, Iran to Beijing, China and Istanbul, Turkey, respectively. Between December 26 and December 28, 2016, EP–MMH (MSN 391) flew on routes from Tehran, Iran to Kuala Lumpur, Malaysia.

[31] The Airbus A320 is powered with U.S.-origin engines, which are subject to the EAR and classified under Export Control Classification (''ECCN'') 9A991.d. The engines are valued at more than 10 percent of the total value of the aircraft, which consequently is subject to the EAR. The aircraft is classified under ECCN 9A991.b, and its export or reexport to Iran would require U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations.

[32] The Airbus A340 is powered by U.S.-origin engines that are subject to the Regulations and classified under ECCN 9A991.d. The Airbus A340 contains controlled U.S.-origin items valued at more than 10 percent of the total value of the aircraft and as a result is subject to the Regulations regardless of its location. The aircraft is classified under ECCN 9A991.b. The export or re-export of this aircraft to Iran requires U.S. Government authorization pursuant to sections 742.8 and 746.7 of the Regulations. On June 4, 2018, EP–MMT (MSN 292) flew from Bangkok, Thailand to Tehran, Iran.

Mahan has an interest.[33] The June 14, 2018 order also cited the April 2018 arrest and arraignment of a U.S. citizen on a three-count criminal information filed in the United States District Court for the District of New Jersey involving the unlicensed exports of U.S.-origin aircraft parts valued at over $2 million to Iran, including to Mahan Airways.

The December 11, 2018 renewal order detailed publicly available information showing that Mahan Airways had continued operating a number of aircraft subject to the EAR, including, but not limited to, EP–MMB, EP–MME, EP–MMF, and EP–MMQ, on international flights into and out of Iran from/to Istanbul, Turkey, Guangzhou, China, Bangkok, Thailand, and Dubai, UAE.[34] It also discussed that OEE's continued investigation of Mahan Airways and its affiliates and agents had resulted in an October 2018 guilty plea by Arzu Sagsoz, a Turkish national, in the U.S. District Court for the District of Columbia, stemming from her involvement in a conspiracy to export a U.S.-origin aircraft engine, valued at approximately $810,000, to Mahan.

The December 11, 2018 order also noted OFAC's September 14, 2018 designation of Mahan-related entities as SDGTs pursuant to Executive Order 13224, namely, My Aviation Company Limited, of Thailand, and Mahan Travel and Tourism SDN BHD, a/k/a Mahan Travel a/k/a Mihan Travel & Tourism SDN BHD, of Malaysia.[35] As general sales agents for Mahan Airways, these companies sold cargo space aboard Mahan Airways' flights, including on flights to Iran, and provided other services to or for the benefit of Mahan Airways and its operations.[36]

The June 5, 2019 renewal order highlighted Mahan's continued violation of the TDO and the Regulations. An end-use check conducted by BIS in Malaysia in March 2019 uncovered evidence that, on approximately ten occasions, Mahan had caused, aided and/or abetted the unlicensed export of U.S.-origin items subject to the Regulations from the United States to Iran via Malaysia. The items included helicopter shafts, transmitters, and other aircraft parts, some of which are listed on the Commerce Control List and controlled on anti-terrorism grounds. The June 5, 2019 order also detailed publicly available flight tracking information showing that Mahan continued to unlawfully operate a number of aircraft subject to the EAR on flights into and out of Iran, including on routes to and from Damascus, Syria.[37]

The June 5, 2019 order also described actions taken by both BIS and OFAC to thwart efforts by entities connected to or acting on behalf of Mahan Airways to violate U.S. export controls and sanctions related to Iran. On May 14, 2019, BIS added Manohar Nair, Basha Asmath Shaikh, and two co-located companies that they operate, Emirates Hermes General Trading and Presto Freight International, LLC, to the Entity List pursuant to section 744.11 of the Regulations, including for engaging in activities to procure U.S.-origin items on Mahan's behalf.[38] On January 24, 2019, OFAC designated as SDGTs Flight Travel LLC, which is Mahan's general service agent in Yerevan, Armenia, and Qeshm Fars Air, an Iranian airline which operates two U.S.-origin Boeing 747s [39] and is owned or controlled by Mahan, and also linked to the Islamic Revolutionary Guard Corps-Qods Force (IRGC–QF).[40]

The December 2, 2019 renewal order noted that OEE's on-going investigation revealed that U.S.-origin passenger flight and database management software subject to the Regulations was provided to a company in Turkey and subsequently used to facilitate and service Mahan's operations into and out of Turkey in further violation of the Regulations.

Additionally, open source information, including flight tracking data and news articles published in October 2019, showed that Mahan Airways was now operating a U.S.-origin Boeing 747 on routes between Iranian airports in Tehran, Kish Island, and Mashhad. This aircraft, bearing Iranian tail number EP–MNB, appears to be one of the three aircraft that Mahan illegally acquired via Blue Airways of Armenia and U.K.-based Balli Group that resulted in the issuance of the original TDO.[41] *See supra* at 10–12.

Evidence was also described in the December 2, 2019 renewal order showing that on or about November 11, 2019, Mahan caused, aided and/or abetted the unlicensed export of a U.S.-origin atomic absorption spectrometer, an item subject to the Regulations, from the United States to Iran via the UAE. Finally, publicly available flight tracking information showed that Mahan continued to unlawfully operate a number of aircraft subject to the EAR on flights into and out of Iran, including on routes to and from Guangzhou, China, Istanbul, Turkey, and Kuala Lumpur, Malaysia.[42]

[33] *See* 83 FR 27828 (June 14, 2018). OFAC's related press release stated in part that ''[o]ver the last several years, Otik Aviation has procured and delivered millions of dollars in aviation-related spare and replacement parts for Mahan Air, some of which are procured from the United States and the European Union. As recently as 2017, Otik Aviation continued to provide Mahan Air with replacement parts worth well over $100,000 per shipment, such as aircraft brakes.'' The twelve additional Mahan-related aircraft that were designated are: EP–MMA (MSN 20), EP–MMB (MSN 56), EP–MMC (MSN 282), EP–MMJ (MSN 526), EP–MMV (MSN 2079), EP–MNF (MSN 547), EP–MOD (MSN 3162), EP–MOM (MSN 3165), EP–MOP (MSN 2257), EP–MOQ (MSN 2261), EP–MOR (MSN 2392), and EP–MOS (MSN 2347). *See https://home.treasury.gov/news/press-releases/sm0395. See also https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180524.aspx.*

[34] Flight tracking information showed that on December 10, 2018, EP–MMB (MSN 56) flew from Istanbul, Turkey to Tehran, Iran, and EP–MME (MSN 371) flew from Guangzhou, China to Tehran, Iran. Additionally, on December 6, 2018, EP–MMF (MSN 376) flew from Bangkok, Thailand to Tehran, Iran, and on December 9, 2018, EP–MMQ (MSN 449) flew on routes between Dubai, United Arab Emirates and Tehran, Iran.

[35] *See* 83 FR 34301 (July 19, 2018) (designation of Mahan Travel and Tourism SDN BHD on July 9, 2018), and 83 FR 53359 (Oct. 22, 2018) (designation of My Aviation Company Limited and updating of entry for Mahan Travel and Tourism SDN BHD on September 14, 2018).

[36] OFAC's press release concerning its designation of My Aviation Company Limited on September 14, 2018, states in part that ''[t]his Thailand-based company has disregarded numerous U.S. warnings, issued publicly and delivered bilaterally to the Thai government, to sever ties with Mahan Air.'' My Aviation provides cargo services to Mahan Airways, including freight booking, and works with local freight forwarding entities to ship cargo on regularly scheduled Mahan Airways' flights to Tehran, Iran. My Aviation has also provided Mahan Airways with passenger booking services. *See https://home.treasury.gov/news/press-releases/sm484.*

[37] Specifically, on May 26, 2019, EP–MMJ (MSN 526) flew from Damascus, Syria to Tehran, Iran. In addition, on May 24, 2019, EP–MNF (MSN 547) flew on routes between Moscow, Russia and Tehran, and on May 23, 2019, EP–MMF (MSN 376) flew from Dubai, UAE to Tehran.

[38] *See* 84 FR 21233 (May 14, 2019).

[39] These 747s are registered in Iran with tail numbers EP–FAA and EP–FAB, respectively.

[40] OFAC's press release concerning these designations states that Qeshm Fars Air was being designated for ''being owned or controlled by Mahan Air, as well as for assisting in, sponsoring, or providing financial, material or technological support for, or financial or other services to or in support of, the IRGC–QF,'' and that Flight Travel LLC was being designated for ''acting for or on behalf of Mahan Air.'' It further states, *inter alia,* that ''Mahan Air employees fill Qeshm Fars Air management positions, and Mahan Air provides technical and operational support for Qeshm Fars Air, facilitating the airline's illicit operations.'' *See https://home.treasury.gov/news/press-releases/sm590. See also https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190124.aspx.*

[41] The same open sources indicated this aircraft continued to operate on flights within Iran to include a May 11, 2020 flight from Tehran, Iran to Kerman, Iran.

[42] Publicly available flight tracking information shows that on November 23, 2019, EP–MME (MSN 371) flew from Guangzhou, China to Tehran, Iran, and on November 21, 2019, EP–MMF (MSN 376) flew on routes between Istanbul, Turkey and Tehran, Iran. Additionally, on November 20, 2019, EP–MMQ (MSN 449) flew from Kuala Lumpur, Malaysia, to Tehran, Iran.

The May 29, 2020 renewal order cited Mahan's operation of EP–MMD, EP–MMF, and EP–MMI, aircraft originally acquired from Al Naser Airlines, on international flights into and out of Iran from/to Bangkok, Thailand, Dubai, UAE, and Shanghai, China in violation of the TDO and EAR.[43] The May 29, 2020 renewal order also detailed the indictment of Ali Abdullah Alhay and Issam Shammout, parties added to the TDO in May and July 2015, respectively, in the United States District Court for the District of Columbia. Alhay and Shammout were charged with, among other violations, conspiring to export aircraft and parts to Mahan in violation of export control laws and the embargo on Iran beginning around August 2012 through May 2015.

In addition to detailing the operation of multiple aircraft in violation of the Regulations,[44] the November 24, 2020 renewal order discussed a related TDO issued on August 19, 2020, denying for 180 days the export privileges of Indonesia-based PT MS Aero Support (''PTMS Aero''), PT Antasena Kreasi (''PTAK''), PT Kandiyasa Energi Utama (''PTKEU''), Sunarko Kuntjoro, Triadi Senna Kuntjoro, and Satrio Wiharjo Sasmito based on their involvement in the unlicensed export of aircraft parts to Mahan Airways—often in coordination with Mustafa Ovieci, a Mahan executive.[45] These parties also facilitated the shipment of damaged Mahan parts to the United States for repair and subsequent export back to Iran in further violation of U.S. laws. In both instances, the fact that the items were destined to Iran/Mahan was concealed from U.S. companies, shippers, and freight forwarders.[46]

The November 24, 2020 renewal order also includes actions taken by other U.S. government agencies such as OFAC's August 19, 2020 designation of UAE-based Parthia Cargo, its CEO Amin Mahdavi, and Delta Parts Supply FZC as SDGTs pursuant to Executive Order 13224 for providing ''key parts and logistics services for Mahan Air. . . .'' The OFAC press release further states, in part, that Mahdavi ''has directly coordinated the shipment of parts on behalf of Mahan Air.'' [47] In addition, Mahdavi and Parthia Cargo were indicted in the United States District Court for the District of Columbia for violating sanctions on Iran.[48]

Moreover, in October 2020, the U.S. District Court for the District of New Jersey sentenced Joyce Eliasbachus to 18 months of confinement based on her role in a conspiracy to export $2 million dollars' worth of aircraft parts from the United States to Iran, including to Mahan Airways.[49]

The May 21, 2021 renewal order outlined Mahan's continued operation of a number of aircraft subject to the EAR, including, but not limited to, EP–MMH, EP–MMI, and EP–MMQ, on international flights into and out of Iran from/to Shanghai, China, and Dubai, United Arab Emirates, and Guangzhou, China, respectively.[50]

Open source news reporting also indicated that after five years of maintenance, Mahan Air is now operating EP–MNE, a Boeing 747 on domestic flights within Iran.[51] In addition to this aircraft being one of the original three Boeing aircraft Mahan obtained in violation of the Regulations, any service or maintenance involving parts subject to the EAR would further violate the TDO.

The November 17, 2021 order details Mahan's continued operation of a number of aircraft subject to the EAR, including, but not limited to EP–MME, EP–MMJ, EP–MMQ, on flights into and out of Iran from/to Istanbul, Turkey, and Dubai, United Arab Emirates, and Shenzhen, China, respectively.[52]

Additionally, publicly available industry sources showed that EP–MMG (MSN 383), an aircraft that Mahan acquired from Al Naser Air in violation of both the TDO and Regulations, was in a maintenance, repair, overhaul (''MRO'') status at Iran's Imam Khomeini International Airport in Tehran, Iran.

The May 13, 2022 renewal order outlines Mahan's continuing violation of the TDO and/or Regulations including, but not limited to the operation of EP–MME, EP–MNO, and EP–MMB on flights into and out of Iran from/to Moscow, Russia, Damascus, Syria, and Guangzhou, China, respectively.[53] Open source press reports also indicates that as of April 2022, Mahan Air increased its service into Moscow, Russia by adding two weekly flights to Moscow's Sheremetyevo Airport (''SVO'') to its current service into Moscow's Vnukovo Airport (''VKO'').[54] Mahan flights into Russia after February 24, 2022 violated the stringent export controls imposed on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia in response to Russia's further invasion of Ukraine. These controls include a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (section 746.8(a)(1) of the EAR).[55]

The May 13, 2022 renewal order also cited OFAC's recent administrative enforcement action with an Australian freight forwarder resulting in a $6,131,855 civil penalty, which resolved, in part, allegations of receiving 327 payments from Mahan that were processed through U.S. financial institutions or foreign branches of U.S. financial institutions in apparent violation of OFAC sanctions.[56]

The November 8, 2022 order detailed Mahan Air's continued violation of the TDO and Regulations, including the Russia-related export controls set out in section 746.8 of the Regulations. On September 19, 2022, BIS publicly identified Mahan's EP–MEE aircraft for

[43] Publicly available flight tracking information shows that on May 8, 2020, EP–MMD (MSN 164) flew on routes between Bangkok, Thailand and Tehran, Iran, and on May 10, 2020, EP–MMF (MSN 376) flew on routes between Dubai, UAE and Tehran. In addition, on May 9, 2020, EP–MMI (MSN 416) flew on routes between Shanghai, China and Tehran.

[44] Publicly available flight tracking information shows that on November 13, 2020, EP–MMQ (MSN 449) flew on routes between Istanbul, Turkey and Tehran, Iran, and on November 15, 2020, EP–MMI (MSN 416) flew on routes between Shenzhen, China and Tehran.

[45] *See* 85 FR 52321 (Aug. 25, 2020).

[46] PTMS Aero, PTAK, PTKEU, and Sunarko Kuntjoro were each indicted in December 2019 on multiple counts related to this conspiracy in the United States District Court for the District of Columbia.

[47] *https://home.treasury.gov/news/press-releases/sm1098.*

[48] *https://www.justice.gov/opa/pr/iranian-national-and-uae-business-organization-charged-criminal-conspiracy-violate-iranian.*

[49] Eliasbachus' arrest and arraignment were detailed in the June 14, 2018 renewal order, as described *supra* at 21.

[50] Publicly available flight tracking information shows that on May 14, 2021, EP–MMH (MSN 391) flew on routes between Shanghai, China and Tehran, Iran, and on May 13, 2021, EP–MMI (MSN 416) flew on routes between Dubai, United Arab Emirates and Tehran. In addition, on May 20, 2021, EP–MMQ (MSN 346) flew on routes between Guangzhou, China and Tehran.

[51] *https://simpleflying.com/mahan-air-747-300-flies-again/.*

[52] Publicly available flight tracking information shows that on November 7, 2021, EP–MME (MSN 376) flew on routes between Istanbul, Turkey and Tehran, Iran, and on November 9, 2021, EP–MMJ (MSN 526) flew on routes between Dubai, United Arab Emirates and Tehran, Iran. In addition, on November 8, 2021, EP–MMQ (MSN 346) flew on routes between Shenzhen, China and Tehran, Iran.

[53] Publicly available flight tracking information shows that on May 2, 2022, EP–MME (MSN 376) flew on routes between Moscow, Russia and Tehran, Iran, and on May 5, 2022, EP–MNO (MSN 595) flew on routes between Damascus, Syria and Tehran, Iran. In addition, on May 6, 2022, EP–MMB (MSN 56) flew on routes between Guangzhou, China and Tehran, Iran.

[54] *https://centreforaviation.com/news/mahan-air-launches-moscow-sheremetyevo-service-1131185.*

[55] The TDO prohibits Mahan from being eligible to use license exception Aircraft, Vessels, and Spacecraft (AVS) (section 740.15 of the EAR).

[56] *https://home.treasury.gov/system/files/126/20220425_toll.pdf.*

its unlicensed reexport to Russia in apparent violation of section 746.8 of the Regulations.[57] Additionally, open source evidence showed that Mahan continues to operate EP–MME, EP–MMJ, and EP–MMQ on flights into and out of Iran from/to Moscow, Russia, and Dubai, United Arab Emirates, respectively, without the requisite authorization.[58]

Further, on August 2, 2022, BIS took a related enforcement action against Venezuela-based cargo airline Empresa de Transporte Aéreocargo del Sur, S.A., a/k/a Aerocargo del Sur Transportation Company, a/k/a EMTRASUR (''EMTRASUR''), for acquiring custody and/or control from Mahan Air of a U.S.-origin Boeing 747 aircraft bearing manufacturer's serial number 23413 (''MSN 23413'') in violation of the TDO.[59] In or around October 2021, Mahan Air transferred custody and control of MSN 23413 to EMTRASUR's parent company, CONVIASA,[60] through an intermediary.

OEE's April 2023 renewal request outlines open source evidence showing Mahan continues to operate EP–MNF, EP–MMQ, and EP–MME on flights into and out of Iran from/to Guangzhou, China, Kabul, Afghanistan, and Moscow, Russia, respectively, without the requisite authorization.[61] Additionally, national security and foreign policy concerns are raised by open source reports regarding Mahan's intention to start direct flights from Iran to Minsk, Belarus, which reportedly began on April 18, 2023.[62] Lastly, publicly available information shows that Russian airline Aeroflot, which is currently subject to its own TDO,[63] has begun sending its aircraft to Mahan for repairs and/or maintenance.[64]

C. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that the denied persons have acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should continue to avoid dealing with Mahan Airways and Al Naser Airlines and the other denied persons, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

III. Order

It is therefore ordered:

First, that MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran; PEJMAN MAHMOOD KOSARAYANIFARD A/K/A KOSARIAN FARD, P.O. Box 52404, Dubai, United Arab Emirates; MAHMOUD AMINI, G#22 Dubai Airport Free Zone, P.O. Box 393754, Dubai, United Arab Emirates, and P.O. Box 52404, Dubai, United Arab Emirates, and Mohamed Abdulla Alqaz Building, Al Maktoum Street, Al Rigga, Dubai, United Arab Emirates; KERMAN AVIATION A/K/A GIE KERMAN AVIATION, 42 Avenue Montaigne 75008, Paris, France; SIRJANCO TRADING LLC, P.O. Box 8709, Dubai, United Arab Emirates; MAHAN AIR GENERAL TRADING LLC, 19th Floor Al Moosa Tower One, Sheik Zayed Road, Dubai 40594, United Arab Emirates; MEHDI BAHRAMI, Mahan Airways-Istanbul Office, Cumhuriye Cad. Sibil Apt No: 101 D:6, 34374 Emadad, Sisli Istanbul, Turkey; AL NASER AIRLINES A/K/A AL–NASER AIRLINES A/K/A AL NASER WINGS AIRLINE A/K/A ALNASER AIRLINES AND AIR FREIGHT LTD., Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Al Amirat Street, Section 309, St. 3/H.20, Al Mansour, Baghdad, Iraq, and P.O. Box 28360, Dubai, United Arab Emirates, and P.O. Box 911399, Amman 11191, Jordan; ALI ABDULLAH ALHAY A/K/A ALI ALHAY A/K/A ALI ABDULLAH AHMED ALHAY, Home 46, Al-Karrada, Babil Region, District 929, St 21, Beside Al Jadirya Private Hospital, Baghdad, Iraq, and Anak Street, Qatif, Saudi Arabia 61177; BAHAR SAFWA GENERAL TRADING, P.O. Box 113212, Citadel Tower, Floor-5, Office #504, Business Bay, Dubai, United Arab Emirates, and P.O. Box 8709, Citadel Tower, Business Bay, Dubai, United Arab Emirates; SKY BLUE BIRD GROUP A/K/A SKY BLUE BIRD AVIATION A/K/A SKY BLUE BIRD LTD A/K/A SKY BLUE BIRD FZC, P.O. Box 16111, Ras Al Khaimah Trade Zone, United Arab Emirates; and ISSAM SHAMMOUT A/K/A MUHAMMAD ISAM MUHAMMAD ANWAR NUR SHAMMOUT A/K/A ISSAM ANWAR, Philips Building, 4th Floor, Al Fardous Street, Damascus, Syria, and Al Kolaa, Beirut, Lebanon 151515, and 17–18 Margaret Street, 4th Floor, London, W1W 8RP, United Kingdom, and Cumhuriyet Mah. Kavakli San St. Fulya, Cad. Hazar Sok. No.14/A Silivri, Istanbul, Turkey, 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 engaging 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 from any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of a Denied Person any item subject to the EAR;

[57] *https://bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3138-bis-press-release-gp10-iranian-craft-additions/file.*

[58] Publicly available flight tracking information shows that on October 9, 2022, EP–MME (MSN 376) flew on routes between Tehran, Iran and Moscow, Russia's VTO airport, and on October 26, 2022, EP–MMJ (MSN 526) flew on routes between Tehran, Iran and Moscow, Russia's SVO airport. On October 28, 2022, EP–MMQ (MSN 346) flew on routes between Dubai, United Arab Emirates and Tehran, Iran.

[59] BIS issued a separate TDO denying the export privileges of EMTRASUR for a period of 180 days. *See* 87 FR 47964 (Aug. 5, 2022).

[60] On or about February 7, 2020, U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') added CONVIASA, a Venezuelan state-owned airline, to the list of Specially Designated Nationals (''SDN'') pursuant to Executive Order (E.O.) 13884. *See https://home.treasury.gov/news/press-releases/sm903.*

[61] Publicly available flight tracking information shows that on April 24, 2023, EP–MMQ (MSN 346) flew on routes between Guangzhou, China, and Tehran, Iran, and on April 27, 2023, EP–MNF (MSN 547) flew on routes between Kabul, Afghanistan and Tehran, Iran. On April 28, 2023, EP–MME (MSN 371) flew on routes between Moscow, Russia and Tehran, Iran.

[62] *https://iranpress.com/content/76332/mahan-air-launches-direct-flight-from-tehran-minsk.*

[63] *See* 88 FR 19609 (Apr. 3, 2023).

[64] *https://simpleflying.com/aeroflot-airbus-a330-maintenance-iran-mahan-air/.*

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 a Denied Person by ownership, control, position of responsibility, affiliation or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of sections 766.24(e) of the EAR, Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading 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 sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Pejman Mahmood Kosarayanifard, Mahmoud Amini, Kerman Aviation, Sirjanco Trading LLC, Mahan Air General Trading LLC, Mehdi Bahrami, Sky Blue Bird Group, and/or Issam Shammout may, at any time, appeal their inclusion as a related person 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. A renewal request may be opposed by Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and/or Bahar Safwa General Trading as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce 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 provided to Mahan Airways, Al Naser Airlines, Ali Abdullah Alhay, and Bahar Safwa General Trading and each related person, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: May 5, 2023.

Kevin J. Kurland,

Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023–09921 Filed 5–9–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–018, C–570–019]

Boltless Steel Shelving Units Prepacked for Sale From the People's Republic of China: Rescission of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a withdrawal of the circumvention inquiry request, the U.S. Department of Commerce (Commerce) is rescinding this circumvention inquiry to determine whether imports of boltless steel shelving units prepackaged for sale (boltless steel shelving), which are completed or assembled in Malaysia using certain components from the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on boltless steel shelving from China.

DATES: Applicable May 10, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel Frost, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8180.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2015, Commerce published AD and CVD orders on boltless steel shelving from China.[1] On October 20, 2022, Edsal Manufacturing Company, Inc. (Edsal) filed a circumvention inquiry request alleging that boltless steel shelving completed or assembled in Malaysia using certain components from China and exported to the United States are circumventing the *Orders*.[2] On December 9, 2022, Commerce initiated a circumvention inquiry regarding the above-referenced merchandise.[3] On April 17, 2023, Edsal withdrew its circumvention inquiry request.[4]

Scope of the Orders

The merchandise covered by these *Orders* is boltless steel shelving units prepackaged for sale. For a complete description of the scope, *see* the Initiation Memorandum.[5]

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers boltless steel shelving that has been completed or assembled in Malaysia using, at a minimum, the key components of boltless steel shelving, *i.e.,* vertical posts and horizontal beams, from China that are then subsequently exported to the United States.

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Antidumping Duty Order,* 80 FR 63741 (October 21, 2015); and *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 63745 (October 21, 2015) (collectively, *Orders*).

[2] *See* Edsal's Letter, ''Boltless Steel Shelving Units Prepackaged for Sale from China—Petitioner's Request for Circumvention Ruling Pursuant to Section 781(b), as Amended,'' dated October 20, 2022.

[3] *See Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders,* 87 FR 75592 (December 9, 2022) (*Initiation Notice*), and accompanying Initiation Memorandum.

[4] *See* Edsal's Letter, ''Petitioner's Withdrawal of Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930,'' dated April 17, 2023.

[5] *See Initiation Notice* Initiation Memorandum at 2–3.

Rescission of Circumvention Inquiry

As noted above, Edsal has withdrawn its request for a circumvention inquiry on boltless steel shelving completed or assembled in Malaysia using certain components from China and exported to the United States. Therefore, in accordance 19 CFR 351.226(f)(6)(i), Commerce finds that it is appropriate to rescind this circumvention inquiry in its entirety.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce notified U.S. Customs and Border Protection (CBP) of the initiation of this circumvention inquiry and directed CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders*.[6] Upon publication of this rescission notice, Commerce will inform CBP that Commerce has rescinded this inquiry and that CBP should continue to suspend entries of boltless steel shelving from China that are subject to the *Orders* at the applicable rate(s) in effect on the date of entry until specific liquidation instructions are issued.

Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of the APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with section 781 of the Tariff Act of 1930, as amended, and 19 CFR 351.226(f)(6).

[6] *See* CBP Message 2343414, ''Initiation of Circumvention Inquiry—Antidumping/Countervailing Orders on Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China (A–570–018/C–570–019),'' dated December 9, 2022.

Dated: May 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–09946 Filed 5–9–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–849]

Common Alloy Aluminum Sheet From Germany: Preliminary Results of Antidumping Duty Administrative Review; 2020–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) (October 15, 2020, through March 31, 2022). Interested parties are invited to comment on these preliminary results of the review.

DATES: Applicable May 10, 2023.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4406 or (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2022, Commerce initiated an administrative review of the antidumping duty order[1] on common alloy aluminum sheet from Germany covering the above-referenced POR.[2] For a complete description of the events that followed the initiation of this review, *see* the accompanying Preliminary Decision Memorandum.[3] On December 15, 2022, Commerce extended the deadline for issuing the preliminary results of this review from January 3, 2023, to April 28, 2023.[4]

Scope of the Order

The products covered by this *Order* are common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of this *Order* includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. For a full description of the scope of the *Order, see* Preliminary Decision Memorandum.

Preliminary Results of Successor-in-Interest Analysis

Commerce initiated this administrative review with respect to four companies, including Hydro Aluminium Rolled Products GmbH (HARP) and Speira GmbH (Speira).[5] Speira reported that during the POR, ''HARP assumed new ownership and took on the name of Speira GmbH.''[6] We have analyzed record information regarding changes in HARP's management, manufacturing facilities, customers, and suppliers, and preliminarily determine that Speira is the successor-in-interest to HARP. Accordingly, we have treated HARP and Speira as the same company in our analyses in this review. *See* the Preliminary Decision Memorandum for further information. Should our preliminary successor-in-interest determination remain unchanged in the final results of review, we will instruct CBP to apply the assessment rates that we calculated for Speira to POR entries of subject merchandise from both Speira and HARP.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). We calculated export and constructed export prices and NV for the two mandatory respondents, Novelis Deutschland GmbH (Novelis) and Speira (formerly known HARP), in accordance with sections 772 and 773 of the Act, respectively.

For a full description of the methodology underlying our decisions,

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Antidumping Duty Orders,* 86 FR 22139 (April 27, 2021) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 42144 (July 14, 2022) (*Initiation Notice*).

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Results of the 2020–2022 Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from Germany,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* Memorandum, ''Extension of Deadline for the Preliminary Results of the 2020–2022 Antidumping Duty Administrative Review,'' dated December 15, 2022.

[5] *See Initiation Notice.*

[6] *See* Preliminary Decision Memorandum (citing Speira's Letter, ''Section A Response,'' dated September 30, 2022, at 1).

see the Preliminary Decision Memorandum. A list of the sections in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, the Preliminary Decision Memorandum may be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Margin for the Non-Individually Examined Company

The Act and Commerce's regulations do not address what weighted-average dumping margin to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, when calculating weighted-average dumping margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation.

Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate in an investigation on the weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Where the weighted-average dumping margin for each of the individually examined companies is zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

Because Commerce preliminarily calculated weighted-average dumping margins for Novelis and Speira that are not zero, *de minimis,* or based entirely on facts available, we have preliminarily assigned Constellium Rolled Products Singen GmbH & Co. KG., the sole company under review that was not selected for individual examination, a weighted-average dumping margin equal to the weighted average of the estimated weighted-average dumping margins calculated for Novelis and HARP/Speira, weighted by the mandatory respondents' publicly ranged total sales values, consistent with the guidance in section 735(c)(5)(A) of the Act.[7] For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We are assigning the following weighted-average dumping margins to the companies listed below for the period October 15, 2020, through March 31, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
Novelis Deutschland GmbH	17.80
Hydro Aluminium Rolled Products GmbH/Speira GmbH	18.70
Review-Specific Rate Applicable to the Following Non-Examined Company:	
Constellium Rolled Products Singen GmbH & Co. KG	18.10

Disclosure

Commerce intends to disclose the calculations that it performed for these preliminary results of review under Administrative Protective Order to parties to the proceeding within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties may comment on the preliminary results of this review by submitting case briefs to Commerce no later than 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[8] Interested parties may also file rebuttal briefs with Commerce no later than seven days after case briefs are due. Interested parties should only respond to arguments raised in case briefs in their rebuttal briefs.[9] Parties who submit case or rebuttal briefs are requested to submit with each brief a table of contents, a summary of the arguments, not to exceed five pages, and a table of authorities.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing regarding issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, Requests for a hearing should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing and whether any individuals are foreign nationals; and (3) a list of the issues the party intends to discuss at the hearing. Oral arguments at the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, Commerce will announce the date and time of the hearing. Parties should confirm the date and time of the hearing two days before the scheduled hearing date.

All submissions must be filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

Final Results of Review

Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act, unless extended.

[7] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from Germany: Calculation of the Weighted-Average Dumping Margin for the Company Not Selected for Individual Examination,'' dated concurrently with this notice.

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19, 85 FR 17006 (March 26, 2020); and Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[13]

For the company that was not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to the weighted-average dumping margin determined in the final results of review.

For individually examined respondents whose weighted-average dumping margin is not zero or *de minimis,* we will calculate importer-specific assessment rates in accordance with 19 CFR 351.212(b)(1). Where the respondent reported reliable entered values, we intend to calculate importer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total entered value of the merchandise sold to the importer.[14] Where the respondent did not report entered values, we will calculate importer-specific assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total quantity of those sales. We also will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, we will use the per-unit assessment rate where entered values were not reported.[15]

Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* we will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[16] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced or exported by the examined companies for which the examined companies did not know that the merchandise they sold was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[17]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[18]

Cash Deposit Requirements

The following cash deposit requirements will be in effect for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the exporters listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent, and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review or a previous segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 49.40 percent, the all-others rate established in the less-than-fair-value investigation.[19]

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of double antidumping duties and/or antidumping duties increased by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(l) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: April 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Sections in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Successor-in-Interest Analysis
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2023–09922 Filed 5–9–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–839]

Common Alloy Aluminum Sheet From Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2020–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that common alloy aluminum sheet (CAAS) from the Republic of Turkey (Turkey) was sold in the United States at less than normal value during the period of review (POR) October 15, 2020, through March 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable May 10, 2023.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations,

[13] *See* 19 CFR 351.212(b).

[14] *See* 19 CFR 351.212(b)(1).

[15] *Id.*

[16] *See* 19 CFR 351.106(c)(2).

[17] For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[18] *See* section 751(a)(2)(C) of the Act.

[19] *See Common Alloy Aluminum Sheet from Germany: Final Determination of Sales at Less Than Fair Value,* 86 FR 13318 (March 8, 2021).

Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2021, Commerce published the antidumping duty order on common alloy aluminum sheet from Turkey.[1] On May 2, 2022, the petitioners requested an administrative review of six companies.[2] On June 9, 2022, in accordance with 19 CFR 351.221(c)(i), Commerce initiated an administrative review of the *Order,* covering two producers/exporters selected for individual examination, Assan Aluminyum Sanayi ve Ticaret A.S. (Assan) and Teknik Aluminyum Sanayi A.S. (Teknik), and four additional companies not selected for individual examination: ASAS Aluminyum Sanayi ve Ticaret A.S.; Panda Aluminyum A.S.; PMS Metal Profil Aluminyum Sanayi ve Ticaret A.S.; and TAC Metal Ticaret Anonim Sirketi.[3] Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on December 2, 2022, Commerce determined that it was not practicable to complete the preliminary results of this review within 245 days and extended the deadline for the preliminary results of this review until April 28, 2023.[4]

For a detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise subject to the *Order* is CAAS from Turkey. Products subject to the *Order* are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of the *Order* may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Act. We calculated export price in accordance with section 772(a) of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminarily determine the following weighted-average dumping margins for the period October 15, 2020, through March 31, 2022.

Exporter or producer	Weighted-average dumping margin (percent)
Assan Aluminyum Sanayi ve Ticaret A.S	2.61
Teknik Aluminyum Sanayi A.S	12.24
Non-Selected Companies	7.40

Rate for Companies Not Individually Examined

Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others rate, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total facts available. Accordingly, Commerce's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis,* or based entirely on facts available. In this review, we calculated a weighted-average dumping margin of 2.61 percent for Assan and 12.24 percent for Teknik. In accordance with section 735(c)(5)(A) of the Act, Commerce has assigned the weighted average of these two calculated weighted-average dumping margins based on their publicly ranged sales quantities, 7.40 percent, to the non-selected companies in these preliminary results.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[6] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[7] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8]

[1] *See Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, Southern Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders,* 86 FR 22139 (April 27, 2021) (*Order*).

[2] Aleris Rolled Products, Inc.; Arconic Corporation; Commonwealth Rolled Products Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc. (collectively, the petitioners).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 87 FR 35165 (June 9, 2022). On August 23, 2022, Commerce clarified with the petitioners that they intended to request a review of ASAS Aluminyum Sanayi ve Ticaret A.S., not ASA Aluminyum Sanayi ve Ticaret A.S., the name listed in the initiation notice published in June 2022. *See* Memorandum, ''Clarification of Certain Companies Requested for Review,'' dated August 26, 2022. The correct name was noted in a subsequent initiation notice published in September 2022. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 54463 (September 6, 2022).

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2022 Antidumping Duty Administrative Review,'' dated December 2, 2022.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Common Alloy Aluminum Sheet from Turkey; 2020–2022,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* 19 CFR 351.309(c)(1)(ii).

[7] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues the party intends to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[9]

All submissions should be filed using ACCESS,[10] and must be served on interested parties.[11] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[12]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

If Assan's or Teknik's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[13] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If either Assan's or Teknik's weighted-average dumping margin is zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Assan or Teknik for which they did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value investigation if there is no rate for the intermediate company(ies) involved in the transaction.[15]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the company-specific cash deposit rate for Assan and Teknik will be equal to the weighted-average dumping margin established in the final results of this review for each respondent (except, if that rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), then the cash deposit rate will be zero); (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.85 percent, the all-others rate established in the less-than-fair-value investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(2) and 351.221(b)(4).

Dated: April 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Affiliation
V. Companies Not Selected for Individual Examination
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2023–09962 Filed 5–9–23; 8:45 am]

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[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.303(f).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[13] *See* 19 CFR 351.212(b)(1).

[14] *See* 19 CFR 351.106(c)(2); *see also Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Order,* 86 FR at 22142.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–840]

Common Alloy Aluminum Sheet From the Republic of Turkey: Preliminary Results of the 2020–2021 Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and/or exporters of common alloy aluminum sheet (CAAS) from the Republic of Turkey (Turkey), during the period of review (POR) August 14, 2020, through December 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable May 10, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2022, Commerce initiated this administrative review of the countervailing duty order on CAAS from Turkey.[1] The mandatory respondents are Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Americas, Inc., Kibar Dis Ticaret A.S. (collectively, Assan) and Teknik Aluminyum Sanayi A.S. (Teknik). On December 2, 2022, Commerce extended the time limit for these preliminary results to April 28, 2023.[2]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the order is CAAS from Turkey. CAAS is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. For a complete description of the scope of this order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs preliminarily found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient and that the subsidy is specific.[4] For a full description of the methodology underlying Commerce's preliminary conclusions, *see* the Preliminary Decision Memorandum.

Companies Not Selected for Individual Examination

The Act and Commerce's regulations do not directly address the subsidy rate to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available.[5] We preliminarily determine that Assan and Teknik received countervailable subsidies that are above *de minimis* and are not based entirely on facts available for 2020. Therefore, we preliminarily determine to apply the simple average of the net subsidy rates calculated for Assan and Teknik to the non-selected companies for 2020.[6] Assan is the only mandatory respondent with a calculated rate above *de minimis* and not based entirely on facts available for 2021. Therefore, we are preliminarily assigning Assan's net subsidy rate to the non-selected companies for 2021. The sole company for which a review was requested, and which were not selected as mandatory respondents or found to be cross owned with a mandatory respondent, was P.M.S. Metal Profil Aluminyum Sanayi Ve Ticaret A.S.

Preliminary Results of Review

As a result of this review, we preliminarily determine that, for 2020 and 2021, the following estimated countervailable subsidy rates exist:

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 35165 (June 9, 2022).

[2] *See* Memorandum, ''Common Alloy Aluminum Sheet from the Republic of Turkey: Extension of Deadline for Preliminary Results of 2020–2021 Countervailing Duty Administrative Review,'' dated December 2, 2022.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020–2021 Countervailing Duty Administrative Review of Common Alloy Aluminum Sheet from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[6] *See* Memorandum, ''Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated concurrently with this memorandum.

Company	Subsidy rate 2020 (percent *ad valorem*)	Subsidy rate 2021 (percent *ad valorem*)
Assan Aluminyum Sanayi ve Ticaret A.S	3.62	1.18
Teknik Aluminyum Sanayi A.S	1.11	0.63
Companies Not Selected for Individual Review	2.37	1.18

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), Commerce preliminarily assigned a subsidy rate in the amount for the producer/exporter shown above. Upon completion of this administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits in the amounts indicated for the producer/exporter listed above with regard to shipments of subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailable duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed in reaching the preliminary results within five days of publication of these preliminary results, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written documents may be submitted to the Assistant Secretary for Enforcement and Compliance.[7] A timeline for the submission of case and rebuttal briefs and written comments will be provided to interested parties at a later date.

Pursuant to 19 CFR 351.301(c) and (d)(2), parties who wish to submit case or rebuttal briefs in this review are requested to submit for each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using ACCESS. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must do so within 30 days after the date of publication of this notice by submitting a written request to the Assistant Secretary for Enforcement and Compliance.[9] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether a participant is a foreign national; and (3) a list of the issues to be discussed. If a hearing request is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, which will include the results of Commerce's analysis of the issues raised in the case briefs, within 120 days after the date of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

[7] *See* 19 CFR 351.309(c) and (d).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[9] *See* 19 CFR 351.310(c).

Dated: April 28, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the *Order*
V. Rate for Non-Selected Companies
VI. Subsidies Valuation Information
VII. Benchmarks and Interest Rates
VIII. Use of Facts Otherwise Available and Application of Adverse Inferences
IX. Analysis of Programs
X. Recommendation

[FR Doc. 2023–09961 Filed 5–9–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC963]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Port San Luis Breakwater Repairs in Avila Beach, California

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

ACTION: Notice; issuance of renewal incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to U.S. Army Corps of Engineers (ACOE) to incidentally harass marine mammals incidental to Port San Luis breakwater repairs in Avila Beach, California.

DATES: This renewal IHA is valid from the date of issuance through March 31, 2024.

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms, such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On April 27, 2021, NMFS issued an IHA to the ACOE to take marine mammals incidental to Port San Luis breakwater repairs in Avila Beach, California (86 FR 22151, April 27, 2021), effective from April 1, 2022 through March 31, 2023. On March 28, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but were not completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-army-corps-engineers-port-san-luis-breakwater-repair-project*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed renewal incidental harassment authorization was published on April 14, 2023 (88 FR 23002).

Description of the Specified Activities and Anticipated Impacts

Port San Luis breakwater is approximately 2,400 feet (730 m) long and 20 feet (6 m) wide. Repair identified in the initial IHA was designed to focus on the most heavily damaged 1,420 feet (430 m) at the seaward end of the breakwater. The footprint of the breakwater would not be changed, but the crest elevation would be raised 3 feet (1 m) from +13 feet (4 m) Mean Lower Low Water (MLLW) to +16 feet (4.9) MLLW for hydraulic stability, to accommodate larger armor stone, to meet design criteria, and to account for sea level rise. Repair work could potentially extend to the seabed to ensure a stable slope and structural stability is maintained.

The project was initially described as consisting of the repair of a deteriorating breakwater at Port San Luis, California. The project is required to protect Port San Luis Harbor and maintain safe navigability within the port. Repair work includes minor excavation of shoaled sediment (~15,000 cubic yards (11,470 cubic meters)) adjacent to the leeward side of the breakwater to create adequate depths for barges and support boats to access the breakwater for the repair. Approximately 29,000 tons (26,310 metric tons) of existing stone would need to be reset and 60,000 tons (54,430 metric tons) of new stone

(stones range from 5 to 20 tons (4.5–18.1 metric tons) each) would be placed to restore the most heavily damaged portion of the breakwater. The project was expected to take no more than 174 work days over 7 months.

Due to a combination of contracting and weather delays, only a subset of the activities in the initial IHA were completed. Specifically, under the initial IHA, the ACOE has completed: (1) excavation of shoaled sediment adjacent to the leeward side of the breakwater to create adequate depths for barges and other vessels to access the breakwater for the repair work, and (2) repair of 450 feet (137.2 meters) of the breakwater. This renewal request is to cover the subset of the activities covered in the initial IHA that will not be completed during the effective IHA period due to project delays. The remaining breakwater repair work under the renewal IHA would involve completing the remaining 970 feet (295.7 meters) of repairs of the breakwater and is expected to take no more than 162 workdays.

The likely or possible impacts of the ACOE's planned activity on marine mammals could involve both non-acoustic and acoustic stressors and is unchanged from the impacts described in the initial IHA. Potential non-acoustic stressors could result from the physical and visual presence of the equipment, vessels, and personnel. Acoustic stressors include effects of heavy equipment operation, rock setting, and sediment movement. The effects of underwater and in-air noise and visual disturbance from the ACOE's planned activities have the potential to result in Level B harassment of marine mammals in the action area.

Detailed Description of the Activity

A detailed description of the construction activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization (86 FR 14579, March 17, 2021; 86 FR 22151, April 27, 2021). As previously mentioned, this IHA renewal is for a subset of the activities authorized in the initial IHA that would not be completed prior to its expiration due to project delays. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. The renewal IHA would be effective from the date of issuance through March 31, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (86 FR 14579, March 17, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA (86 FR 14579, March 17, 2021).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the **Federal Register** notice of the Proposed IHA for the initial authorization (86 FR 14579, March 17, 2021). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, other scientific literature, and the public comments, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (86 FR 14579, March 17, 2021; 86 FR 22151, April 27, 2021). Specifically, days of operation, area or space within which harassment is likely to occur, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, daily take estimates and types of take remain unchanged from the previously issued IHA. The number of takes authorized in this renewal are a subset of the initial authorized takes that better represent the amount of activity left to complete. These takes, which reflect the lower number of remaining days of work (162), are indicated below in Table 1.

TABLE 1—PROPOSED AMOUNT OF TAKING, BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Stock	Proposed take	Percent of stock
Harbor seal	California	1,674	5.4
Steller sea lions	Eastern DPS	3,124	7.2
California sea lion	U.S	48,933	19

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the FR notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate (86 FR 22151, April 27, 2021). The following mitigation, monitoring, and reporting measures are proposed for this renewal:

- Monitoring must take place from 30 minutes prior to initiation of construction activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of construction activity.
- The ACOE must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead Protected Species Observer (PSO) to determine the shutdown zones clear of marine mammals. Construction may

commence when the determination is made.

- If construction is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.
- The Holder must use soft start techniques. Soft start requires contractors and equipment to slowly approach the work site creating a visual disturbance allowing animals in close proximity to construction activities a chance to leave the area prior to stone resetting or new stone placement. Contractors shall avoid walking or driving equipment through the seal haulout. A soft start must be implemented at the start of each day's construction activity and at any time following cessation of activity for a period of 30 minutes or longer.
- Vessels would approach the breakwater perpendicular to the area they need to be as much as is feasible to minimize interactions with pinnipeds on or near the breakwater.
- The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant ACOE staff are trained prior to the start of construction activity subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.
- Construction activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within a 200 m Level B harassment zone.
- Construction work will start at the landward end of the breakwater as much as feasible.
- The ACOE must employ one protected species observers (PSOs) to monitor the shutdown and Level B harassment zones.
- Monitoring will be conducted 30 minutes before, during, and 30 minutes after construction activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from construction activity.
- The ACOE must submit a draft report detailing all monitoring within 90 calendar days of the completion of marine mammal monitoring or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first.
- The ACOE must prepare and submit final report within 30 days following resolution of comments on the draft report from NMFS.
- The ACOE must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).
- The ACOE must report injured or dead marine mammals.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to ACOE was published in the **Federal Register** on April 14, 2023 (88 FR 23002). That notice either described, or referenced descriptions of, the ACOE's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments.

Determinations

The renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the ACOE's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) ACOE's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a renewal IHA to ACOE for the take of marine mammals incidental to conducting Port San Luis breakwater repairs in Avila Beach, CA, through March 31, 2024.

Dated: May 5, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, Marine Fisheries Service.

[FR Doc. 2023–09951 Filed 5–9–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2023–HQ–0004]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget

(OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 9, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Air Force Families Forever Annual Survivor Survey; OMB Control Number 0701–AFFF.

Type of Request: New.

Number of Respondents: 350.

Responses per Respondent: 1.

Annual Responses: 350.

Average Burden per Response: 25 minutes.

Annual Burden Hours: 146.

Needs and Uses: The Air Force Families Forever (AFFF) program is a long-term survivor program established to provide support to family members of deceased Regular Air Force and U.S. Space Force members and Reserve Component Airmen who died in an Active Duty, Inactive Duty for Training (IDT), or Annual Training (AT) status and whose relationship was established prior to the Airman or Guardian's death. The program's mission is to link families of fallen Airmen and Guardians to their Air Force and Space Force Family, thereby promoting Survivor resilience and fostering well-being and connectedness. The Air Force Families Forever Annual Survivor Survey is necessary to assess the impact and effectiveness of AFFF and make changes to policy, operational guidance, or tactical implementation of the program based on the results. Results may lead to changes to the current outreach conducted through AFFF, a reassessment of appropriate staffing levels, and the identification of high performing program elements, to name just a few potential outcomes. The AFFF survey is available to those NOK who are eligible for the program to obtain their assessment of how the program supports them and if any changes to the program are necessary to improve support. The survey is voluntary and will not collect any information specific to the respondent's identity. The information collected will remain confidential and will only be used in aggregate. The results will be analyzed by headquarters staff to understand the impacts of the AFFF program.

Affected Public: Individuals or households.

Frequency: Annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–09920 Filed 5–9–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0041]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 10, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Federal Voting Assistance Program ATTN: Mr. David Beirne, 4800 Mark Center Drive, Suite 03J25, Alexandria, VA 22350, or call at (571) 372–0740.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Overseas Citizen Population Survey; OMB Control Number 0704–0539.

Needs and Uses: The primary objective of the Overseas Citizen Population Survey (OCPS), conducted on behalf of the Federal Voting Assistance Program (FVAP), is to refine FVAP's methodology for estimating the number of overseas U.S. civilians who are eligible to vote and who have registered and participated in the past. These estimates are then used to address the question of whether the registration and voting propensity of the overseas civilian population differs from that of comparable domestic or military populations. Subsequent to each Presidential election year, FVAP must

report to Congress voter registration and participation rates for Uniformed Services voters and overseas citizens. Previous attempts to collect information on the overseas citizen population to identify and measure its voter registration and participation rates in Federal elections suffered from significant bias; this effort is focused on refining a well-established method to report voter registration and participation rates from a more well-defined subgroup of overseas civilians. Conducting this research will help FVAP meet its federal and congressional mandates in terms of reporting annually on its activities and overall voter registration and participation rates after each Presidential election. The data obtained through this study is also intended to provide insights into existing barriers to UOCAVA voting and recommendations for addressing these challenges. In 2018, data from the 2016 survey was used to identify the barriers that overseas citizens face in requesting, casting, and returning their ballots—and, along with the 2018 data, which is just becoming available, will help shape FVAP's outreach to these voters in 2020 and beyond. The 2020 version of the OCPS will test awareness and efficacy of these efforts. The survey also identified that overseas voters are more likely to avail themselves of electronic options when requesting their ballots (compared to active duty military, who rely more often on postal mail). These results guided changes to the 2020 survey, which further probes this difference. Finally, the 2018 survey allows for a midterm-to-midterm comparison of the overseas voting experience from 2014 to 2018—and the 2020 version will permit a similar comparison to the 2016 presidential election. To obtain the necessary information, the OCPS will use data collected from a sample of registered overseas civilian voters in conjunction with previous country level estimates developed by FVAP research and establish a research method to assist FVAP in reporting voter registration and participation rates for the 2020 election.

Affected Public: Individuals or households.

Annual Burden Hours: 4,500.

Number of Respondents: 18,000.

Responses per Respondent: 1.

Annual Responses: 18,000.

Average Burden per Response: 15 minutes.

Frequency: Biennially.

Dated: May 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–09929 Filed 5–9–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0122]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUDS(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 9, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Domestic Abuse Victim Reporting Preference Statement; DD Form 2967; OMB Control Number 0704–DARS.

Type of Request: Existing collection in use without OMB control number.

Number of Respondents: 20,000.

Responses per Respondent: 1.

Annual Responses: 20,000.

Average Burden Per Response: 1.25 hours.

Annual Burden Hours: 25,000.

Needs and Uses: Public Law (Pub. L.) 98–212 established the Family Advocacy Program (FAP) for the purpose of identifying, responding, and treating child abuse/neglect and domestic abuse. Section 543 of Public Law 103–337, National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, establishes the requirement for domestic abuse victim advocates (DAVAs) in the Armed Forces that are responsible for (1) working with victims of domestic abuse to provide: (a) information on available benefits and services, (b) assistance in obtaining those benefits and services, and (c) other appropriate assistance. (2) Services offered in the case of an individual who is a victim of family violence (including intrafamilial sexual, physical, and emotional abuse) shall be provided principally through the FAPs of the military departments. Section 574 of Public Law 114–328, NDAA for FY 2017, requires that the Armed Forces report to Congress critical information on the circumstances of incidents of child abuse/neglect and domestic abuse to further inform ongoing prevention and response efforts. The FAP Central Registry data submitted from each Military Service (Army, Navy, Marine Corps, and Air Force) is aggregated to report a DoD-wide description of the child abuse/neglect and domestic abuse incidents reported to FAP annually, by fiscal year. Section 543 of Public Law 114–328 further directed the Secretary of Defense to include information on each claim of retaliation in connection with a report of sexual assault (to include domestic abuse incidents) in the Armed Forces made by or against a member of such Armed Forces. This includes the narrative description and nature of each complaint, information on the complainant and alleged retaliator, and summary and determination of the investigation. Section 536 of Public Law 116–92, NDAA for FY 2020, directs the Secretary to prescribe procedures under which a victim who files a restricted report on an incident of sexual assault (to include domestic abuse incidents) may request, at any time, the return of any personal property of the victim obtained as part of the sexual assault forensic examination. Section 543 of Public Law 113–291, DoDI 5505.18, ''Investigation of Adult Sexual in the Department of Defense,'' and Under Secretary of Defense for Personnel and Readiness memorandum, Section 536 of Public Law 115–232, NDAA for FY 2019, ''Procedures to Implement the ''Catch a Serial Offender Program,'' establishes the requirement for the option of expedited transfer to be made available to victims of domestic abuse. DoD Instruction (DoDI) 6400.06, ''DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel,'' sets forth the policies for the implementation and execution of the FAP to include programs consistent

with the procedures outlined in Section 3 of the DoDI; and ensuring the implementation, monitoring, and evaluation of the program at all levels of military command.

Affected Public: Individuals or households.

Frequency: As required.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–09923 Filed 5–9–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0042]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Employer Support for the Guard and Reserve announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 10, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Employer Support for the Guard and Reserve, 4800 Mark Center Drive, Suite 05E22, Alexandria, VA 22350–4000, Tara E. Stewart, (571) 372–0686, *tara.e.stewart.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Uniformed Services Employment and Reemployment Rights Act (USERRA) Inquiry and Support Request; DD Forms 3021 and 3022; OMB Control Number 0704–ERRA.

Needs and Uses: These forms are intended for those who are experiencing civilian employment problems related to military obligations. To record information related to the mediation of disputes and answering of inquiries related to the USERRA; by tracking case assignments and mediation results of potential conflicts between employers and the National Guard, Reserves, or National Disaster Medical Service (NDMS) members they employ; and by reporting statistics related to the ESGR Ombudsman Program in aggregate and at the state committee-level. These records are also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research. Service members will request ESGR assistance as related to their rights and responsibilities pursuant to USERRA. This electronic form is to be submitted through the *www.ESGR.mil* website, *https://www.esgr.mil/USERRA/USERRA-Contact/USERRA-Support-Request/t/1.*

Affected Public: Individuals or households.

Annual Burden Hours: 154.75.

Number of Respondents:

DD Form 3021: 977.
DD Form 3022: 880.
Total: 1,857.

Responses per Respondent: 1.

Annual Responses: 1,857.

Average Burden per Response: 5 minutes.

Frequency: On Occasion.

This information collection obtains contact information, ESGR awareness, and the respondent's question(s) about the program to assist in answering the public's questions related to USERRA. ESGR provides Ombudsmen to mediate uniformed service-related disputes between service members and their civilian employers. The information collected serves to support the ESGR Ombudsman Program by tracking assistance provided to members of the Uniformed Services, and is to include the National Disaster Medical System by recording information related to answering inquiries related to the USERRA and by reporting statistics related to the Ombudsman Program in aggregate and at State committee level.

Dated: May 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–09928 Filed 5–9–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0023]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget

(OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 9, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Naval Academy Candidate Application Package; USNA Forms 1110/7, 1110/21, 5500/1, 5710/1, 1531/11, 1531/16, and 1531/17; OMB Control Number 0703–0036.

Type of Request: Reinstatement.

Request for Information

Number of Respondents: 26,500.
Responses per Respondent: 1.
Annual Responses: 26,500.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 2,208.

International Applicant Nominations

Number of Respondents: 128.
Responses per Respondent: 1.
Annual Responses: 128.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 11.

Preliminary Application

Number of Respondents: 16,000.
Responses per Respondent: 1.
Annual Responses: 16,000.
Average Burden per Response: 60 minutes.
Annual Burden Hours: 16,000.

Application Process

Number of Respondents: 14,000.
Responses per Respondent: 1.
Annual Responses: 14,000.
Average Burden per Response: 120.96 minutes.
Annual Burden Hours: 28,225.

Recommendations and Evaluations

Number of Respondents: 70,775.
Responses per Respondent: 1.
Annual Responses: 70,775.
Average Burden per Response: 59.61 minutes.
Annual Burden Hours: 70,317.

Accepted Candidate Package

Number of Respondents: 1,200.
Responses per Respondent: 4.23.
Annual Responses: 5,079.
Average Burden per Response: 64.03 minutes.
Annual Burden Hours: 5,420.

Total

Number of Respondents: 128,603.
Annual Responses: 132,482.
Annual Burden Hours: 122,181.

Needs and Uses: This information requirement is used to determine the eligibility, competitive standing, and the scholastic and leadership potential of candidates for an appointment to the United States Naval Academy (USNA). Prior performance, including academic achievements, involvement in extracurricular activities and performance in leadership positions, has been found to be an excellent predictor of success. Without this information, the Naval Academy's ability to recruit qualified candidates will be seriously impacted. An analysis of the information collected is made by the Admissions Board in order to gauge the qualifications of individual candidates. Respondents are applicants for admission to the USNA, persons interested in applying for admission to the USNA, school officials for those applicants, Chain of Command officials for active duty applicants, person's providing recommendations for applicants, Blue and Gold Officers, Embassy or Naval Attachés for international applicants from other countries, and local law enforcement officials.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–09925 Filed 5–9–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program—Grants for Credit Enhancement for Charter School Facilities

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for Charter Schools Program (CSP)—Grants for Credit Enhancement for Charter School Facilities (Credit Enhancement), Assistance Listing Number 84.354A. This notice relates to the approved information collection under OMB control number 1810–0775.

DATES:

Applications Available: May 10, 2023.

Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by May 25, 2023. Applicants who do not meet this deadline may still apply.

Deadline for Transmittal of Applications: June 26, 2023.

Deadline for Intergovernmental Review: August 23, 2023.

Pre-Application Webinar Information: The Credit Enhancement program intends to hold a webinar to provide technical assistance to interested applicants. Detailed information regarding this webinar will be provided at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/credit-enhancement-for-charter-school-facilities-program/applicant-info-and-eligibility/.*

Note: For new potential grantees unfamiliar with grantmaking at the Department, please consult our ''Getting Started with Discretionary Grant Applications web page'' at *https://www2.ed.gov/fund/grant/about/discretionary/index.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common

Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs*. Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Clifton Jones, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E211, Washington, DC 20202. Telephone: 202–205–2204. Email: *charter.facilities@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Credit Enhancement program provides grants to eligible entities to demonstrate innovative methods of helping charter schools address the cost of acquiring, constructing, and renovating facilities by enhancing the availability of loans and bond financing.

Background:

Charter schools are public schools that serve large percentages of underserved student groups. Lack of access to adequate facilities is one of the biggest obstacles to creating and expanding charter schools as cited by charter school leaders.[1] In 2021, the General Accounting Office (GAO) issued a report identifying the challenges charter schools encounter with locating and securing charter school facilities and government assistance. In this report, the GAO identified the following four challenges unique to charter schools when trying to secure charter school facilities and funding: (1) affordability and limited access to state and local funding and affordable private loans as well as rising real estate costs and renovation expenses; (2) availability of safe and secure building space and lack of amenities (*e.g.,* a cafeteria or playground) or safe and secure building space and limited access to buildings; (3) lack of consistent local support and inconsistent assistance by local governments and school districts for charter school facilities' needs; and (4) limited staff expertise in facilities management.[2] The Credit Enhancement grant program responds to all of these challenges and the underlying, shared cause—accessing capital.

The Credit Enhancement program provides grant funds to financial institutions to enhance the credit of charter schools so they can access private and non-federal capital to finance facility projects and pay affordable interest rates. Access to capital via the Credit Enhancement program allows participating charter school leaders to focus on the educational mission while the Credit Enhancement grantees focus on the business of financing, designing, and constructing a facility built to suit the unique needs of the school model, student population, and budget. Access to high-quality school facilities is an essential component of providing equitable, high-quality education to all students.

In his January 2023 speech, the Secretary encouraged all stakeholders to ''raise the bar'' in education to provide opportunities for students to reach new heights in the classroom, in their careers, and in their lives and communities, making a positive difference in the world for generations to come. One component of raising the bar for the charter school sector is to ensure that charter schools, including those operating in our most distressed communities, have access to and operate high-quality facilities. The unique challenges charter schools face in accessing high-quality facilities mean that a disproportionate number of low-income students and students of color in distressed communities are left waiting and denied opportunities for comprehensive and rigorous learning experiences. In expanding access to high-quality facilities with the Credit Enhancement grant program, we raise the bar for those charter schools that serve low-income students and students of color located in low-resourced, underfunded areas.[3]

Definitions:

The following definitions apply to this program. The definition of ''charter school'' is from section 4310 of the Elementary and Secondary Education Act of 1965, as amended by the Every Students Succeeds Act (ESEA) (20 U.S.C. 7221i), and the remainder are from 34 CFR 77.1.

Baseline means the starting point from which performance is measured and targets are set.

Charter school means a public school that—

(a) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements in section 4310 of the ESEA;

(b) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(c) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(d) Provides a program of elementary or secondary education, or both;

(e) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(f) Does not charge tuition;

(g) Complies with the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*);

(h) Is a school to which parents choose to send their children, and that—(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA (20 U.S.C. 7221b(c)(3)(A)), if more students apply for admission than can be accommodated; or (ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the

[1] *https://facilitycenter.publiccharters.org/school-leaders.*

[2] K–12 Education: Challenges Locating and Securing Charter School Facilities and Government Assistance—Briefing to the Republican Leader, House Committee on Education and Labor—August 2, 2021.

[3] Strengthening Federal Investment in Charter School Facilities, February 2018, National Alliance for Public Charter Schools and National Charter School Resource Center (2020). A Synthesis of Research on Charter School Facilities. Bethesda, MD: Manhattan Strategy Group.

basis of a lottery as described in paragraph (h)(i);

(i) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(j) Meets all applicable Federal, State, and local health and safety requirements;

(k) Operates in accordance with State law;

(l) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(m) May serve students in early childhood education programs or postsecondary students.

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance.

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project.

Program Authority: 20 U.S.C. 7221c.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 225.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $50,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $2,000,000 to $20,000,000.

Estimated Average Size of Awards: $11,000,000.

Maximum Award: We will not award a grant for more than $20,000,000 for a grant project.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

III. Eligibility Information

1. *Eligible Applicants:* (a) A public entity, such as a State or local governmental entity; (b) A private, nonprofit entity; or (c) A consortium of entities described in (a) and (b).

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition does not involve supplement-not-supplant funding requirements.

c. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* Consistent with section 4304(g) of the ESEA (20 U.S.C. 7221c(g)), an eligible entity may use not more than 2.5 percent of the funds received under this program for the administrative costs of carrying out its responsibilities under this program.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* The charter schools that a grantee selects to benefit from this program must meet the definition of charter school in section 4310(2) of the ESEA (20 U.S.C. 7221i(2)). Additionally, with respect to component (B) of the definition of ''charter school,'' which requires that a school be a public school operated under public supervision and direction, each charter school selected to benefit from this program must assure the grantee that is has not relinquished full or substantial control of the charter school to a for-profit management organization (also referred to as an education management organization) or other for-profit entity; and each charter school must assure the grantee that it is fiscally responsible and transparent, particularly with respect to contractual relationships with for-profit management organizations.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Credit Enhancement competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of

Information Act (5 U.S.C. 552, as amended). Because we plan to post on our website the application narrative sections of successful applications, you may wish to request confidentiality of business information. Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:*

(a) Reserve accounts. Under 20 U.S.C. 7221c(f), an eligible entity receiving a grant must, in accordance with State and local law, directly or indirectly, alone or in collaboration with others, deposit the funds received, other than funds used for administrative costs, in a reserve account established and maintained by the eligible entity for this purpose. Amounts deposited in such account must be used by the eligible entity for one or more of the following purposes: (1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein, the proceeds of which are used for an objective described in paragraph (b). (2) Guaranteeing and insuring leases of personal and real property for an objective described in paragraph (b). (3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools. (4) Facilitating the issuance of bonds by charter schools, or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (including the recruitment of bond counsel, underwriters, and potential investors, and the consolidation of multiple charter school projects within a single bond issue). Funds received and deposited in the reserve account must be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Any earnings on funds received must be deposited in the reserve account and used in accordance with this program.

(b) Charter school objectives. Under 20 U.S.C. 7221c(e), an eligible entity receiving a grant must use the funds deposited in the reserve account to assist one or more charter schools to access private sector capital to accomplish one or more of the following objectives: (1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school. (2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school. (3) The predevelopment costs required to assess sites for purposes of paragraph (1) or (2) and that are necessary to commence or continue the operation of a charter school.

(c) Reasonable costs. Grantees must ensure that all costs incurred using funds from the reserve account are reasonable and allowable. We specify unallowable costs in 34 CFR 225.21.

(d) No full faith and credit for grantee obligation. No financial obligation of a grantee under this program (such as an obligation under a guarantee, bond, note, evidence of debt, or loan) shall be an obligation of, or guaranteed in any respect by, the United States. The full faith and credit of the United States are not pledged to the payment of funds that may be required to be paid under any obligation made by a grantee under this program. In the event of a default on any debt or other obligation, the United States has no liability to cover the cost of the default.

(e) Performance Agreement. Grantees must enter into a written Performance Agreement with the Department and may not draw down funds prior to approval of the agreement by the Department, unless the grantee receives written permission from the Department in the interim to draw down a specific limited amount of funds.

(f) Standards of conduct. Grantees must maintain and enforce standards of conduct governing the performance of their employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct must mandate disinterested decision-making.

(g) Recovery of funds. The Secretary, in accordance with chapter 37 of title 31 of the United States Code, will collect the funds in the reserve account established with grant funds (including any earnings on those funds) as follows: (1) All or a portion of the funds if the Secretary determines that the grantee has permanently ceased to use such funds to accomplish the purposes described in the authorizing statute and the Performance Agreement; or (2) All of the funds if the Secretary determines that, not earlier than 2 years after the date on which it first receives these funds, the grantee has failed to make substantial progress in undertaking the grant project.

(h) We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, and resumes. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name, a contact person's name and email address, and the Assistance Listing Number. Applicants that do not submit a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 225.11 and are as follows:

(a) Quality of project design and significance (35 points). In determining the quality of project design and significance, the Secretary considers—

(1) The extent to which the grant proposal would provide financing to charter schools at better rates and terms than they can receive absent assistance through the program;

(2) The extent to which the project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the program;

(3) The extent to which the project implementation plan and activities, including the partnerships established, are likely to achieve measurable objectives that further the purposes of the program;

(4) The extent to which the project is likely to produce results that are replicable;

(5) The extent to which the project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;

(6) The extent to which the proposed activities will leverage private or public sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs more than would be accomplished absent the program;

(7) The extent to which the project will serve charter schools in States with strong charter laws, consistent with the criteria for such laws in section 4303(g)(2) of the ESEA; and

(8) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the project.

(b) *Quality of project services (15 points).* In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the charter schools to be served;

(2) The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.

(c) *Capacity (35 points).* In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a charter school;

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners, or other grant project participants, the specific resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure that charter schools within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the charter school facilities programs, their performance in implementing these grants.

Note: The 35 available points under this selection criterion will be allocated evenly among the factors applicable to a particular applicant. For example, for an applicant for which none of factors (6)–(8) apply, the 35 available points will be allocated among the first five factors. Similarly, for an applicant that is a State governmental entity that is a previous grantee under the charter school facilities programs, the 35 available points will be allocated evenly among factors (1)–(5), (7), and (8).

(d) *Quality of project personnel (15 points).* In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality. In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions.* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System.* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS. Please note that, if the total value of your currently active grants, cooperative agreements, and

procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice. We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works.

Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:*

(a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has developed the following performance measures for the purpose of Department reporting under 34 CFR 75.110:

(a) Program Performance Measures. The performance measures for this program are: (1) The amount of funding grantees leverage for charter schools to acquire, construct, and renovate school facilities; and (2) the number of charter schools served. Grantees must provide information that is responsive to these measures as part of their annual performance reports.

(b) Project-Specific Performance Measures. Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the project and program. Applicants must provide the following information, as directed by 34 CFR 75.110(b):

(1) Project Performance Measures. How each proposed project-specific performance measure would accurately measure the performance of the project and how the proposed project-specific performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Project Performance Targets. Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

Note: The Secretary encourages applicants to consider measures and targets tied to their grant activities during the grant period. The measures should be sufficient to gauge the progress throughout the grant period and show results by the end of the grant period.

(3) Data Collection and Reporting. (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If applicants do not have experience with collection and reporting of performance data through other projects or research, they should provide other evidence of their capacity to successfully carry out data collection and reporting for their proposed project.

6. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors at a location to be determined in the continental United States during each year of the project. Applicants may include the cost of attending this meeting as an administrative cost in their proposed budgets.

7. *Technical Assistance:* Grantees under this competition must participate in all Credit Enhancement program technical assistance offerings provided by the Department and its contractual technical assistance providers and partners throughout the life of the project.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain

this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James F. Lane,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–09952 Filed 5–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0147]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NCES Data Security Requirements for Accessing Restricted Use Data

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The National Center for Education Statistics (NCES) within the Institute of Education Sciences, U.S. Department of Education invites the general public and other federal agencies to comment on a proposed information collection. NCES plans to collect information from individuals to fulfill its data security requirements when providing access to restricted-use microdata for the purpose of evidence building. NCES's data security agreements and other paperwork along with the corresponding security protocols allow the agency to maintain careful controls on confidentiality and privacy, as required by law. NCES published this proposal for 60 days of public comment beginning November 25, 2022. The purpose of this notice is to allow for an additional 30 days of public comment on the proposed data security information collection, prior to submission of the information collection request (ICR) to the Office of Management and Budget (OMB).

DATES: Written comments on this notice must be received by June 9, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to information activities, please contact Carrie Clarady, 202–245–6347 or *carrie.clarady@ed.gov.*

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act of 2018 mandates that the Office of Management and Budget (OMB) establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act of 2018, it is recognized that other agencies and organizational units within the Executive branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is to be a single web-based common application for requesting access to confidential data assets from federal statistical agencies and units. The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation submitted a **Federal Register** Notice in September 2022 announcing plans to collect information through the SAP Portal (87 FR 53793). OMB approved the SAP Portal for data collection in December 2022.

Once an application for confidential data is approved through the SAP Portal, NCES will collect information to meet its data security requirements. This collection will occur outside of the SAP Portal.

Title of the Collection: NCES Data Security Requirements for Accessing Restricted Use Data.

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 80.

Total Estimated Number of Annual Burden Hours: 60.

Abstract

Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. Specifically, the Evidence Act requires OMB to establish a common application process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply for access to confidential data assets collected, accessed, or acquired by a statistical agency or unit. This new process will be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by law.

Data collected, accessed, or acquired by statistical agencies and units is vital for developing evidence on conditions, characteristics, and behaviors of the public and on the operations and outcomes of public programs and policies. This evidence can benefit the stakeholders in the programs, the broader public, as well as policymakers

and program managers at the local, State, Tribal, and National levels. The many benefits of access to data for evidence building notwithstanding, NCES is required by law to maintain careful controls that allow it to minimize disclosure risk while protecting confidentiality and privacy. The fulfillment of NCES's data security requirements places a degree of burden on individuals, which is outlined below.

The SAP Portal is a web-based application for requesting access to confidential data assets from federal statistical agencies and units. The objective of the SAP Portal is to broaden access to confidential data for the purposes of evidence building and reduce the burden of applying for confidential data. Once an individual's application in the SAP Portal has received a positive determination, the data-owning agency(ies) or unit(s) will begin the process of collecting information to fulfill their data security requirements.

The paragraphs below outline the SAP Policy, the steps to complete an application through the SAP Portal, and the process NCES uses to collect information fulfilling its data security requirements.

The SAP Policy

At the recommendation of the ICSP, the SAP Policy establishes the SAP to be implemented by statistical agencies and units and incorporates directives from the Evidence Act. The policy is intended to provide guidance as to the application and review processes using the SAP Portal, setting forth clear standards that enable statistical agencies and units to implement a common application form and a uniform review process.

The SAP Portal

The SAP Portal is an application interface connecting applicants seeking data with a catalog of data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential data assets will continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal will provide a streamlined application process across agencies, reducing redundancies in the application process. This single SAP Portal will improve the process for applicants, tracking and communicating the application process throughout its lifecycle. This reduces redundancies and burden on applicants who request access to data from multiple agencies. The SAP Portal will automate key tasks to save resources and time and will bring agencies into compliance with the Evidence Act statutory requirements.

Data Discovery

Individuals begin the process of accessing restricted-use data by discovering confidential data assets through the SAP data catalog, maintained by federal statistical agencies at *https://www.researchdatagov.org/.* Potential applicants can search by agency, topic, or keyword to identify data of interest or relevance. Once they have identified data of interest, applicants can view metadata outlining the title, description or abstract, scope and coverage, and detailed methodology related to a specific data asset to determine its relevance to their research.

While statistical agencies and units shall endeavor to include metadata in the SAP data catalog on all confidential data assets for which they accept applications, it may not be feasible to include metadata for some data assets (*e.g.,* potential curated versions of administrative data). A statistical agency or unit may still accept an application through the SAP Portal even if the requested data asset is not listed in the SAP data catalog.

SAP Application Process

Individuals who have identified and wish to access confidential data assets are able to apply for access through the SAP Portal. Applicants must create an account and follow all steps to complete the application. Applicants begin by entering their personal, contact, and institutional information, as well as the personal, contact, and institutional information of all individuals on their research team. Applicants proceed to provide summary information about their proposed project, to include project title, duration, funding, timeline, and other details including the data asset(s) they are requesting and any proposed linkages to data not listed in the SAP data catalog, including non-federal data sources. Applicants then proceed to enter detailed information regarding their proposed project, including a project abstract, research question(s), literature review, project scope, research methodology, project products, and anticipated output. Applicants must demonstrate a need for confidential data, outlining why their research question cannot be answered using publicly available information.

Submission for Review

Upon submission of their application, applicants will receive a notification that their application has been received and is under review by the data owning agency or agencies (in the event where data assets are requested from multiple agencies). At this point, applicants will also be notified that application approval does not alone grant access to confidential data, and that, if approved, applicants must comply with the data-owning agency's security requirements outside of the SAP Portal, which may include a background check.

In accordance with the Evidence Act and the direction of the ICSP, agencies will approve or reject an application within a prompt timeframe. In some cases, agencies may determine that additional clarity, information, or modification is needed and request the applicant to ''revise and resubmit'' their application.

Data discovery, the SAP application process, and the submission for review are planned to take place within the web-based SAP Portal.

Access to Restricted-Use Data

In the event of a positive determination, the applicant will be notified that their proposal has been accepted. The positive or final adverse determination concludes the SAP Portal process. In the instance of a positive determination, the data-owning agency (or agencies) will contact the applicant to provide instructions on the agency's security requirements that must be completed to gain access to the confidential data. The completion and submission of the agency's security requirements will take place outside of the SAP Portal.

Collection of Information for Data Security Requirements

In the instance of a positive determination for an application requesting access to an IES/NCES-owned confidential data asset, NCES will contact the applicant(s) to initiate the process of collecting information to fulfill its data security requirements. This process allows NCES to place the applicant(s) in a trusted access category and includes the collection of the following information from applicant(s):

- Restricted-use licensing agreement—This document is an agreement between NCES and the applicant's organization stipulating that NCES's confidential data assets are provisioned exclusively for statistical purposes and that the applicant must handle and use the data in accordance with the terms and conditions stated in the agreement and all prevailing laws and regulations. The agreement requires signatures from the applicant(s) and a senior official at the applicant's organization who has the authority to

enter the organization into a legal agreement with NCES. A Memorandum of Understanding is used in lieu of a restricted-use data licensing agreement for other government agencies.

- Security plan form—This document requests information from the applicant(s) to ensure the confidential data assets are protected from unauthorized access, disclosure, or modification. The information collected in the security plan form includes the following:
  - planned work location address(es),
  - workstation specifications (make, model, serial number, type, and operating system),
  - workstation authorized users,
  - workstation monitor position (to prevent unauthorized viewing), and
  - workstation antivirus brand and version.

In addition, the applicant(s) must initial a series of security measures to indicate compliance. Finally, the form requires signatures from the applicant(s), a senior official at the applicant's organization, and a System Security Officer (SSO) at the applicant's organization. The SSO, in signing the Security plan form, assures the inspection and integrity of the applicant's security plan. A Security plan: Remote Access Only form is used in lieu of a Security plan form when the license is accessing data remotely.

- Affidavit of nondisclosure form—This document describes the confidentiality protections the applicant(s) must uphold and the penalties for unauthorized access or disclosure. The form requires signatures from the applicant(s) as well as the imprint of a notary public.
- Licensee training certificate—This document requests information from the applicant(s) to ensure the completion of the IES/NCES restricted-use data license training.

These documents and a more complete description of the NCES Data Security Process are available for public view during this 30D public comment period.

Estimate of Burden

The amount of time to complete the agreements and other paperwork that comprise NCES's security requirements will vary based on the confidential data assets requested. To obtain access to NCES confidential data assets, it is estimated that the average time to complete and submit NCES's data security agreements and other paperwork and to complete the required training is 45 minutes. This estimate does not include the time needed to complete and submit an application within the SAP Portal. All efforts related to SAP Portal applications occur prior to and separate from NCES's effort to collect information related to data security requirements.

The expected number of applications in the SAP Portal that receive a positive determination from NCES in a given year may vary. Overall, per year, NCES estimates it will collect data security information for 80 application submissions that received a positive determination within the SAP Portal. NCES estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 180 hours and, as a result, an average annual burden of 60 hours.

Dated: May 4, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–09878 Filed 5–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Preparation of Related Services Personnel Serving Children With Disabilities who Have High-Intensity Needs

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for Personnel Development to Improve Services and Results for Children with Disabilities—Preparation of Related Services Personnel Serving Children with Disabilities who have High-Intensity Needs, Assistance Listing Number (ALN) 84.325R. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: May 10, 2023.

Deadline for Transmittal of Applications: June 29, 2023.

Deadline for Intergovernmental Review: August 28, 2023.

Pre-Application Webinar Information: No later than May 15, 2023, the Office of Special Education and Rehabilitative Services will post details on pre-recorded informational webinars designed to provide technical assistance to interested applicants. Links to the webinars may be found at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Louise Tripoli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5013, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7554. Email: *Louise.Tripoli@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in early intervention, special education, related services, and regular education to work with children, including infants, toddlers, and youth, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research, to be successful in serving those children.

Priorities: This competition includes one absolute priority and, within that absolute priority, one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1462 and 1481)).

Absolute Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Preparation of Related Services Personnel Serving Children with Disabilities who have High-Intensity Needs.

Background:

The purpose of this priority is to prepare scholars in related services who are fully credentialed and licensed to serve children, including infants, toddlers, and youth, with disabilities (children with disabilities) who have high-intensity needs.[1] The Department is committed to promoting equity for children with disabilities to access educational resources and opportunities, and a high priority for the Department is to increase the number of related services personnel, including increasing the number of multilingual personnel and personnel from racially and ethnically diverse backgrounds, who provide services to children with disabilities. To support these goals, under this absolute priority, the Department will fund high-quality projects that prepare related services personnel at the bachelor's degree, certification, master's degree, or clinical doctoral degree levels for professional practice in a variety of education settings, including natural environments (the home and community settings in which children with and without disabilities participate), early childhood programs, classrooms, schools, and distance learning environments; including increasing the number of multilingual personnel and personnel from racially and ethnically diverse backgrounds. Projects will also prepare such personnel to support each child with a disability who has high-intensity needs in meeting high expectations and to have meaningful and effective collaborations with other providers, families, and administrators.

A shortage of related services personnel persists in all regions of the country and ultimately impedes the ability of children with disabilities to reach their full academic, social, and emotional potential (National Coalition on Personnel Shortages in Special Education, n.d.). In a national survey of Part C State coordinators, most respondents indicated that they had shortages of personnel to work in their system with the top three areas of shortage being speech-language pathologists, physical therapists, and occupational therapists (IDEA Infant and Toddler Coordinators Association, 2021). Other data substantiates this acute shortage in school-based settings with the majority of school districts reporting that they do not have enough related services personnel to meet the needs of students with disabilities (National Coalition on Personnel Shortages in Special Education, n.d.). These shortages are only expected to increase as the estimated demand for future related services professions is expected to exceed the supply (Bureau of Labor Statistics, 2023). The overall shortage in related services personnel is exacerbated by the substantial shortage of multilingual personnel, personnel with disabilities, and personnel from racially and ethnically diverse backgrounds prepared to enter the workforce (American Physical Therapy Association, 2020; American Speech-Language Hearing Association, 2019; National Association of School Psychologists, 2021). These shortages are of concern, as research indicates that increasing multilingual personnel, personnel with disabilities, and personnel from racially and ethnically diverse backgrounds can have positive impacts on all children. Multilingual children and children of color, with and without disabilities, demonstrate improved academic achievement and behavioral and social-emotional development when they receive services from multilingual personnel and personnel from racially and ethnically diverse backgrounds (Bryan, 2021; Carver-Thomas, 2018).

The need for related services personnel with the knowledge and skills to serve children with disabilities who have high-intensity needs is even greater. To effectively serve children with disabilities who have high-intensity needs, related services personnel require specialized or advanced skills and knowledge to work within a multidisciplinary team, collaboratively design and deliver evidence-based intensive individualized interventions, and provide interventions in person and through distance learning technologies in natural environments, classrooms, and schools that address the needs of these individuals (Boe et al., 2013; Browder et al., 2014; McLeskey & Brownell, 2015).

To enable related services personnel to provide efficient, high-quality, integrated, and equitable services, both in person and through distance learning technologies, personnel preparation programs need to embed, into preservice training in early intervention settings, early childhood programs, and schools, content, practices, and extensive field or clinical experiences that are evidence-based and culturally and linguistically responsive. Therefore, this priority aims to fund high-quality projects that prepare scholars in related services, including multilingual scholars, scholars with disabilities, and scholars from racially and ethnically diverse backgrounds, who are fully credentialed and licensed to enter the field and serve children with disabilities who have high-intensity needs.

Priority:

The purpose of this priority is to increase the number and improve the quality of related services personnel,[2] including multilingual personnel and personnel from racially and ethnically diverse backgrounds, who are fully credentialed and licensed to serve children with disabilities who have high-intensity needs.[3] The priority will fund high-quality projects that prepare scholars [4] in related services at the bachelor's degree, certification,[5]

[1] For the purposes of this priority, ''high-intensity needs'' refers to a complex array of disabilities (*e.g.,* multiple disabilities, significant cognitive disabilities, significant physical disabilities, significant sensory disabilities, significant autism, significant emotional disabilities, or significant learning disabilities, including dyslexia) or the needs of children with these disabilities requiring intensive, individualized intervention(s) (*i.e.,* that are specifically designed to address persistent learning or behavior difficulties, implemented with greater frequency and for an extended duration than is commonly available in a typical classroom or early intervention setting, or which require personnel to have knowledge and skills in identifying and implementing multiple evidence-based interventions).

[2] For the purposes of this priority, ''related services'' includes the following: speech-language pathology and audiology services; interpreting services; psychological services; applied behavior analysis; physical therapy and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services, including rehabilitation counseling; and orientation and mobility services.

[3] For the purposes of this priority, ''high-intensity needs'' refers to a complex array of disabilities (*e.g.,* multiple disabilities, significant cognitive disabilities, significant physical disabilities, significant sensory disabilities, significant autism, significant emotional disabilities, or significant learning disabilities, including dyslexia) or the needs of children with these disabilities requiring intensive, individualized intervention(s) (*i.e.,* that are specifically designed to address persistent learning or behavior difficulties, implemented with greater frequency and for an extended duration than is commonly available in a typical classroom or early intervention setting, or which require personnel to have knowledge and skills in identifying and implementing multiple evidence-based interventions).

[4] For the purposes of this priority, ''scholar'' means an individual who: (a) is pursuing a bachelor's, certification, master's, or clinical doctoral degree in related services; (b) receives scholarship assistance as authorized under section 662 of IDEA (34 CFR 304.3(g)); (c) will be eligible for a license, endorsement, or certification from a State or national credentialing authority following completion of the degree program identified in the application; and (d) will be able to be employed in a position that serves children with disabilities for a minimum of 51 percent of their time or case load.

[5] For the purposes of this priority, ''certification'' refers to programs of study that lead to State licensure, endorsement, or certification that qualifies graduates to teach or provide services to children with disabilities. Programs of study that lead to a certificate of completion from the

Continued

master's degree, or clinical doctoral degree levels for professional practice in natural environments, early childhood programs, classrooms, school settings, and in distance learning environments serving children with disabilities who have high-intensity needs.

Note: Projects may include individuals who are not funded as scholars, but are in degree programs (*e.g.,* general education, early childhood education, administration) that are cooperating with the grantee's project. These individuals may participate in the coursework, assignments, field or clinical experiences, and other opportunities required of scholars' program of study (*e.g.,* speaker series, monthly seminars) if doing so does not diminish the benefit for project-funded scholars (*e.g.,* by reducing funds available for scholar support or limiting opportunities for scholars to participate in project activities).

Note: Projects that prepare scholars from two or more related services degree programs can qualify under this priority. Related services degree programs across more than one institution of higher education (IHE) may partner together within a project.

Note: Applications that propose to prepare early intervention and special education personnel who do not provide related services are not eligible under this priority but can qualify under the Preparation of Early Intervention and Special Education Personnel Serving Children with Disabilities who have High-Intensity Needs priority (ALN 84.325K).

Focus Areas:

Within this absolute priority, the Secretary intends to support projects under the following two focus areas: (A) Preparing Related Services Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities who have High-Intensity Needs; and (B) Preparing Related Services Personnel to Serve School-Age Children with Disabilities who have High-Intensity Needs.

Applicants must identify the specific focus area (*i.e.,* A or B) under which they are applying as part of the competition title on the application cover sheet (SF 424, line 12). Applicants may not submit the same proposal under more than one focus area. Applicants may submit different proposals in different focus areas.

Note: The Office of Special Education Programs (OSEP) may fund out of rank order high-quality applications to ensure that projects are funded in both Focus Area A and Focus Area B.

Focus Area A: Preparing Related Services Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities who have High-Intensity Needs. This focus area is for projects that prepare related services personnel to provide services to infants, toddlers, and preschool children with disabilities who have high-intensity needs. In States where the certification age range is other than birth through five, applicants must propose a preparation project that complies with the State's certification requirements for related services personnel to work in early intervention or early childhood special education.

Focus Area B: Preparing Related Services Personnel to Serve School-Age Children With Disabilities Who Have High-Intensity Needs. This focus area is for projects that prepare related services personnel to work with school-age children with disabilities who have high-intensity needs.

Focus Areas A and B:

Applicants may, but are not required to, use up to the first 12 months of the performance period and up to $100,000 of funds awarded in the first budget period for planning, including enhancing an existing program, without enrolling scholars. If an applicant chooses to use the first year for program planning, then the applicant must provide sufficient justification for requesting program planning time and include the goals, objectives, key personnel and necessary collaborators, and intended outcomes of program planning in year one, a description of the proposed strategies and activities to be supported, and a timeline for the work. The proposed strategies may include activities such as—

(1) Updating coursework, group assignments, or extensive and coordinated field or clinical experiences in early intervention settings, early childhood programs, and schools needed to support preparation for related services personnel, including personnel from groups that are underrepresented in the field, including personnel with disabilities, multilingual personnel, and personnel from racially and ethnically diverse backgrounds, serving children with disabilities who have high-intensity needs;

(2) Building capacity (*e.g.,* hiring a field supervisor, providing professional development for faculty and field supervisors) of the program to prepare scholars, including scholars from groups that are underrepresented in the field, including scholars with disabilities, multilingual scholars, and scholars from racially and ethnically diverse backgrounds, to serve children with disabilities with high-intensity needs and their families;

(3) Purchasing needed resources (*e.g.,* additional intervention supplies, technology-based resources, or other specialized equipment to enhance interventions); or

(4) Establishing relationships with early intervention and early childhood programs or schools to serve as sites for field or clinical experiences needed to support the project. These sites may include high-need local educational agencies (LEAs),[6] high-poverty schools,[7] schools identified for comprehensive support and improvement,[8] and schools implementing a targeted support and improvement plan [9] for children with disabilities; early childhood and early intervention programs located within the geographic boundaries of a high-need LEA; and early childhood and early intervention programs located within the geographical boundaries of an LEA serving the highest percentage of schools identified for comprehensive support and improvement or implementing targeted support and improvement plans in the State.

Additional Federal funds may be requested for scholar support and other grant activities occurring in year one of the project, provided that the total request for year one does not exceed the maximum award available for one

institution of higher education (IHE), but do not lead to State licensure, endorsement, or certification, do not qualify.

[6] For the purposes of this priority, ''high-need LEA'' means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children are from families with incomes below the poverty line.

[7] For the purposes of this priority, ''high-poverty school'' means a school in which at least 50 percent of students are from low-income families as determined using one of the measures of poverty specified in section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

[8] For the purposes of this priority, ''school implementing a comprehensive support and improvement plan'' means a school identified for comprehensive support and improvement by a State under section 1111(c)(4)(D) of the ESEA that includes (a) not less than the lowest performing 5 percent of all schools in the State receiving funds under title I, part A of the ESEA; (b) all public high schools in the State failing to graduate one third or more of their students; and (c) public schools in the State described in section 1111(d)(3)(A)(i)(II) of the ESEA.

[9] For the purposes of this priority, ''school implementing a targeted support and improvement plan'' means a school identified for targeted support and improvement by a State that has developed and is implementing a school-level targeted support and improvement plan to improve student outcomes based on the indicators in the statewide accountability system defined in section 1111(d)(2) of the ESEA.

budget period of 12 months (*i.e.,* $250,000).

Note: Applicants proposing projects to develop, expand, or add a new area of emphasis to related services programs must provide, in their applications, information on how these new areas will be sustained once Federal funding ends.

Note: Project periods under this priority may be up to 60 months. Projects should be designed to ensure that all proposed scholars successfully complete the program within 60 months from the start of the project. The Secretary may reduce continuation awards for any project in which scholar recruitment is not on track or scholars are not on track to complete the program within the project period.

To be considered for funding under this absolute priority, all program applicants must meet the requirements contained in this priority.

To meet the requirements of this priority, an applicant must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how—

(1) The proposed project will address the need in the proposed preparation focus area to prepare related services personnel who are fully qualified to serve children with disabilities who have high-intensity needs;

(2) The proposed project will increase the number of personnel in the proposed preparation focus area who demonstrate the competencies [10] needed to—

(i) Promote high expectations and improve outcomes for children with disabilities who have high-intensity needs;

(ii) Provide intensive, evidence-based [11] individualized interventions in person and through distance learning technologies in a variety of early intervention, early childhood, and school settings (*e.g.,* natural environments; public schools, including charter schools; private schools; and other nonpublic education settings, including home education);

(iii) Provide culturally and linguistically responsive interventions and services;

(iv) Collaborate with diverse partners, including multilingual individuals, individuals and families from racially and ethnically diverse backgrounds, and individuals with disabilities, using a multidisciplinary team approach to address the individualized developmental, learning, and academic needs of children with disabilities who have high-intensity needs, and support their successful transitions from early childhood to elementary, elementary to secondary, or transition to postsecondary education and the workforce; and

(v) Exercise leadership to improve professional practice and services and education for children with disabilities who have high-intensity needs; and

(3) The applicant has successfully graduated students in their program, including students with disabilities, multilingual students, and students who are from racially, and ethnically diverse backgrounds, including data disaggregated by disability status, race, national origin, and primary language(s), and the number of students who have graduated in the last five years.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how—

(1) The project will conduct its planning activities, if the applicant will use any of the allowable first 12 months of the project period for planning;

(2) The project will recruit and retain scholars. To meet this requirement, the applicant must describe—

(i) The selection criteria the project will use to identify applicants for admission in the program;

(ii) The specific recruitment strategies the project will use to attract a diverse pool of applicants, including from groups that are traditionally underrepresented in the field, applicants with disabilities, multilingual applicants, and applicants from racially and ethnically diverse backgrounds; and

Note: Applicants should engage in focused outreach and recruitment to increase the number of applicants from groups that are traditionally underrepresented in the field, including applicants with disabilities, multilingual applicants, and applicants from racial and ethnic diversity backgrounds, but the selection criteria the applicant intends to use must ensure equal access and treatment of all applicants seeking admission to the program and must be consistent with applicable law, including Federal civil rights law.

(iii) The approach that will be used to mentor and support all scholars, including any specific approaches to supporting groups that are traditionally underrepresented in the field, including individuals with disabilities, multilingual scholars, and scholars from racially and ethnically diverse backgrounds, for retention and completion of the program within the project period and preparing them for careers in early intervention, special education, and related services; and

(3) The project will be designed to promote the acquisition of the competencies needed by related services personnel to support improved outcomes for children with disabilities with high-intensity needs. To address this requirement, the applicant must—

(i) Describe how the proposed components, such as coursework; field or clinical experiences in early intervention, early childhood, and school settings; work-based experiences; or other opportunities provided to scholars, and sequence of the project components will enable the scholars to acquire the competencies needed by personnel working with children with disabilities with high-intensity needs;

(ii) Describe how the proposed project will implement current evidence-based practices (EBPs) to prepare scholars to provide effective and equitable evidence-based culturally and linguistically responsive instruction, interventions, and services that improve outcomes for children with disabilities with high-intensity needs, in a variety of educational or early childhood and early intervention settings, including in-person and remote settings; and

(iii) Describe how the proposed project will engage partners, including: multilingual individuals and individuals and families of color; public or private partnering agencies, schools, or programs; centers or organizations that provide services to children with disabilities and their families; and individuals with disabilities and their families, to inform and support project components.

(c) Demonstrate, in the narrative section of the application under ''Quality of the project personnel and management plan,'' how—

(1) The project director and other key project personnel are qualified to prepare scholars in the project's preparation focus area;

(2) The project director and other key project personnel will manage the components of the project; and

(3) The time commitments of the project director and other key project

[10] For the purposes of this priority, ''competencies'' means what a person knows and can do—the knowledge, skills, and dispositions necessary to effectively function in a role (National Professional Development Center on Inclusion, 2011).

[11] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component (as defined in 34 CFR 77.1) included in the project's logic model (as defined in 34 CFR 77.1) is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes (as defined in 34 CFR 77.1).

personnel are adequate to meet the objectives of the proposed project.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) Information regarding the types of accommodations and resources available to fully support scholars' well-being and a work-life balance (*e.g.,* university and community mental health supports, counseling services, health resources, housing resources, child care) will be disseminated and how the project will support scholars to access those accommodations and resources on a timely basis, if needed, while the scholar is in the program;

(2) The types of accommodations and resources provided to support scholars' well-being and a work-life balance will be individualized based on scholars' cultural, academic, social emotional, and disability-related needs with the goal of supporting them to complete the program; and

(3) The budget is adequate for meeting the project objectives and mitigating financial burden to scholars in completing the program of study.

Note: Scholar support does not need to be uniform for all scholars and should be customized for individual scholars based on scholars' financial needs, including consideration of all costs associated with the cost of attendance, even if that means enrolling fewer scholars. Scholar support can include support for cost of attendance (*i.e.,* tuition and fees; university student health insurance; an allowance for books, materials, and supplies; an allowance for miscellaneous personal expenses; an allowance for dependent care, such as child care; and/or an allowance for room and board), travel in conjunction with training assignments including conference registration, and stipends to support scholars' completion of the program. Projections for scholar support should consider tuition increases and cost of living increases over the project period.

(e) Demonstrate, in the narrative section of the application under ''Quality of the project evaluation,'' how the applicant will—

(1) Evaluate how well the goals or objectives of the proposed project have been met. To meet this requirement, the applicant must describe—

(i) The outcomes to be measured for both the project and the scholars, particularly the acquisition of scholars' competencies; and

(ii) The evaluation methodologies, data collection methods, and data analyses that will be used; and

(2) Collect, analyze, and use data on scholars supported by the project to inform the project on an ongoing basis.

(f) Demonstrate, in the appendices or narrative under ''Required project assurances'' as directed, that the following requirements are met. The applicant must—

(1) Include in Appendix A of the application—

(i) Charts, tables, figures, graphs, screen shots, and visuals that provide information directly relating to the application requirements for the narrative. Appendix A should not be used for supplementary information. Please note that charts, tables, figures, graphs, and screen shots can be single-spaced when placed in Appendix A; and

(ii) A letter of support from a public or private partnering agency, school, or program, that states it will provide scholars with a field or clinical experience in a high-need LEA, a high-poverty school, a school implementing a comprehensive support and improvement plan, a school implementing a targeted support and improvement plan for children with disabilities, a State educational agency, an early childhood and early intervention program located within the geographical boundaries of a high-need LEA, or an early childhood and early intervention program located within the geographical boundaries of an LEA serving the highest percentage of schools identified for comprehensive support and improvement or implementing targeted support and improvement plans in the State;

(2) Include in Appendix B of the application—

(i) A table that lists the project's required coursework and includes the course title, brief description, learning goals, and relevant State or national professional organization personnel standards for each course;

(ii) Four exemplar course syllabi required by the degree program that reflect EBPs across the areas of assessment; social, emotional, and behavior development and learning; inclusive practices; instructional strategies; and literacy, as appropriate;

(3) Include in the application budget attendance by the project director at a three-day project directors' meeting in Washington, DC, during each year of the project; and

(4) Provide an assurance that—

(i) The project will meet the requirements in 34 CFR 304.23, particularly those related to (A) informing all scholarship recipients of their service obligation commitment; and (B) disbursing scholarships. Failure by a grantee to properly meet these requirements is a violation of the grant award that may result in the grantee being liable for returning any misused funds to the Department;

(ii) The project will meet the statutory requirements in section 662(e) through (h) of IDEA;

(iii) The project will be operated in a manner consistent with nondiscrimination requirements contained in Federal civil rights laws;

(iv) All the syllabi for the project's required coursework will be provided if requested by OSEP;

(v) At least 65 percent of the total award over the project period (*i.e.,* up to 5 years) will be used for scholar support;

(vi) Scholar support provided by the project (*e.g.,* tuition and fees; university student health insurance; an allowance for books, materials, and supplies; an allowance for miscellaneous personal expenses; an allowance for dependent care, such as child care; and an allowance for room and board) is not based on the condition that the scholar work for the grantee (*e.g.,* personnel at the IHE);

(vii) The project director, key personnel, and scholars will actively participate in learning opportunities (*e.g.,* webinars, briefings) supported by OSEP. This is intended to promote opportunities for participants to understand reporting requirements, share resources, and generate new knowledge by addressing topics of common interest to participants across projects including Department priorities and needs in the field;

(viii) The project website, if applicable, will be of high quality, with an easy-to-navigate design that meets government or industry-recognized standards for accessibility;

(ix) Scholar accomplishments (*e.g.,* public service, awards, publications, conference presentations) will be reported in annual and final performance reports; and

(x) Annual data will be submitted on each scholar who receives grant support (OMB Control Number 1820–0686). The primary purposes of the data collection are to track the service obligation fulfillment of scholars who receive funds from OSEP grants and to collect data for program performance measure reporting under 34 CFR 75.110. Data collection includes the submission of a signed, completed pre-scholarship agreement and exit certification for each scholar funded under an OSEP grant (see paragraph (f)(4)(i) of this priority). Applicants are encouraged to visit the Personnel Development Program Data Collection System website at *https://*

pdp.ed.gov/osep for further information about this data collection requirement.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award an additional 3 points to an application that meets the competitive preference priority. Applicants should indicate in the abstract if they are addressing the competitive preference priority.

This priority is:

Applications from New Potential Grantees (0 or 3 points).

(a) Under this priority, an applicant must demonstrate that the applicant (*e.g.,* the IHE) has not had an active discretionary grant under ALN 84.325K,[12] in the last five years before the deadline date for submission of applications under this program (ALN 84.325R).

(b) For the purpose of this priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

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Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 304.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,750,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2024 from the list of unfunded applications from this competition.

Estimated Range of Awards: $200,000–$250,000 per year.

Estimated Average Size of Awards: $225,000 per year.

Maximum Award: We will not make an award exceeding $250,000 for a single budget period of 12 months.

Estimated Number of Awards: 27.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are IHEs and private nonprofit organizations.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* Cost sharing or matching is not required for this competition.

b. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html*.

[12] 84.325R is a new related services personnel preparation program for serving children with disabilities who have high-intensity needs. Previously, personnel preparation of related services providers was funded under 84.325K.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee, consistent with 34 CFR 75.708(b)(2).

4. *Other General Requirements:*

a. Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

b. Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/content/pkg/FR-2022-12-07/pdf/2022-26554.pdf,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages; (2) limit the whole application to no more than 100 pages; and (3) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated; and

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services; and

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(c) *Quality of project personnel and quality of the management plan (20 points).*

(1) The Secretary considers the quality of the project personnel and the quality of the management plan.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) *Adequacy of resources (20 points).*

(1) The Secretary considers the adequacy of resources of the proposed project.

(2) In determining the adequacy of resources of the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project; and

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted

after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include (1) the percentage of preparation programs that incorporate scientifically based practices or EBPs into their curricula; (2) the percentage of scholars completing the preparation program who are knowledgeable and skilled in EBPs that improve outcomes for children with disabilities; (3) the percentage of scholars who exit the preparation program prior to completion due to poor academic performance; (4) the percentage of scholars completing the preparation program who are working in the area(s) in which they were prepared upon program completion; (5) the Federal cost per scholar who completed the preparation program; (6) the percentage of scholars who completed the preparation program and are employed in high-need districts; and (7) the percentage of scholars who completed the preparation program and who are rated effective by their employers.

In addition, the Department will gather information on the following outcome measures: the number and percentage of scholars proposed by the grantee in their application that were actually enrolled and making satisfactory academic progress in the current academic year; the number and percentage of enrolled scholars who are on track to complete the training program by the end of the project's original grant period; and the percentage of scholars who completed the preparation program and are employed in the field of special education for at least two years.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary.

Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2023–09954 Filed 5–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0083]

Agency Information Collection Activities; Comment Request; IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 10, 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–0083. 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 Christine Pilgrim, (202) 245–7351.

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: IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR).

OMB Control Number: 1820–0624.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 107,400.

Abstract: In accordance with 20 U.S.C. 1416(b)(1), not later than one year after the date of enactment of the Individuals with Disabilities Education, as revised in 2004, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan is called the Part B State Performance Plan (Part B—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State also shall report annually to the Secretary on the performance of the State under the State's performance plan. This report is called the Part B Annual Performance Report (Part B—APR). Information Collection 1820–0624 corresponds to 34 CFR 300.600 through 300.602.

Dated: May 4, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–09870 Filed 5–9–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1889–085, Project No. 2485–071]

FirstLight MA Hydro LLC, Northfield Mountain LLC; Notice of Revised Deadline for Comments on Settlement Agreement

On April 7, 2023, the Commission issued a Notice of Settlement Agreement and Soliciting Comments, setting a comment deadline of May 7, 2023, and a reply comment deadline of May 22, 2023. Subsequent to issuance of the Notice, Commission staff sent a request to FirstLight MA Hydro LLC and Northfield Mountain LLC for additional information on certain operational and environmental measures stipulated in the settlement agreement, setting a response deadline of May 11, 2023. Because the additional information filing could inform comments on the settlement agreement, the settlement comment deadline is extended to May 26, 2023, and the reply comment deadline is now June 12, 2023.

Dated: May 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09940 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1825–000.

Applicants: Kentucky Power Company.

Description: § 205(d) Rate Filing: Revision to Reactive Rate Schedule No. 304 to be effective 7/1/2023.

Filed Date: 5/3/23.

Accession Number: 20230503–5145.

Comment Date: 5 p.m. ET 5/24/23.

Docket Numbers: ER23–1826–000.

Applicants: Cross-Sound Cable Company, LLC.

Description: § 205(d) Rate Filing: IROL–CIP Schedule 17 Cost Recovery to be effective 7/4/2023.

Filed Date: 5/4/23.

Accession Number: 20230504–5003.

Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1827–000.

Applicants: Otter Tail Power Company.

Description: Tariff Amendment: Notice of Cancellation of Service Agreements for Remedial Action Scheme Service to be effective 5/31/2023.

Filed Date: 5/4/23.

Accession Number: 20230504–5041.

Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1828–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: April 2023 RTEP, 30-Day Comment Period Requested to be effective 8/2/2023.

Filed Date: 5/4/23.

Accession Number: 20230504–5048.

Comment Date: 5 p.m. ET 6/5/23.

Docket Numbers: ER23–1829–000.

Applicants: Shady Oaks Wind 2, LLC.

Description: Initial rate filing: Application for MBR Authorization w/ Waivers & Expedited Treatment to be effective 5/5/2023.

Filed Date: 5/4/23.

Accession Number: 20230504–5093.

Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1830–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: 2023–05–04 Filing of Eighth Revised New England Power Service Agreement No. 23 to be effective 5/5/2023.

Filed Date: 5/4/23.

Accession Number: 20230504–5096.

Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1831–000.
Applicants: ISO New England Inc., New England Power Company.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Fourth Revised TSA–NEP–86 Under Schedule 21–NEP to be effective 5/5/2023.
Filed Date: 5/4/23.
Accession Number: 20230504–5117.
Comment Date: 5 p.m. ET 5/25/23.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES23–45–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Tri-State Generation and Transmission Association, Inc.
Filed Date: 5/3/23.
Accession Number: 20230503–5174.
Comment Date: 5 p.m. ET 5/24/23.

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: May 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09956 Filed 5–9–23; 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 & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–760–000.
Applicants: Northern Border Pipeline Company.
Description: § 4(d) Rate Filing: Electric Compressor Surcharge Clarification to be effective 5/1/2023.
Filed Date: 5/3/23.
Accession Number: 20230503–5095.
Comment Date: 5 p.m. ET 5/15/23.
Docket Numbers: RP23–761–000.
Applicants: Fundare Resources Operating Company, LLC, Moonrise Midstream, LLC.
Description: Joint Petition for Temporary Waiver of Capacity Release Regulations, et al. of Fundare Resources Operating Company, LLC, et al.
Filed Date: 5/3/23.
Accession Number: 20230503–5126.
Comment Date: 5 p.m. ET 5/15/23.
Docket Numbers: RP23–762–000.
Applicants: Discovery Gas Transmission LLC.
Description: § 4(d) Rate Filing: Tariff Updates to be effective 6/5/2023.
Filed Date: 5/4/23.
Accession Number: 20230504–5046.
Comment Date: 5 p.m. ET 5/16/23.

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: May 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09955 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–255–000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on April 26, 2023, Natural Gas Pipeline Company of America LLC (NGPA), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and NGPA's blanket certificate issued in Docket No. CP82–402–000, for authorization to perform a miscellaneous rearrangement project that involves (1) the replacement of approximately 1.10-mile-long, 36-inch-diameter portion of Natural's Herscher Discharge Line (HDL) that currently traverses the center of Burlington Northern Santa Fe Railway Company's (BNSF) property in Will County, Illinois with a 2.18-mile-long, 36-inch-diameter pipe located on the southern and western borders of BNSF's property; (2) the automation of an existing mainline valve (MLV) 607 located in Will County, Illinois; and (3) the installation of a new automated MLV GL608 located in Grundy County, Illinois (HDL Relocation Project). The proposed relocation of HDL was requested by BNSF to accommodate construction of a new intermodal rail car switching yard by BNSF on that property. This Project will not result in the reduction of system capacity or the termination of any services and will not affect the quality of service provided to any shipper on the NGPA system. The estimated cost for the project is $14,000,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Francisco Tarin, Director, Regulatory, for Kinder Morgan Inc., as Operator of Natural Gas Pipeline Company of America LLC, 2 North Nevada Avenue, Colorado Springs, Colorado 80903, at (719) 667–7515, or *francisco_tarin@kindermorgan.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on July 3, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person[2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is July 3, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is July 3, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 3, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–255–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or[6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–255–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Francisco Tarin, Director, Regulatory, for Kinder Morgan Inc., as Operator of Natural Gas Pipeline Company of America LLC, 2 North Nevada Avenue, Colorado Springs, Colorado 80903, or *francisco_tarin@kindermorgan.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09941 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

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: EC23–82–000.

Applicants: Hamilton Liberty LLC, Hamilton Patriot LLC, Hamilton Projects Acquiror, LLC, BCPG USA Inc.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Hamilton Liberty LLC, et al.

Filed Date: 4/28/23.

Accession Number: 20230428–5666.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: EC23–83–000.

Applicants: Imperial Valley Solar 2, LLC, NES Galaxy, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Imperial Valley Solar 2, LLC, et al.

Filed Date: 4/28/23.

Accession Number: 20230428–5668.

Comment Date: 5 p.m. ET 5/19/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2129–016; ER10–2134–014; ER10–2135–016; ER10–2136–020; ER15–103–012; ER18–140–010; ER22–2144–003.

Applicants: Invenergy Nelson Expansion LLC, Lackawanna Energy Center LLC, Invenergy Nelson LLC, Invenergy Cannon Falls LLC, Spindle Hill Energy LLC, Hardee Power Partners Limited, Grays Harbor Energy LLC.

Description: Notice of Change in Status of Grays Harbor Energy LLC, et al.

Filed Date: 4/28/23.

Accession Number: 20230428–5706.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER10–3120–014; ER10–3128–014; ER10–3136–014; ER10–3145–014; ER11–2701–016; ER15–762–020; ER15–1579–018; ER15–1582–019; ER15–1914–020; ER15–2680–016; ER16–468–014; ER16–474–015; ER16–890–015; ER16–1255–017; ER16–1738–014; ER16–1901–014; ER16–1955–014; ER16–1956–014; ER16–1973–014; ER16–2201–013; ER16–2224–013; ER16–2578–014; ER17–306–013; ER17–544–013; ER17–1864–012; ER17–1871–012; ER17–1909–012; ER18–1667–009; ER18–2492–008; ER19–846–009; ER19–847–009; ER19–1179–004; ER19–1473–004; ER20–1629–003; ER20–2065–004; ER20–2066–004; ER20–2519–003; ER21–1488–003; ER21–2156–004; ER21–2766–003; ER22–799–004; ER23–48–002.

Applicants: West Line Solar, LLC, Lancaster Area Battery Storage, LLC, Central Line Solar, LLC, Antelope Expansion 1B, LLC, Luna Storage, LLC, East Line Solar, LLC, Antelope Expansion 3B, LLC, Antelope Expansion 3A, LLC, AES ES Alamitos, LLC, AES Alamitos Energy, LLC, AES ES Gilbert, LLC, San Pablo Raceway, LLC, Antelope DSR 3, LLC, FTS Master Tenant 2, LLC, Antelope Expansion 2, LLC, Bayshore Solar C, LLC, Bayshore Solar B, LLC, Bayshore Solar A, LLC, Beacon Solar 1, LLC, Beacon Solar 3, LLC, North Lancaster Ranch LLC, Solverde 1, LLC, Antelope DSR 1, LLC, Western Antelope Blue Sky Ranch B LLC, Western Antelope Dry Ranch LLC, Antelope DSR 2, LLC, Elevation Solar C LLC, Beacon Solar 4, LLC, Antelope Big Sky Ranch LLC, Summer Solar LLC, Central Antelope Dry Ranch C LLC,FTS Master Tenant 1, LLC, Sandstone Solar LLC, 87RL 8me LLC, 65HK 8me LLC, 67RK 8me LLC, Sierra Solar Greenworks LLC, Mountain View Power Partners IV, LLC, AES Alamitos, LLC, Mountain View Power Partners, LLC, AES Redondo Beach, L.L.C., AES Huntington Beach, L.L.C.

Description: Notice of Change in Status of Sierra Solar Greenworks LLC, et al. under ER15–762, et al.

Filed Date: 4/27/23.

Accession Number: 20230427–5487.

Comment Date: 5 p.m. ET 5/18/23.

Docket Numbers: ER16–918–006.

Applicants: Rhode Island State Energy Center, LP.

Description: Notice of Non-Material Change in Status of Rhode Island State Energy Center, LP.

Filed Date: 4/28/23.

Accession Number: 20230428–5685.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER17–351–006; ER17–354–006.

Applicants: American Falls Solar II, LLC, American Falls Solar, LLC.

Description: Notice of Non-Material Change in Status of American Falls Solar, LLC, et al.

Filed Date: 4/28/23.

Accession Number: 20230428–5699.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER17–1394–008.

Applicants: 83WI 8me, LLC.

Description: Notice of Non-Material Change in Status of 83WI 8me, LLC.

Filed Date: 5/1/23.

Accession Number: 20230501–5463.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER17–1609–005; ER20–2667–001.

Applicants: South Field Energy LLC, Carroll County Energy LLC.

Description: Notice of Change in Status of Carroll County Energy LLC et al.

Filed Date: 5/1/23.

Accession Number: 20230501–5514.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER18–140–011.

Applicants: Lackawanna Energy Center LLC.

Description: Notice of Change in Status of Lackawanna Energy Center LLC.

Filed Date: 4/28/23.

Accession Number: 20230428–5707.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER19–53–004.

Applicants: SR Millington, LLC.

Description: Notice of Non-Material Change in Status of SR Millington, LLC.

Filed Date: 4/28/23.

Accession Number: 20230428–5698.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER19–2429–008.

Applicants: Brookfield Smoky Mountain Hydropower LP.

Description: Notice of Non-Material Change in Status of Brookfield Smoky Mountain Hydropower LP.

Filed Date: 5/1/23.

Accession Number: 20230501–5466.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER21–1297–005.

Applicants: BigBeau Solar, LLC.

Description: Notice of Non-Material Change in Status of BigBeau Solar, LLC.

Filed Date: 4/28/23.

Accession Number: 20230428–5701.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER22–9–001; ER22–11–001.

Applicants: Janis Solar, LLC, Grissom Solar, LLC.

Description: Notice of Non-Material Change in Status of Grissom Solar, LLC, et al.

Filed Date: 4/28/23.

Accession Number: 20230428–5687.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER22–1549–003.

Applicants: Sun Streams PVS, LLC.

Description: Notice of Non-Material Change in Status of Sun Streams PVS, LLC.

Filed Date: 4/28/23.

Accession Number: 20230428–5708.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER23–1788–000.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Service Agreement No. 403—Notice of Cancellation to be effective 7/1/2023.

Filed Date: 5/1/23.

Accession Number: 20230501–5304.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1789–000.

Applicants: AZ Solar 1, LLC.

Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5309.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER23–1790–000.
Applicants: EnergyMark, LLC.
Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5312.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER23–1791–000.
Applicants: FL Solar 1, LLC.
Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5315.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER23–1792–000.
Applicants: FL Solar 4, LLC.
Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5319.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER23–1793–000.
Applicants: GA Solar 3, LLC.
Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5327.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER23–1794–000.
Applicants: Goal Line, L.P.
Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5331.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER23–1795–000.
Applicants: Grand View PV Solar Two LLC.
Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5337.
Comment Date: 5 p.m. ET 5/22/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–44–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Golden Spread Electric Cooperative, Inc.
Filed Date: 5/1/23.
Accession Number: 20230501–5460.
Comment Date: 5 p.m. ET 5/22/23.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH23–13–000.
Applicants: The Carlyle Group Inc.
Description: The Carlyle Group Inc. submits FERC 65–B Notice of Exemption Notification.
Filed Date: 4/28/23.
Accession Number: 20230428–5696.
Comment Date: 5 p.m. ET 5/19/23.

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: May 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09979 Filed 5–9–23; 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: EC23–85–000.
Applicants: Boomtown Solar Energy LLC, BREC Holding Company, LLC, Union Electric Company d/b/a Ameren Missouri.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Boomtown Solar Energy LLC, et al.
Filed Date: 5/3/23.
Accession Number: 20230503–5176.
Comment Date: 5 p.m. ET 7/3/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–029; ER12–2381–015; ER13–1069–018; ER14–1140–005.
Applicants: Inspire Energy Holdings, LLC, MP2 Energy LLC, MP2 Energy NE LLC, Shell Energy North America (US), L.P.
Description: Notice of Change in Status of Shell Energy North America (US), L.P., et al.
Filed Date: 5/1/23.
Accession Number: 20230501–5577.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER10–2354–012.
Applicants: Midway-Sunset Cogeneration Company.
Description: Notice of Non-Material Change in Status of Midway-Sunset Cogeneration Company.
Filed Date: 5/2/23.
Accession Number: 20230502–5278.
Comment Date: 5 p.m. ET 5/23/23.
Docket Numbers: ER10–2434–012; ER10–2436–012; ER10–2467–012; ER17–1666–009; ER18–1709–004; ER19–1635–003.
Applicants: Hoosier Wind Project, LLC, Wapsipinicon Wind Project, LLC, Fenton Power Partners I, LLC.
Description: Notice of Change in Status of Fenton Power Partners I, LLC, et al.
Filed Date: 5/1/23.
Accession Number: 20230501–5582.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER10–2727–007; ER10–1451–009; ER10–1467–010; ER10–1469–010; ER10–1473–009; ER10–1474–009; ER10–1478–011; ER10–2687–009; ER10–2688–012; ER10–2689–012; ER10–2728–011; ER11–3907–003.
Applicants: The Toledo Edison Company, Green Valley Hydro, LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, Pennsylvania Electric Company, Metropolitan Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, Jersey Central Power & Light, Allegheny Energy Supply Company, LLC.
Description: Notice of Non-Material Change in Status of Allegheny Energy Supply Company, LLC, et al.
Filed Date: 4/28/23.
Accession Number: 20230428–5730.
Comment Date: 5 p.m. ET 5/19/23.
Docket Numbers: ER12–1470–014; ER10–3026–012; ER16–1833–009.
Applicants: Sempra Gas & Power Marketing, LLC, Termoelectricia U.S., LLC, Energia Sierra Juarez U.S., LLC.
Description: Notice of Non-Material Change in Status of Energia Sierra Juarez U.S., LLC, et al.
Filed Date: 5/1/23.
Accession Number: 20230501–5579.
Comment Date: 5 p.m. ET 5/22/23.
Docket Numbers: ER15–2376–005; ER10–2020–004.
Applicants: PPL Renewable Energy, LLC, Energy Power Investment Company, LLC.
Description: Notice of Change in Status of Energy Power Investment Company, LLC, et al.

Filed Date: 5/1/23.
Accession Number: 20230501–5581.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER18–1534–013; ER10–1852–079; ER10–1951–055; ER11–4462–078; ER17–838–053; ER18–1535–012; ER20–2012–008; ER22–1454–003.

Applicants: LI Solar Generation, LLC, Orbit Bloom Energy, LLC, Montauk Energy Storage Center, LLC, NextEra Energy Marketing, LLC, NEPM II, LLC, NextEra Energy Services Massachusetts, LLC, Florida Power & Light Company, East Hampton Energy Storage Center, LLC.

Description: Notice of Change in Status of East Hampton Energy Storage Center, LLC, et al.

Filed Date: 5/1/23.
Accession Number: 20230501–5580.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER20–59–004; ER10–1874–015; ER15–1952–013; ER16–2520–005; ER17–318–005; ER18–97–003; ER19–8–005; ER19–9–009; ER20–57–003; ER20–58–003; ER20–339–003; ER20–422–003.

Applicants: FL Solar 1, LLC, Twiggs County Solar, LLC, FL Solar 4, LLC, GA Solar 3, LLC, Mankato Energy Center II, LLC, Sweetwater Solar, LLC, MS Solar 3, LLC, Three Peaks Power, LLC, Grand View PV Solar Two LLC, Pavant Solar LLC, Mankato Energy Center, LLC, AZ Solar 1, LLC.

Description: Notice of Non-Material Change in Status of AZ Solar 1, LLC, et al.

Filed Date: 5/1/23.
Accession Number: 20230501–5576.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER20–59–005; ER10–1874–016; ER10–1946–017; ER10–2201–004; ER10–2721–014; ER10–2861–012; ER12–1308–015; ER13–291–003; ER13–1504–013; ER14–1468–014; ER14–2140–014; ER14–2141–014; ER14–2465–016; ER14–2466–016; ER14–2939–013; ER15–632–015; ER15–634–015; ER15–1471–013; ER15–1672–012; ER15–1952–014; ER15–2728–015; ER16–612–002; ER16–711–011; ER16–915–007; ER16–2010–007; ER16–2520–006; ER16–2561–007; ER17–318–006; ER18–97–004; ER19–8–006; ER19–9–010; ER19–2287–005; ER19–2294–005; ER19–2305–005; ER20–57–004; ER20–58–004; ER20–339–004; ER20–422–004.

Applicants: FL Solar 1, LLC, Twiggs County Solar, LLC, FL Solar 4, LLC, GA Solar 3, LLC, Valencia Power, LLC, Mesquite Power, LLC, Goal Line L.P., Mankato Energy Center II, LLC, Sweetwater Solar, LLC, MS Solar 3, LLC, Three Peaks Power, LLC, Sunflower Wind Project, LLC, Grand View PV Solar Two LLC, Hancock Wind, LLC, Comanche Solar PV, LLC, Pio Pico Energy Center, LLC, Greeley Energy Facility, LLC, Maricopa West Solar PV, LLC, Pavant Solar LLC, Evergreen Wind Power II, LLC, Blue Sky West, LLC, Cottonwood Solar, LLC, CID Solar, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, RE Camelot LLC, RE Columbia Two LLC, Selmer Farm, LLC, Mulberry Farm, LLC, KMC Thermo, LLC, SWG Arapahoe, LLC, EnergyMark, LLC, Palouse Wind, LLC, Fountain Valley Power, L.L.C., El Paso Electric Company, Marina Energy, LLC, Broad River Energy LLC, Mankato Energy Center, LLC, AZ Solar 1, LLC.

Description: Notice of Non-Material Change in Status of AZ Solar 1, LLC, et al.

Filed Date: 5/1/23.
Accession Number: 20230501–5585.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER21–1251–002; ER22–2141–002; ER22–2519–002.

Applicants: Bellflower Solar 1, LLC, Sun Mountain Solar 1, LLC, Bighorn Solar 1, LLC.

Description: Notice of Non-Material Change in Status of Bighorn Solar 1, LLC, et al.

Filed Date: 5/1/23.
Accession Number: 20230501–5578.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER22–1549–004.
Applicants: Sun Streams PVS, LLC.
Description: Notice of Non-Material Change in Status of Sun Streams PVS, LLC.

Filed Date: 4/28/23.
Accession Number: 20230428–5729.
Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: ER22–1982–006; ER18–882–018; ER18–2314–013; ER22–2048–003; ER22–2706–004; ER22–2824–005.

Applicants: Yellow Pine Solar, LLC, Eight Point Wind, LLC, Skipjack Solar Center, LLC, Sholes Wind Energy, LLC, Elk City Renewables II, LLC, Great Prairie Wind, LLC.

Description: Notice of Change in Status of Great Prairie Wind, LLC, et al.

Filed Date: 5/1/23.
Accession Number: 20230501–5584.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER22–2046–002; ER10–1882–009; ER10–1894–010; ER10–2563–007; ER12–164–023; ER18–2203–003; ER19–1402–002; ER20–2288–003.

Applicants: Tatanka Ridge Wind, LLC, Coyote Ridge Wind, LLC, Upper Michigan Energy Resources Corporation, Bishop Hill Energy III LLC, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Wisconsin River Power Company, Sapphire Sky Wind Energy LLC.

Description: Notice of Non-Material Change in Status of Sapphire Sky Wind Energy LLC, et al.

Filed Date: 5/1/23.
Accession Number: 20230501–5575.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER22–2706–003.
Applicants: Eight Point Wind, LLC.
Description: Notice of Change in Status of Eight Point Wind, LLC.

Filed Date: 5/1/23.
Accession Number: 20230501–5583.
Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1351–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2023–05–04_SA 3482 ATC-Wisconsin Electric Power Sub 2nd Rev GIA (J878 J1316) to be effective 3/8/2023.

Filed Date: 5/4/23.
Accession Number: 20230504–5061.
Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER23–1373–001.
Applicants: Hillcrest Solar I, LLC.
Description: Notice of Change in Status of Hillcrest Solar I, LLC.

Filed Date: 5/1/23.
Accession Number: 20230501–5574.
Comment Date: 5 p.m. ET 5/22/23.

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: May 4, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09957 Filed 5–9–23; 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 & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–753–000.
Applicants: Portland Natural Gas Transmission System.
Description: § 4(d) Rate Filing: Irving Oil Name Change—NR Amendment to be effective 5/1/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5303.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: RP23–754–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 5–1–23 to be effective 5/1/2023.
Filed Date: 5/1/23.
Accession Number: 20230501–5366.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: RP23–756–000.
Applicants: Northern Natural Gas Company.
Description: Compliance filing: 20230501 Winter PRA Filing to be effective N/A.
Filed Date: 5/1/23.
Accession Number: 20230501–5369.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: RP23–757–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Nextera to TVA perm rel eff 5–1–23 to be effective 5/1/2023.
Filed Date: 5/2/23.
Accession Number: 20230502–5000.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: RP23–758–000.
Applicants: Alliance Pipeline L.P.
Description: Annual Report of Operational Purchases and Sales of Alliance Pipeline L.P.
Filed Date: 5/1/23.
Accession Number: 20230501–5519.
Comment Date: 5 p.m. ET 5/15/23.

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.

Filings in Existing Proceedings

Docket Numbers: RP12–609–000.
Applicants: Texas Gas Transmission, LLC.
Description: Report Filing: 2022 Operational Purchases and Sales Report Filing to be effective N/A.
Filed Date: 5/1/23.
Accession Number: 20230501–5061.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: RP13–212–000.
Applicants: Boardwalk Storage Company, LLC.
Description: Report Filing: 2022 Operational Purchases and Sales Report Filing to be effective N/A.
Filed Date: 5/1/23.
Accession Number: 20230501–5058.
Comment Date: 5 p.m. ET 5/15/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09978 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1772–000]

Fox Squirrel Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Fox Squirrel Solar LLC' s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 22, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09975 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1773–000]

Pomona Energy Storage 2 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pomona Energy Storage 2 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 22, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09974 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG23–79–000, EG23–79–000, EG23–79–000, EG23–80–000, EG23–81–000, EG23–82–000, EG23–83–000, EG23–84–000, EG23–85–000, EG23–86–000, EG23–87–000]

Danish Fields Solar LLC, Lockhart ESS, LLC, SR Snipesville III, LLC, SR McNeal, LLC, Braes Bayou II, LLC, McFarland Solar A, LLC, Sweetland Wind Farm, LLC, Nestlewood Solar I LLC, North Central Valley Energy Storage, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

Take notice that during the month of April 2023, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2022).

Dated: May 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09976 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–84–000.

Applicants: Wisconsin Power and Light Company.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Wisconsin Power and Light Company.

Filed Date: 5/1/23.

Accession Number: 20230501–5562.

Comment Date: 5 p.m. ET 5/22/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–64–000; QF23–886–001.

Applicants: 2014 ESA Project Company, LLC, 2014 ESA Project Company, LLC, Generate Capital, PBC.

Description: Petition for Declaratory Order, et al. of 2014 ESA Project Company, LLC.

Filed Date: 4/28/23.

Accession Number: 20230428–5663.

Comment Date: 5 p.m. ET 5/30/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2782–004; ER22–149–004.

Applicants: Sagebrush Line, LLC, Sagebrush ESS, LLC.

Description: Notice of Non-Material Change in Status of Sagebrush ESS, LLC, et al.

Filed Date: 5/1/23.

Accession Number: 20230501–5561.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1470–000; ER23–1476–000.

Applicants: Cottontail Solar 8, LLC, Cottontail Solar 2, LLC.

Description: Supplement to March 27, 2023, Cottontail Solar 2, LLC, et al. tariff filings.

Filed Date: 4/20/23.

Accession Number: 20230420–5250.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1796–000.

Applicants: Marina Energy, LLC.

Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.

Filed Date: 5/1/23.

Accession Number: 20230501–5338.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1797–000.

Applicants: MS Solar 3, LLC.

Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.

Filed Date: 5/1/23.

Accession Number: 20230501–5340.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1798–000.

Applicants: Sweetwater Solar, LLC.

Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.

Filed Date: 5/1/23.

Accession Number: 20230501–5358.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1799–000.

Applicants: Three Peaks Power, LLC.

Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.

Filed Date: 5/1/23.

Accession Number: 20230501–5362.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1800–000.

Applicants: Twiggs County Solar, LLC.

Description: Compliance filing: Tariff Revisions to be effective 5/2/2023.

Filed Date: 5/1/23.

Accession Number: 20230501–5365.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1801–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6879; Queue Nos. AD1–056/AD1–057 to be effective 3/30/2023.

Filed Date: 5/1/23.

Accession Number: 20230501–5384.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1802–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6269; Queue No. AE2–059 (amend) to be effective 7/2/2023.

Filed Date: 5/2/23.

Accession Number: 20230502–5053.

Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER23–1803–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–05–02_MISO SPP JOA re: Improve Affected Systems Coordination Processes to be effective 7/2/2023.

Filed Date: 5/2/23.

Accession Number: 20230502–5088.

Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER23–1804–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: MISO Schedule 50 Cost Recovery Filing of Michigan Electric Transmission Company, LLC.

Filed Date: 5/1/23.

Accession Number: 20230501–5556.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1805–000.

Applicants: Michigan Electric Transmission Company, LLC.

Description: MISO Schedule 50 Cost Recovery Filing of Michigan Electric Transmission Company, LLC.

Filed Date: 5/1/23.

Accession Number: 20230501–5557.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1806–000.

Applicants: Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc.

Description: Annual Informational Filing regarding Prepaid Pension Cost and Accrued Pension Cost of Entergy Arkansas, LLC, et al.

Filed Date: 5/1/23.

Accession Number: 20230501–5558.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1807–000.

Applicants: System Energy Resources, Inc.

Description: Annual Informational Filing regarding Prepaid Pension Cost and Accrued Pension Cost of System Energy Resources, Inc.

Filed Date: 5/1/23.

Accession Number: 20230501–5559.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1808–000.

Applicants: Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc.

Description: Post-Retirement Benefits Other than Pensions for 2022 Calendar Year of Entergy Arkansas, LLC, et al.

Filed Date: 5/1/23.

Accession Number: 20230501–5560.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: ER23–1809–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: SPP–MISO JOA Revisions to Improve Affected Systems Coordination Process to be effective 7/2/2023.

Filed Date: 5/2/23.

Accession Number: 20230502–5175.

Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER23–1810–000.

Applicants: Indian Creek Solar Farm LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 7/3/2023.

Filed Date: 5/2/23.

Accession Number: 20230502–5184.

Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER23–1811–000.

Applicants: Sol InfraCo MT1, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 12/31/9998.

Filed Date: 5/2/23.

Accession Number: 20230502–5186.

Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER23–1812–000.

Applicants: Sunflower Energy Center, LLC.

Description: Baseline eTariff Filing: Application for MBR Authorization with Waiver Requests to be effective 5/3/2023.

Filed Date: 5/2/23.

Accession Number: 20230502–5188.

Comment Date: 5 p.m. ET 5/23/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–889–000.

Applicants: 2014 ESA Project Company, LLC.

Description: Form 556 of 2014 ESA Project Company, LLC [1152 E California].

Filed Date: 4/28/23.

Accession Number: 20230428–5722.

Comment Date: 5 p.m. ET 5/19/23.

Docket Numbers: QF23–890–000.

Applicants: 2014 ESA Project Company, LLC.

Description: Form 556 of 2014 ESA Project Company, LLC [1200 E California Blvd].

Filed Date: 4/28/23.

Accession Number: 20230428–5724.

Comment Date: 5 p.m. ET 5/19/23.

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: May 2, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09977 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–101–005]

Transcontinental Gas Pipe Line Company, LLC; Notice of Request for Extension of Time

Take notice that on April 27, 2023, Transcontinental Gas Pipe Line Company, LLC (Transco) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until May 3, 2025, to construct and place into service, its Northeast Supply Enhancement (NESE) Project located in Pennsylvania, onshore and offshore New Jersey, and offshore New York as authorized in the Order

Issuing Certificate (Order).[1] Ordering Paragraph (B)(1) of the Order required Transco to complete the construction of the NESE Project facilities and make them available for service within two years of the date of the Order, or by May 3, 2021.

On May 20, 2021, the Commission granted Transco an extension of time, until May 3, 2023, to complete construction of the NESE Project and make it available for service.[2] Construction on the NESE Project has not begun. Transco states that it continues to review the scope of work for the NESE Project to not only meet Brooklyn Union Gas Company and KeySpan Gas East Corporation's (collectively, National Grid) firm transportation capacity needs but also to address water quality concerns raised by New York and New Jersey in their respective denials of water quality certification for the project under section 401 of the Clean Water Act. Transco asserts that the continuing need for the NESE Project is demonstrated by the 15-year term precedent agreements with National Grid for the entirety of the NESE Project's capacity, which remain in full force and effect. As a result, Transco now requests an additional two years, or until May 3, 2025, to complete construction of the NESE Project and make it available for service.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Transco's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,[3] the Commission will aim to issue an order acting on the request within 45 days.[4] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[5] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[6] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[7] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 19, 2023.

Dated: May 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09942 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *Transcontinental Gas Pipe Line Company, LLC,* 167 FERC ¶ 61,110 (2019).

[2] *Transcontinental Gas Pipe Line Company, LLC,* 175 FERC ¶ 61,148 (2021).

[3] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2022).

[4] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[5] *Id.* at P 40.

[6] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with National Environmental Policy Act.

[7] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15292–000]

Dashields Hydropower Corporation; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 4, 2022, Dashields Hydropower Corporation filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Dashields Locks and Dam Hydroelectric Project to be located at the existing U.S. Army Corps of Engineers' (Corps) Pittsburgh District Dashields Locks and Dam located on the Ohio River at Coraopolis, Allegheny County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) a new 150-foot-long, 90-foot-wide intake channel to be located immediately downstream of the opposite bank of the Corps' existing locks and dam; (2) two new 5-megawatt Kaplan pit turbine/generator units; (3) a new 200-foot-long, 90-foot-wide, 105-foot-high powerhouse; (4) a new 60-foot-long, 40-foot-wide substation with a new 13.8/69-kilovolt (kV) three-phase step-up transformer; (5) a new three-phase, 69-kV, 2-mile-long transmission line; (6) a new 175-foot-long, 90-foot-wide tailrace; and (7) appurtenant facilities. The proposed project would have an annual generation of 52,000 megawatt-hours.

Applicant Contact: Alan W. Skelly, Dashields Hydropower Corporation, 127 Longwood Blvd., Mount Orab, OH 45154; phone: (937) 802–8866.

FERC Contact: Woohee Choi; email: *woohee.choi@ferc.gov;* phone: (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent,

and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15292–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15292) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 4, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09937 Filed 5–9–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0015; FRL–10897–01–OCSPP]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period October 1, 2022, to March 31, 2023, to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0015, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests for a specific crop/site on a limited acreage, or other unit for treatment (*e.g.,* square footage, cartons of produce in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are requested less frequently than specific exemptions.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is concurred upon by EPA) when there is insufficient time to request and obtain EPA permission for emergency use of a pesticide under one of the other types of emergency exemptions.

EPA may deny an emergency exemption request: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of infants and children to residues of the pesticide.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized, the pests, the crop or use for which authorized, number of acres or other unit for treatment (if applicable), and the effective date of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any, and notes when a Notice of Receipt (if required under 40 CFR 166.24) was published in the **Federal Register**.

III. Emergency Exemptions

A. U.S. States and Territories

California

Department of Pesticide Regulation

Specific exemption: EPA authorized the use of kasugamycin on a maximum of 102,000 acres of almond trees to control bacterial blast. Time-limited tolerances in connection with a previous action are established in 40 CFR 180.614(b). This authorization was effective February 1, 2023.

Louisiana

Department of Agriculture and Forestry

Specific exemption: EPA authorized the use of triclopyr on a maximum of 450,000 acres of sugarcane to control

divine nightshade. A time-limited tolerance in connection with this action is established in 40 CFR 180.417(b). The authorization was effective October 3, 2022.

Massachusetts

Department of Agricultural Resources

Specific exemption: EPA authorized the use of pronamide on a maximum of 5,000 acres of cranberries to control dodder. A time-limited tolerance in connection with this action is established in 40 CFR 180.317(b). The authorization was effective April 15, 2023.

Texas

Department of Agriculture

Quarantine exemption: EPA authorized the use of thiamethoxam on a maximum of 190,000 acres of commercial rice fields to control the rice delphacid. Time-limited tolerances in connection with this action are established for thiamethoxam in 40 CFR 180.565(b). Section 18 use of thiamethoxam on rice results in potential clothianidin (a major metabolite of thiamethoxam) residues that, when combined with the residues from the Section 3 use of clothianidin on rice, requires an increase in the tolerance for residues of clothianidin in rice. Therefore, a time-limited tolerance is established in 40 CFR 180.586(b), to support this emergency use. The authorization was effective October 12, 2022.

B. Federal Departments and Agencies

United States Department of Agriculture

Animal and Plant Health Inspector Service

Quarantine exemptions: EPA authorized the use of a mixture of sodium hypochlorite and propylene glycol in freezing temperatures to decontaminate hard, nonporous outdoor surfaces associated with poultry facilities infected with Newcastle disease virus. The authorization was effective October 18, 2022.

EPA authorized the use of a mixture of potassium peroxymonosulfate and propylene glycol for disinfection of hard, nonporous surfaces associated with poultry facilities infected with Newcastle disease virus. The authorization was effective December 20, 2022.

EPA authorized the use of methyl bromide to fumigate post-harvest unlabeled imported/domestic commodities to prevent the introduction/spread of any new or recently introduced foreign pest(s) to any U.S. geographical location. The authorization was effective March 3, 2023.

National Aeronautics and Space Administration

Specific exemption: EPA authorized the use of ortho-phthaldehyde, immobilized to a porous resin, to treat the International Space Station (ISS) internal active thermal control system (IATCS) coolant for control of aerobic and microaerophilic water bacteria and unidentified gram-negative rods. This specific exemption was granted because, without this use, the ISS would have no means to control organisms in the IATCS since there are no registered alternatives available that meet the required criteria. The emergency request proposed a use of a new (unregistered) chemical. In accordance with the requirements at 40 CFR 166.24(a)(1), a notice of receipt published in the **Federal Register** on September 26, 2022, to allow a public comment period that closed on October 6, 2022. The authorization was effective October 7, 2022.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 26, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2023–09880 Filed 5–9–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEJECR–2023–0099; FRL–10939–01–OA]

White House Environmental Justice Advisory Council; Notification of 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 dates and times described below. The meeting is open to the public. For additional information about registering to attend the meeting or provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Pre-Registration is required.

DATES: The WHEJAC will convene an in-person public meeting with a virtual option on Tuesday, June 13, 2023, at approximately 6:00 p.m. Mountain Standard Time. The WHEJAC meeting continues Wednesday, June 14, 2023, and Thursday, June 15, 2023, from approximately 9:00 a.m.–5:00 p.m. Mountain Standard Time each day. 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 Environmental Justice Interagency Council (IAC) and the WHEJAC. A public comment period relevant to current WHEJAC charges will be considered by the WHEJAC at the meeting on Tuesday, June 13, 2023, (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to speak during the public comment period must register by 11:59 p.m., Mountain Standard Time, June 6, 2023.

ADDRESSES: The WHEJAC meeting will be held at the Renaissance Phoenix Downtown Hotel, 100 North 1st Street in Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Audrie Washington, WHEJAC Designated Federal Officer, U.S. EPA; *email: whejac@epa.gov;* telephone (312) 886–0669. Additional information about the WHEJAC is available at: *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council#meetings.*

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 White House Interagency Council on how to increase the Federal Government's efforts to address current and historic environmental injustice, including recommendations for updating Executive Order 12898. 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. No two individuals can share the same registration link. Information on how to register is located at *https://www.epa.gov/*

environmentaljustice/white-house-environmental-justice-advisory-council#meetings. Registration for the public meeting is available throughout the scheduled end time of the meeting. Registration to speak during the public comment period will close at 11:59 p.m. Mountain Standard Time on June 6, 2023. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you will provide public comment during the meeting, or if you will submit written comments.

A. Public Comment

The WHEJAC is interested in receiving public comments relevant to the following questions currently under consideration: (1) Please provide any feedback on ongoing activities and resources by the federal government agencies on environmental justice, including the Justice40 Initiative, Climate and Economic Justice Screening Tool, and forthcoming Environmental Justice Scorecard; and (2) What resources or tools would you find beneficial related to environmental justice from federal government agencies? 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 may 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 June 20, 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, contact Audrie Washington at (312) 886–0669 or via email at *whejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone number 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. 2023–09917 Filed 5–9–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1039: FR ID 139940]

Information Collection Being Reviewed by the Federal Communications Commission

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 July 10, 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.: 3060–1039.

Title: Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act—Review Process, WT Docket No. 03–128.

Form No.: FCC Form 620 and 621, TCNS E-filing.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 70,152 respondents and 70,152 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 1, 4(i), 303(q), 303(r), 309(a), 309(j) and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(q), 303(r), 309(a), 309(j) and 319, sections 101(d)(6) and 106 of the National Historic Preservation Act (NHPA) of 1966, 16 U.S.C. 470a(d)(6) and 470f, and section 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b).

Total Annual Burden: 97,929 hours.

Annual Cost Burden: $13,087,425.

Needs and Uses: FCC staff, State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO) and the Advisory Council of Historic Preservation (ACHP) use the data to take such action as may be necessary to ascertain whether a proposed action may affect sites of cultural significance to tribal nations and historic properties that are listed or eligible for listing on the National Register as directed by section 106 of the National Historic Preservation Act (NHPA) and the Commission's rules.

FCC Form 620, New Tower (NT) Submission Packet is to be completed by or on behalf of applicants to

construct new antenna support structures by or for the use of licensees of the FCC. The form is to be submitted to the State Historic Preservation Office (''SHPO'') or to the Tribal Historic Preservation Office (''THPO''), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under section 106 of the NHPA prior to beginning construction may violate section 110(k) of the NHPA and the Commission's rules.

FCC Form 621, Collocation (CO) Submission Packet is to be completed by or on behalf of applicants who wish to collocate an antenna or antennas on an existing communications tower or non-tower structure by or for the use of licensees of the FCC. The form is to be submitted to the State historic Preservation Office (''SHPO'') or to the Tribal Historic Preservation Office (''THPO''), as appropriate, and the Commission before any construction or other installation activities on the site begins. Failure to provide the form and complete the review process under section 106 of the NHPA prior to beginning construction or other installation activities may violate section 110(k) of the NHPA and the Commission's rules.

The Tower Construction Notification System (TCNS) is used by or on behalf of Applicants proposing to construct new antenna support structures, and some collocations, to ensure that Tribal Nations have the requisite opportunity to participate in review prior to construction. To facilitate this coordination, Tribal Nations have designated areas of geographic preference, and they receive automated notifications based on the site coordinates provided in the filing. Applicants complete TCNS before filing a 620 or 621 and all the relevant data is pre-populated on the 620 and 621 when the forms are filed electronically.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–09884 Filed 5–9–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0190 and OMB 3060–0320; FR ID 140064]

Information Collections 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 July 10, 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 Number: 3060–0190.

Title: Section 73.3544, Application To Obtain a Modified Station License.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 325 respondents and 325 responses.

Estimated Time per Response: 0.25–1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 306 hours.

Total Annual Cost: $75,000.

Needs and Uses: The information collection requirements contained in this collection are covered in 47 CFR 73.3544(b) requires an informal application, see Sec. 73.3511(b), may be filed with the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, to cover the following changes:

(1) A correction of the routing instructions and description of an AM station directional antenna system field monitoring point, when the point itself is not changed.

(2) A change in the type of AM station directional antenna monitor. See Sec. 73.69.

(3) A change in the location of the station main studio when prior authority to move the main studio location is not required.

(4) The location of a remote control point of an AM or FM station when prior authority to operate by remote control is not required.

Also, information collection requirements are contained in 47 CFR 73.3544(c) which requires a change in the name of the licensee where no change in ownership or control is involved may be accomplished by written notification by the licensee to the Commission.

OMB Control Number: 3060–0320.

Title: Section 73.1350, Transmission System Operation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 505 respondents; 505 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 253 hours.

Total Annual Cost: None.

Needs and Uses: The information collection requirements contained under 47 CFR 73.1350(g) require licensees to submit a ''letter of notification'' to the FCC in Washington, DC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, whenever a transmission system control point is established at a location other than at the main studio or transmitter within three days of the initial use of that point. The letter should include a list of all control points in use for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–09885 Filed 5–9–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Intent To Award a Single-Source Supplement for the Amputee Coalition of America, Inc. for the National Limb Loss Resource Center Cooperative Agreement

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the Amputee Coalition of America, Inc. for the National Limb Loss Resource Center (NLLRC).

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Elizabeth Leef, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Disabilities, Office of Disability Services Innovation at (202) 475–2486 or *Elizabeth.leef@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this project is to expand on current grant activities occurring across communities. These activities include programs that promote independence, community living, and the adoption of healthy behaviors that promote wellness and prevent and/or reduce chronic conditions associated with limb loss and increase partnerships and collaborations with ACL programs that will benefit all people living with limb loss or limb differences. The administrative supplement for FY 2023 will be for $667,048 bringing the total award for FY 2023 to $4,065,215.

The additional funding will not be used to begin new projects. The funding will be used to enhance and expand existing programs that can serve an increased number of veterans and people living with limb loss and limb differences by providing increased technical assistance activities; promoting health and wellness programs; addressing healthcare access issues, including maternity care; promoting the adoption of healthy behaviors with the objective of preventing and/or reducing chronic conditions associated with limb loss; increasing partnerships and collaborations with ACL programs that will benefit all people living with limb loss or limb differences; enhancing and expanding the evaluation activities currently under way; and enhancing website capacities for improved information dissemination.

Program Name: National Limb Loss Resource Center.

Recipient: The Amputee Coalition of America, Inc.

Period of Performance: The supplement award will be issued for the fifth year of the five-year project period of April 1, 2019, through March 29, 2024.

Total Supplement Award Amount: $667,048 in FY 2023.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: This program is authorized under Section 317 of the Public Health Service Act (42 U.S.C. 247(b–4)); Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (Dec. 16, 2014).

Basis for Award: The Amputee Coalition of America, Inc. is currently funded to carry out the objectives of this program, entitled The *National Limb Loss Resource Center* for the period of April 1, 2019, through March 29, 2024. Almost 2 million Americans have experienced amputations or were born with limb difference and another 28 million people in our country are at risk for amputation. The supplement will enable the grantee to carry their work even further, serving more people living with limb loss and/or limb differences and providing even more comprehensive training and technical assistance in the development of long-term supportive services. The additional funding will not be used to begin new projects or activities. The NLLRC will enhance and expand currently funded activities such as conducting national outreach for the development and dissemination of patient education materials, programs, and services; providing technical support and assistance to community based limb loss support groups; and raising awareness about the limb loss and limb differences communities.

Establishing an entirely new grant project at this time would be potentially disruptive to the current work already well under way. More importantly, the people living with limb loss and limb differences currently being served by this program could be negatively impacted by a service disruption, thus posing the risk of not being able to find the right resources that could negatively impact on health and wellbeing. If this supplement were not provided, the project would be less able to address the significant unmet needs of additional limb loss survivors. Similarly, the project would be unable to expand its current technical assistance and training efforts in NLLRC concepts and approaches, let alone reach beyond traditional providers of services to this population to train more ''mainstream'' providers of disability services.

Dated: May 4, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–09910 Filed 5–9–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1661]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Expanded Access to Investigational Drugs for Treatment Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) 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 June 9, 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 0910–0814. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *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.

Expanded Access to Investigational Drugs for Treatment Use

OMB Control Number 0910–0814—Revision

Sometimes called ''compassionate use,'' expanded access (EA) is a potential pathway for a patient with a serious or immediately life-threatening disease or condition to gain access to an investigational medical product (drug, biologic, or medical device) for treatment outside of clinical trials when no comparable or satisfactory alternative therapy options are available. Agency regulations in 21 CFR part 312 provide for individual patient EA and associated procedures for those submitting EA requests to FDA. We provide resource information on our website at *https://www.fda.gov/news-events/public-health-focus/expanded-access* regarding our EA program, including information for patients, physicians, and industry. We also provide information pertaining to forms and processes for submitting EA requests to FDA. Specifically, we have developed electronic Form FDA 3926 ''Individual Patient Expanded Access Investigational New Drug Application (IND).'' Upon accessing the online form, users may need to follow certain technical instructions to save the document in a portable document format (PDF). Form FDA 3926 requires the completion of data fields that enable FDA to uniformly collect the minimum information necessary from licensed physicians who want to request EA as prescribed in the applicable regulations.

Description of Respondents: Respondents to the collection of information are licensed physicians who request individual patient access to investigational drugs.

In the **Federal Register** of December 14, 2021 (86 FR 71069), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. However, on our own initiative, we are proposing the following revisions to associated Form FDA 3926:

TABLE 1—SUMMARY OF PROPOSED DATA FIELD CHANGES TO FORM FDA 3926

Current field:	Includes proposed changes to:	Becoming new field:	With accompanying instruction to:
8. Physician Name, Address, and Contact Information.	Delete ''Physician's IND number, if known'' from this field and move to proposed Field 4.a. Add ''Name of Institution or Clinical Practice'' to the title of the field.	1. Physician Name, Name of Institution or Clinical Practice, Address, and Contact Information. Remaining fields become renumbered.	Enter the physician's name, name of institution or clinical practice, and the physician's contact information, including the physical address, email address, telephone number, and facsimile (FAX) number.
3.a. Initial Submission.	Add ''enter the Physician's IND Number, if previously issued by FDA,''.	4.a. Initial Submission ..... ☐ Select this box if this form is an initial submission for an individual patient expanded access IND, enter the Physician's IND Number, if previously issued by FDA, and complete only fields 5 through 8, and fields 10 and 11.	If the submission is an initial (original) submission for an individual patient expanded access IND (including for emergency use), select the box provided in field 4.a., enter the physician's IND number, if previously issued by FDA, and complete only fields 5 through 8, and fields 10 and 11. Do not include commercial sponsor's IND number.
4. Clinical Information. Brief Clinical History (Patient's age, gender, weight, allergies, diagnosis, prior therapy, response to prior therapy, reason for request, including an explanation of why the patient lacks other therapeutic options).	Add ''or sensitivities, race and ethnicity (optional)'' after allergies. Add ''Ethnicity (check one)'' and list choice options (Hispanic/Latino or Not Hispanic/Latino). Add ''Race (check all that apply)'' and list choice options (American Indian/Alaska Native or Asian or Black/African American or Native Hawaiian/Other Pacific Islander or White).	5. Clinical Information ..... Brief Clinical History (Patient's age, gender, weight, allergies or sensitivities, race and ethnicity (optional), diagnosis, prior therapy, response to prior therapy, reason for request, including an explanation of why the patient lacks other therapeutic options). Ethnicity (check one) ☐ Hispanic/Latino ☐ Not Hispanic/Latino Race (check all that apply) ☐ American Indian/Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian/Other Pacific Islander ☐ White	Provide the indication (proposed treatment use) and a brief clinical history of the patient. The clinical history includes age, gender, weight, allergies or sensitivities (general (*e.g.,* soy) and drug specific) and other optional demographic and clinical information (*e.g.,* race (as reported by the patient; you may choose multiple answers) and ethnicity (choose only one response)), diagnosis (*e.g.,* a brief summary (with dates) of relevant past medical and surgical history, diagnostic procedures, current stage/severity of disease, and functional status), prior therapy, response to prior therapy (*e.g.,* patient was treated with drug X and subsequently developed lung metastasis), and the reason for requesting the proposed treatment, including an explanation of why the patient lacks other therapeutic options (*e.g.,* patient has failed or is intolerant to currently available therapy, or is not eligible for any clinical trials registered at *ClinicalTrials.gov*).

TABLE 1—SUMMARY OF PROPOSED DATA FIELD CHANGES TO FORM FDA 3926—Continued

Current field:	Includes proposed changes to:	Becoming new field:	With accompanying instruction to:
5: Treatment Information.	Add ''(including rationale for dose)''. Add ''(*e.g.,* assessment criteria/procedure(s) for monitoring and frequency)''. Add ''(*e.g.,* criteria for adjusting dose if dose reduction or escalation is planned, criteria for stopping the treatment),''. Add ''(*e.g.,* concomitant medication)''. Add ''You may choose to attach an Investigator Brochure, scientific publication(s), or other supporting documents, if needed.''.	Field 6	Provide treatment information, including the investigational drug's name and the name of the entity supplying the drug (generally the manufacturer), the applicable FDA review division (if known), and a concise statement regarding the treatment plan. This includes the planned dose, route and schedule of administration of the investigational drug (including rationale for dose), planned duration of treatment, monitoring procedures (*e.g.,* assessment criteria/procedure(s) for monitoring and frequency), planned modifications to the treatment plan in the event of toxicity (*e.g.,* criteria for adjusting dose if dose reduction or escalation is planned, criteria for stopping the treatment), and other relevant information (*e.g.,* concomitant medication). The information should be entered within the space provided. You may choose to attach an Investigator Brochure, scientific publication(s), or other supporting documents, if needed.
None	Add a box option for ''Request for Withdrawal'' under ''Summary of Expanded Access Use (treatment completed)''.	9. Contents of Submission ..... ☐ Request for Withdrawal.	Field 9: Contents of Submission (Follow-up/Additional Submissions Only). *Request for Withdrawal:* A submission describing the intent to withdraw an effective IND (21 CFR 312.38).
None	Add ''When a waiver is requested in this manner, the physician does not receive notice from FDA indicating that the waiver is granted.''.	Field 10.b.: Request for Authorization to Use Alternative IRB Review Procedures.	Select this box to request under 21 CFR 56.105, authorization to obtain concurrence by the IRB chairperson or by a designated IRB member, instead of at a convened IRB meeting, before the treatment use begins, in order to comply with FDA's requirements for IRB review and approval. When a waiver is requested in this manner, the physician does not receive notice from FDA indicating that the waiver is granted.
None	Add ''Information on where and how to submit this form is available at Expanded Access—How to Submit''.	Field 11: Certification Statement and Signature of the Physician.	Field 11: Certification Statement and Signature of the Physician Information on where and how to submit this form is available at Expanded Access—How to Submit.
[General Instruction?].	Insert a statement ''Information on where and how to submit this form is available at Expanded Access—How to Submit a Request (Forms)'' under ''Signature of Physician'' after Field 11.	[General Instruction?]	Information on where and how to submit this form is available at Expanded Access—How to Submit a Request (Forms).

We retain the currently approved burden estimate of 13,910 responses and 255,326 hours annually for the information collection. We anticipate no adjustment as a result of the proposed form updates and have posted a draft of revised Form FDA 3926 to the docket, available for public inspection through *https://www.regulations.gov.*

Dated: May 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09982 Filed 5–9–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–0675]

Determination of Regulatory Review Period for Purposes of Patent Extension; Detectnet

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 Detectnet 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 July 10, 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 November 6, 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 July 10, 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–2022–E–0675 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; Detectnet.'' 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 Detectnet (copper Cu-64 dotatate). Detectnet is a radioactive diagnostic agent indicated for use with positron emission tomography for localization of somatostatin receptor positive neuroendocrine tumors in adult patients. Subsequent to this approval, the USPTO received a patent term restoration application for Detectnet (U.S. Patent No. 10,383,961) from Somscan APS, and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated June 13, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Detectnet 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 Detectnet is 989 days. Of this time, 744 days occurred during the testing phase of the regulatory review period, while 245 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:* December 21, 2017. The applicant claims November 28, 2017, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 21, 2017, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* January 3, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Detectnet (NDA 213227) was initially submitted on January 3, 2020.

3. *The date the application was approved:* September 3, 2020. FDA has verified the applicant's claim that NDA 213227 was approved on September 3, 2020.

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 312 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: May 4, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09891 Filed 5–9–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0973]

Revocation of Three Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to Thermo Fisher Scientific Inc., for the OmniPATH COVID–19 Total Antibody ELISA Test; Detect, Inc., for the Detect Covid–19 Test; and Cepheid, for the Xpert Xpress SARS–CoV–2/Flu/RSV. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act) as requested by each Authorization holder. The revocations, which include an explanation of the reasons for each revocation, are reprinted at the end of this document.

DATES: The Authorization for the Thermo Fisher Scientific Inc.'s OmniPATH COVID–19 Total Antibody ELISA Test is revoked as of April 13, 2023. The Authorization for the Detect, Inc.'s Detect Covid–19 Test is revoked as of April 14, 2023. The Authorization for the Cepheid's Xpert Xpress SARS–CoV–2/Flu/RSV is revoked as of April 17, 2023.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Kim Sapsford-Medintz, Office of Product Evaluation and Quality, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3216, Silver Spring, MD 20993–0002, 301–796–0311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On October 2, 2020, FDA issued the Authorization to Thermo Fisher Scientific Inc., for the OmniPATH COVID–19 Total Antibody ELISA Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21749), as required by section 564(h)(1) of the FD&C Act. On October 28, 2021, FDA issued the Authorization to Detect, Inc., for the Detect Covid–19 Test, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on March 22, 2022 (87 FR 16198), as required by section 564(h)(1) of the FD&C Act. On September 24, 2020, FDA issued the Authorization to Cepheid, for the Xpert Xpress SARS–CoV–2/Flu/RSV, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21751), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. Authorization Revocation Requests

In a request received by FDA on April 10, 2023, Thermo Fisher Scientific Inc., requested the withdrawal of, and on April 13, 2023, FDA revoked, the Authorization for the Thermo Fisher Scientific Inc.'s OmniPATH COVID–19

Total Antibody ELISA Test. Because Thermo Fisher Scientific Inc., notified FDA that it is no longer manufacturing or producing the OmniPATH COVID–19 Total Antibody ELISA Test and requested FDA withdraw the Thermo Fisher Scientific Inc.'s, OmniPATH COVID–19 Total Antibody ELISA Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on March 16, 2023, Detect, Inc., requested revocation of, and on April 14, 2023, FDA revoked, the Authorization for the Detect, Inc.'s Detect Covid–19 Test. Because Detect, Inc., indicated to FDA that as of February 1, 2023, there are no viable/nonexpired Detect Covid–19 Tests in distribution in the United States and requested FDA revoke the Authorization for the Detect Covid–19 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In a request received by FDA on March 7, 2023, Cepheid, requested revocation of, and on April 17, 2023, FDA revoked, the Authorization for the Cepheid's Xpert Xpress SARS–CoV–2/Flu/RSV. Because Cepheid, indicated to FDA that they have stopped sales of the authorized product and requested FDA revoke the Authorization for the Cepheid's Xpert Xpress SARS–CoV–2/Flu/RSV, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/.*

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA of Thermo Fisher Scientific Inc.'s OmniPATH COVID–19 Total Antibody ELISA Test; Detect, Inc's Detect Covid–19 Test; and of Cepheid's Xpert Xpress SARS–CoV–2/Flu/RSV. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4161–01–P

U.S. FOOD & DRUG ADMINISTRATION

April 13, 2023

Colleen Watson
Senior Director Regulatory Affairs
Fisher Diagnostics
Part of Thermo Fisher Scientific Inc.
8365 Valley Pike
Middletown, VA 22645

Re: Revocation of EUA202212

Dear Colleen Watson:

This letter is in response to the request from Thermo Fisher Scientific Inc., in a letter received April 10, 2023, that the U.S. Food and Drug Administration (FDA) withdraw the EUA for the OmniPATH COVID-19 Total Antibody ELISA Test issued on October 2, 2020 and revised on September 23, 2021. Thermo Fisher Scientific Inc. indicated that they are no longer manufacturing or producing the authorized product and requested that the EUA be withdrawn. FDA understands that, as of the date of this letter, there are no viable OmniPATH COVID-19 Total Antibody ELISA Test reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Thermo Fisher Scientific Inc. has requested that FDA withdraw the EUA for OmniPATH COVID-19 Total Antibody ELISA Test, FDA has determined that it is appropriate, to protect the public health or safety, to revoke this authorization. Accordingly, FDA hereby revokes EUA202212 for the OmniPATH COVID-19 Total Antibody ELISA Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the OmniPATH COVID-19 Total Antibody ELISA Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

April 14, 2023

Sarai Meyer
Principal Regulatory Affairs Specialist
Detect, Inc.
530 Old Whitfield St.
Guilford, CT 06437

Re: Revocation of EUA210534

Dear Sarai Meyer:

This letter is in response to the request from Detect, Inc., in a letter received March 16, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Detect Covid-19 Test issued on October 28, 2021, reissued April 11, 2022, and revised on January 12, 2022, and August 17, 2022. FDA understands that as of the date of this letter there are no viable Detect Covid-19 Test reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Detect, Inc. has requested FDA revoke the EUA for Detect Covid-19 Test, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA210534 for the Detect Covid-19 Test, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Detect Covid-19 Test is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

April 17, 2023

Julie Purcell
Director, US Regulatory Affairs
Cepheid
904 Caribbean Drive
Sunnyvale, CA 94089

Re: Revocation of EUA200453

Dear Julie Purcell:

This letter is in response to the request from Cepheid, in a letter received March 7, 2023, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the Xpert Xpress SARS-CoV-2/Flu/RSV issued on September 24, 2020, reissued October 1, 2020, and revised on January 27, 2021, and September 23, 2021. Cepheid indicated that they have stopped sales of the authorized product and requested that the EUA be revoked. FDA understands that as of the date of this letter there will no longer be any viable Xpert Xpress SARS/CoV-2/Flu/RSV reagents remaining in distribution in the United States.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Cepheid has requested FDA revoke the EUA for the Xpert Xpress SARS-CoV-2/Flu/RSV, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200453 for the Xpert Xpress SARS-CoV-2/Flu/RSV, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Xpert Xpress SARS-CoV-2/Flu/RSV is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

//s//

Jeffrey E. Shuren, M.D., J.D.
Director
Center for Devices and Radiological Health
Food and Drug Administration

Dated: May 4, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09879 Filed 5–9–23; 8:45 am]

BILLING CODE 4161–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–1573]

Testing of Glycerin, Propylene Glycol, Maltitol Solution, Hydrogenated Starch Hydrolysate, Sorbitol Solution, and Other High-Risk Drug Components for Diethylene Glycol and Ethylene Glycol; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Testing of Glycerin, Propylene Glycol, Maltitol Solution, Hydrogenated Starch Hydrolysate, Sorbitol Solution, and Other High-Risk Drug Components for Diethylene Glycol and Ethylene Glycol.'' This guidance provides updated recommendations on testing and other activities that will help pharmaceutical manufacturers, repackers, other suppliers, and compounders prevent the use of high-risk drug components, including

glycerin, propylene glycol, maltitol solution, hydrogenated starch hydrolysate, and sorbitol solution, that are contaminated with diethylene glycol (DEG) and ethylene glycol (EG). These and other appropriate measures under current good manufacturing practice (CGMP) are vital to prevent incidents of consumer poisoning.

DATES: The announcement of the guidance is published in the **Federal Register** on May 10, 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–2023–D–1573 for ''Testing of Glycerin, Propylene Glycol, Maltitol Solution, Hydrogenated Starch Hydrolysate, Sorbitol Solution, and Other High-Risk Drug Components for Diethylene Glycol and Ethylene Glycol.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4337, Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Tara Gooen Bizjak, Office of Manufacturing Quality, Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3400.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Testing of Glycerin, Propylene Glycol, Maltitol Solution, Hydrogenated Starch Hydrolysate, Sorbitol Solution, and Other High-Risk Drug Components for Diethylene Glycol and Ethylene Glycol.'' We are issuing this guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ *10.115(g)(2)). This guidance document is being implemented immediately to alert the industry to the potential public health hazard of DEG and EG contamination in certain drug components following international reports of children's oral liquid drug products with confirmed or suspected high levels of DEG or EG contamination.* Although this guidance document is immediately in effect, it remains subject to comment in accordance with FDA's GGP regulation.

On May 2, 2007, FDA announced the availability of a guidance for industry entitled ''Testing of Glycerin for Diethylene Glycol'' (hereinafter, 2007 guidance) (72 FR 24316). As explained in detail in the 2007 guidance, and described further in this updated guidance, there have been repeated instances of DEG poisonings around the world, and even in the United States in 1937. Each outbreak resulted in numerous fatalities, many of them children. The 2007 guidance recommended that certain activities be performed on glycerin, including analytical testing, to avoid the use of DEG-contaminated product.

In 2022 and 2023, numerous countries reported incidents of oral liquid drug products, primarily indicated for children, with confirmed or suspected contamination with high levels of DEG and EG.[1] The cases of contamination,

[1] See *e.g., WHO urges action to protect children from contaminated medicines,* World Health Organization, January 23, 2023, available at *https://www.who.int/news/item/23-01-2023-who-urges-*

spanning at least seven different countries, were associated with more than 300 fatalities—mostly in children under the age of 5.[2] At this time, FDA has no indication that any contaminated products connected to these recent international incidents have entered the U.S. drug supply chain.

This guidance is intended to replace the 2007 guidance and to alert the industry that in addition to glycerin, there are other components at a high risk of contamination with DEG and EG, including, but not limited to, propylene glycol, maltitol solution, hydrogenated starch hydrolysate, and sorbitol solution (hereinafter, ''high-risk components''). This guidance provides recommendations, including analytical testing, to help pharmaceutical manufacturers, repackers, other suppliers of high-risk components, and compounders, prevent the use of glycerin and other high-risk components that are contaminated with DEG or EG.

The guidance represents the current thinking of FDA on ''Testing of Glycerin, Propylene Glycol, Maltitol Solution, Hydrogenated Starch Hydrolysate, Sorbitol Solution, and Other High-Risk Drug Components for Diethylene Glycol and Ethylene Glycol.'' 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.

action-to-protect-children-from-contaminated-medicines. The WHO has issued global medical alerts addressing these incidents in The Gambia (October 5, 2022), Indonesia (November 6, 2022), Uzbekistan (January 11, 2023), and the Marshall Islands and Micronesia (Apr 25, 2023). See *Medical Product Alert N°6/2022: Substandard (contaminated) paediatric medicines,* World Health Organization, October 5, 2022, available at *https://www.who.int/news/item/05-10-2022-medical-product-alert-n-6-2022-substandard-(contaminated)-paediatric-medicines; Medical Product Alert N°7/2022: Substandard (contaminated) paediatric liquid dosage medicines,* World Health Organization, November 2, 2022, available at *https://www.who.int/news/item/02-11-2022-medical-product-alert-n-7-2022-substandard-(contaminated)-paediatric-liquid-dosage-medicines; Medical Product Alert N°1/2023: Substandard (contaminated) liquid dosage medicines,* World Health Organization, January 11, 2023, available at *https://www.who.int/news/item/11-01-2023-medical-product-alert-n-1-2023-substandard-(contaminated)-liquid-dosage-medicines;* and *Medical Product Alert N°4/2023: Substandard (contaminated) syrup medicines,* World Health Organization, Apr 25, 2023, available at *https://www.who.int/news/item/25-04-2023-medical-product-alert-n-4-2023—substandard-(contaminated)-syrup-medicines.*

[2] See *WHO urges action to protect children from contaminated medicines,* World Health Organization, January 23, 2023, available at *https://www.who.int/news/item/23-01-2023-who-urges-action-to-protect-children-from-contaminated-medicines.*

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 collection of information is subject to review by OMB under the PRA. The collection of information for CGMP requirements has been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: May 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–09973 Filed 5–9–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Delegation of Authority

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of the United States Department of Health and Human Services delegated his authorities to the Assistant Secretary for Mental Health and Substance Use within the Substance Abuse and Mental Health Services Administration (SAMHSA) on May 4, 2023. This action is necessary to complete rulemaking being undertaken in conjunction with the Drug Enforcement Administration.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Secretary of the United States Department of Health and Human Services (HHS) has delegated to the Assistant Secretary for Mental Health and Substance Use within the Substance Abuse and Mental Health Services Administration (SAMHSA) the authorities vested in the Secretary of HHS under Title 21, Chapter 13, Subchapter I, Part A, Section 802(54)(G) of the United States Code (21 U.S.C. 802(54)(G)) on May 4, 2023.

21 U.S.C. 802(54)(G) authorizes the Secretary of HHS and the Attorney General to issue regulations (including in 42 CFR chapter I, if appropriate) that define the term ''practice of telemedicine'' for purposes of Title 21, Chapter 13, Subchapter I, as 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 a telecommunications system referred to in section 1395m(m) of title 42, which practice is being conducted under any 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.

These authorities may not be redelegated and shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations. In addition, I hereby ratify and affirm any actions taken by the Assistant Secretary for Mental Health and Substance Use, or other SAMHSA officials, which involved the exercise of the authorities delegated prior to the effective date of the delegation on May 4, 2023.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2023–10041 Filed 5–9–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

National Indian Health Outreach and Education

Announcement Type: New.

Funding Announcement Number: HHS–2023–IHS–NIHOE–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.933.

Key Dates

Application Deadline Date: July 10, 2023.

Earliest Anticipated Start Date: July 24, 2023.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for a cooperative agreement for the National Indian Health Outreach and Education (NIHOE) program. This program is authorized under the Snyder Act, 25

U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); the Indian Health Care Improvement Act at 25 U.S.C. 1621b; and Section 330C of the Public Health Service Act, 42 U.S.C. 254c–3. The Assistance Listings section of *SAM.gov* (*https://sam.gov/content/home*) describes this program under 93.933.

Background

The IHS is committed to providing quality health care, consistent with its statutory authorities and its government-to-government relationship with each Indian Tribe. The IHS mission is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level. To further mission success, the IHS seeks support on a national scale. The IHS serves as the principal Federal health care provider and health advocate for approximately 2.6 million American Indians and Alaska Natives from 574 federally recognized Tribes in 37 states, through a network of over 605 hospitals, clinics and health stations on or near Indian reservations and predominantly in rural locations. Tribes administer over half of the annual IHS discretionary appropriation. The IHS also enters into agreements with 41 Urban Indian Organizations (UIOs). These 41 UIOs are 501(c)(3) nonprofit organizations that provide culturally appropriate and quality health care and referral services for Urban Indians in 22 states. The IHS seeks to collaborate with local communities, not-for-profit organizations, universities and schools, foundations, businesses, and Federal agencies. This effort will foster outreach and education addressing health policy and health program issues; broadcast educational information to all American Indian and Alaska Native (AI/AN) people; provide policy/legislative updates, advocacy, and technical assistance.

Purpose

The purpose of this IHS cooperative agreement is to further the IHS mission and goals related to providing quality health care to the AI/AN community through outreach and education efforts with a focus on improving Indian health care, promoting awareness, visibility, advocacy, training, technical assistance, and education efforts. This program includes the following nine components, as described in this announcement: ''Line Item 128 Health Education and Outreach funds;'' ''Health Care Policy Analysis and Review;'' ''Substance Abuse and Suicide Prevention (SASP) program;'' ''Domestic Violence Prevention (DVP) program,''—a national awareness, visibility, advocacy, outreach and education award; the ''Special Diabetes Program for Indians'' (SDPI); ''Tribal Budget Formulation Activities;'' the ''Affordable Care Act (ACA);'' and the ''Indian Health Care Improvement Act (IHCIA).''

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2023 is approximately $851,311. The award amount for the first budget year is anticipated to be between $246,311 and $851,311. The following estimates are anticipated: $246,311 is estimated for Line Item 128 Health Education and Outreach (this amount could vary based on Tribal shares assumptions); $125,000 for the Health Care Policy Analysis and Review; $150,000 for activities related to the SASP program; $50,000 for activities related to the DVP program; $75,000 associated with providing legislative education, outreach, and communication on the SDPI; $100,000 for Tribal Budget Formulation activities; and $105,000 for outreach and education activities on the ACA and the IHCIA. The 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 to applicants selected for funding under this announcement.

Anticipated Number of Awards

The IHS anticipates issuing one award under this program announcement.

Period of Performance

The period of performance is for 3 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. 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 for the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

A. The IHS assigned program official will work in partnership with the recipient in all decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, coordination of activities, any training, reports, budget, and evaluation. Collaboration includes data analysis, interpretation of findings, and reporting.

B. The IHS assigned program official will monitor the overall progress of the recipient's execution of the requirements of the award noted below, as well as their adherence to the terms and conditions of the cooperative agreement. This includes providing guidance for required reports, development of tools and other products, interpreting program findings, and assisting with evaluation and overcoming any slippages encountered.

C. The IHS assigned program official will also coordinate the following:

- Routinely scheduled conference calls.
- Appropriate dissemination of required reports to each participating IHS program.

D. The IHS will jointly, with the recipient, plan and set an agenda for events that:

- Shares the outcomes of the outreach and health education training provided.
- Fosters collaboration amongst the participating IHS program offices.
- Increases visibility for the partnership between the recipient and the IHS.

E. The IHS may provide guidance in preparing articles for publication and/or presentations of program successes, lessons learned and new findings.

F. Agency staff will review articles concerning HHS for accuracy and may, if requested by the recipient, provide relevant articles.

G. The IHS will communicate, via routine conference calls and meetings, individual or collective (all participating programs) site visits to the recipient.

H. The IHS will provide technical assistance to the recipient as requested.

I. Agency staff may, at the request of the recipient's board, participate on study groups, attend board meetings, and recommend topics for analysis and discussion.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity, an applicant must be a 501(c)(3) organization that has demonstrated expertise as follows:

- Representing Tribal governments and providing a variety of services to Tribes, area health boards, Tribal organizations, and Federal agencies, and

playing a major role in focusing attention on Indian health care needs, resulting in improved health outcomes for Tribes.

- Promoting and supporting health education for AI/AN people and coordinating efforts to inform AI/AN leaders of Federal decisions that affect Tribal government interests including the improvement of Indian health care.
- Administering national health policy and health programs.
- Maintaining a national AI/AN constituency and clearly supporting critical services and activities within the IHS mission of improving the quality of health care for AI/AN people.
- Supporting improved health care in Indian Country.

The Division of Grants Management (DGM) will notify any applicants deemed ineligible.

2. Additional Information on Eligibility

The IHS does not fund concurrent projects. If an applicant is successful under this announcement, any subsequent applications in response to other NIHOE announcements from the same applicant will not be funded. Applications on behalf of individuals (including sole proprietorships) and foreign organizations are not eligible and will be disqualified from competitive review and funding under this funding opportunity.

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.

3. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

4. 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. The DGM will notify the applicant.

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.

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 merit 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 merit 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 for each of the components listed in Section I Purpose). 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.
- One-page Timeframe or Work Plan Chart.
- Letters of Support from organization's Board of Directors.
- 501(c)(3) Certificate.
- 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 rate (IDC) 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: *https://harvester.census.gov/facdissem/Main.aspx.*

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 should be a separate document that is no more than 10 pages per component 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, the reviewers will be directed to ignore any content beyond this page limit. The 10-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, 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—Two Pages)

Section 1: Capabilities and Qualifications

Describe how the applicant has the expertise to provide outreach and education efforts on a continuing basis

regarding the pertinent changes and updates in health care for each of the nine components listed herein.

Part 2: Program Planning and Evaluation (Limit—Six Pages)

Section 1: Program Plans

Describe fully and clearly how the applicant plans to address the NIHOE requirements, including how the applicant plans to demonstrate improved health education and outreach services to all federally recognized Tribes for each of the components described herein. Include proposed timelines as appropriate and applicable.

Section 2: Program Evaluation

Describe fully and clearly how the outreach and education efforts will impact changes in knowledge and awareness in Tribal communities. Identify anticipated or expected benefits for the Tribal constituency.

Describe fully and clearly how each project objective will be evaluated, including a sample list of data variables to be collected (*i.e.,* health education and outreach services, response from community surveys, rating of program or project's ability to use technology, program or project's ability to cover costs of peripherals and software to manage grant). Identify anticipated or expected benefits for the Tribal community or target population.

Part 3: Program Report (Limit—Two Pages)

Section 1: Describe your organization's significant program activities and accomplishments over the past 5 years associated with the goals of this announcement.

Section 2: Describe major activities over the last 24 months.

Please identify and summarize recent major health related project activities of the work done regarding each of the four components during the project period.

B. Budget Narrative (Limit—Six 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 would 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 may be awarded per applicant.
- The purchase of food (*i.e.,* as supplies, for meetings or events, etc.) is not an allowable cost with this award funding and should not be included in the budget.

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.* 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. Applications that do not include a copy of the waiver approval from 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 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, the applicant 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

Organizations that are not registered with the System for Award Management (SAM) must access the SAM online registration through the SAM home page

at *https://sam.gov.* Organizations based in the United States (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 recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime recipient 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

A. Introduction and Need for Assistance (15 Points)

(1) Describe the organization's current health, education, and technical assistance operations as related to the broad spectrum of health needs of the AI/AN community. Include what programs and services are currently provided (*i.e.,* federally-funded, state-funded, etc.), any memorandums of agreement with other national, area, or local Indian health board organizations. This could also include HHS agencies that rely on the applicant as the primary gateway organization to AI/AN communities that are capable of providing the dissemination of health information. Include information regarding technologies currently used (*i.e.,* hardware, software, services, websites, etc.), and identify the source(s) of technical support for those technologies (*i.e.,* in-house staff, contractors, vendors, etc.). Include information regarding how long the applicant has been operating and its length of association/partnerships with area health boards, etc. (historical collaboration).

(2) Describe the organization's current technical assistance ability. Include what programs and services are currently provided, programs and services projected to be provided, memorandums of agreement with other national Indian organizations that deem the applicant as the primary source of health policy information for AI/AN communities, and memorandums of agreement with other area Indian health boards, etc.

(3) Describe the population to be served by the proposed projects.

(4) Identify all previous IHS cooperative agreement awards received, dates of funding and summaries of the projects' accomplishments. State how previous cooperative agreement funds facilitated education, training, and technical assistance nationwide for AI/AN people and relate the progression of health care information delivery and development relative to the current proposed projects. (Copies of reports will not be accepted.)

(5) Describe collaborative and supportive efforts with national, area, and local Indian health boards.

(6) Explain the need/reason for your proposed projects by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed projects. Explain how these gaps/weaknesses have been assessed.

(7) If the proposed projects include information technology (*i.e.,* hardware, software, etc.), provide further information regarding measures taken or to be taken that ensure the proposed projects will not create other gaps in services or infrastructure (*i.e.,* negatively or adversely affect IHS interface capability, Government Performance Results Act reporting requirements, contract reporting requirements, information technology compatibility, etc.), if applicable.

(8) Describe the effect of the proposed projects on current programs (*i.e.,* federally-funded, state-funded, etc.) and, if applicable, on current equipment (*i.e.,* hardware, software, services, etc.). Include the effect of the proposed projects on planned/anticipated programs and/or equipment.

(9) Describe how the projects relate to the purpose of the cooperative agreement by addressing the following: Identify how the proposed projects will address outreach and education regarding each of the components listed.

B. Project Objective(s), Work Plan and Approach (40 Points)

(1) Identify the proposed objective(s) for each of the nine components, as applicable. Objectives should be:

- Measurable and (if applicable) quantifiable.
- Results oriented.
- Time-limited.

Example: Issue quarterly newsletters, provide alerts, and quantify number of contacts with Tribes.

Goals must be clear and concise. Objectives must be measurable, feasible, and attainable for each of the selected projects.

(2) Address how the proposed projects will result in change or improvement in program operations or processes for each proposed project objective for all of the projects. Also address what tangible products, if any, are expected from the projects, (*i.e.,* policy analysis, outreach events, summits, etc.).

(3) Address the extent to which the proposed projects will provide, improve, or expand services that address the need(s) of the target population. Include a current strategic plan and business plan that includes the

expanded services. Include the plan(s) with the application submission.

(4) Submit a work plan that includes the following information.

- Provide the action steps on a timeline for accomplishing each of the projects' proposed objective(s).
- Identify who will perform the action steps.
- Identify who will supervise the action steps.
- Identify what tangible products will be produced during and at the end of the proposed projects' objective(s).
- Identify who will accept and/or approve work products during the duration of the proposed projects and at the end of the proposed projects.
- Include any training that will take place during the proposed projects and who will be attending the training.
- Include evaluation activities planned in the work plans.

(5) If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used).

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered on a timeline.

If a potential consultant/contractor has already been identified, please include a resume.

(6) Describe what updates will be required for the continued success of the proposed projects. Include when these updates are anticipated and where funds will come from to conduct the update and/or maintenance.

C. Program Evaluation (20 Points)

Each proposed objective requires an evaluation component to assess its progression and ensure its completion. Include the evaluation activities in the work plan.

Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work plan and activities of the project.

(1) For outcome evaluation, describe:

- What will the criteria be for determining success of each objective?
- What data will be collected to determine whether the objective was met?
- At what intervals will data be collected?
- Who will collect the data, and what are their qualifications?
- How will the data be analyzed?
- How will the results be used?

(2) For process evaluation, describe:

- How will each project be monitored and assessed for potential problems and needed quality improvements?
- Who will be responsible for monitoring and managing each project's improvements based on results of ongoing process improvements, and what are their qualifications?
- How will ongoing monitoring be used to improve the projects?
- Describe any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.
- How will the organization document what is learned throughout each of the projects' periods?

(3) Describe any evaluation efforts planned after the period of performance has ended.

(4) Describe the ultimate benefit to the AI/AN population that the applicant organization serves that will be derived from these projects.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the projects outlined in the work plan.

(1) Describe the organizational structure of the organization beyond health care activities, if applicable.

(2) Describe the ability of the organization to manage the proposed projects. Include information regarding similarly sized projects in scope and financial assistance, as well as other cooperative agreements/grants and projects successfully completed.

(3) Describe what equipment (*i.e.,* fax machine, phone, computer, etc.) and facility space (*i.e.,* office space) will be available for use during the proposed projects. Include information about any equipment not currently available that will be purchased through the cooperative agreement/grant.

(4) List key personnel who will work on the projects. Include title used in the work plans. Include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed projects. Resumes must indicate that the proposed staff member is qualified to carry out the proposed projects' activities. If a position is to be filled, indicate that information on the proposed position description.

(5) If personnel are to be only partially funded by this cooperative agreement, indicate the percentage of time to be allocated to the projects and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (10 Points)

This section should provide a clear estimate of the projects' program costs and justification for expenses for the entire period of performance. The budgets and budget narratives should be consistent with the tasks identified in the work plans.

(1) Provide a categorical budget for each of the 12-month budget periods requested for each of the nine components.

(2) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement.

(3) Explain in the budget narrative why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.,* equipment specifications, etc.).

Additional documents can be uploaded as Other Attachments in *Grants.gov*.

These include:

- Work plan, logic model, and/or time line 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 this funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Review Committee (RC) 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 RC and will not be funded. The DGM 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 Office of Direct Service and Contracting Tribes within 30 days of the conclusion of the RC 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 period, and period of performance. 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 part 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.

2. Indirect Costs

This section applies to all recipients 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 award 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 2 CFR 200.414(f) Indirect (F&A) costs,

> any non-Federal entity (NFE) [*i.e.,* applicant] that does not have a current negotiated 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 200.403, 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 can be used by applicants that have 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 award.

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 recipients 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 write to *DGM@ihs.gov.*

3. Reporting Requirements

The recipient 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 award, 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 recipient 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 120 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. Recipients 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. 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 recipients of Federal awards 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/.*

D. Non-Discrimination Legal Requirements for Awardees of Federal Financial Assistance (FFA)

The recipient must administer the project in compliance with Federal civil rights laws, where applicable, that prohibit discrimination on the basis of race, color, national origin, disability, age, and comply with applicable conscience protections. The recipient 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.*
- 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.

E. 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 recipients must disclose in writing, in a timely manner, to the IHS and to 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: 09E70, Rockville, MD 20857 (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, 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: Mr. Kenneth Coriz, Policy Analyst, ODSCT, Mail Stop, 8E17, 5600 Fishers Lane, Rockville, Maryland 20857, Phone: (301) 443–1104, Email: *Kenneth.Coriz@ihs.gov.*

2. Questions on awards management and fiscal matters may be directed to: Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Email: *DGM@ihs.gov.*

3. For technical assistance with *Grants.gov,* please contact the *Grants.gov* help desk at 800–518–4726, or by email at *support@grants.gov.*

4. For technical assistance with GrantSolutions, please contact the GrantSolutions help desk at (866) 577–0771, or by email at *help@grantsolutions.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients 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.

P. Benjamin Smith,

Deputy Director, Indian Health Service.

[FR Doc. 2023–09958 Filed 5–9–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Information Collection: Indian Self-Determination and Education Assistance Act Contracts

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for extension of approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on the information collection titled, ''Indian Self-Determination and Education Assistance Act Contracts,'' Office of Management and Budget (OMB) Control Number 0917–0037. The IHS is requesting OMB to approve an extension for this collection, which expires on August 31, 2023.

DATES: *Comment Due Date:* July 10, 2023. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

ADDRESSES: Send your written comments or requests to obtain more information to Ms. Terri Schmidt, Director, IHS Office of Direct Services and Contracting Tribes, by email to *Terri.Schmidt@ihs.gov.*

SUPPLEMENTARY INFORMATION: This notice announces our intent to seek an extension of the collection already approved by OMB, and to solicit comments on specific aspects of the information collection. The purpose of this notice is to allow 60 days for public comment to be submitted to the IHS. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2023–0001).

Information Collection Title: Indian Self-Determination and Education Assistance Act Contracts, 25 CFR part 900, 0917–0037.

Type of Information Collection Request: Extension of currently approved collection. *Form Numbers:* 0917–0037.

Need and Use of Information Collection: In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act (ISDEAA) to authorize Tribes and Tribal organizations (T/TO) to assume control of certain Federal programs, *e.g.,* health care programs that certain Federal agencies would otherwise provide to American Indians and Alaska Natives.

The T/TO that intend to establish a new or expanded Title I self-determination contract with the IHS are required to provide proposal information identified at 25 CFR 900.8, which describes what a contract proposal must contain. This information is used by the IHS to determine applicant eligibility, evaluate applicant capabilities, protect the service population, and safeguard Federal funds and resources.

Subpart C contains provisions relating to the initial contract proposal contents (*i.e.,* 25 CFR 900.8). The proposal contents consist of required items that must be included in a proposal for a new or expanded program. These items include basic information about the T/TO and program to be contracted, such as: name and address; authorizing resolution; date of submission of proposal; description of geographical service area; estimated number of people to be served; brief statement of program functions, services or activities to be performed; description of the proposed program; financial, procurement, and property management standards; description of reports to be provided; staff qualifications, if any; budget information; and waiver information; as requested. The information is collected at the time the T/TO makes an initial application to contract a program.

Subpart F contains the minimum standards for the management systems used by the T/TO when carrying out a self-determination contract. Sections 900.40–44, 48–49, 53, 55, and 60 discuss the information and record keeping requirements of the T/TO regarding the financial, procurement, and property management standards.

Subpart G provides for the negotiation of all reporting and data requirements between the T/TO and the Secretary (*e.g.,* 25 CFR 900.65). The information collected is directly related to the operation of the program and is negotiated on a contract by contract basis. The IHS uses the information to monitor contract operations and determine if satisfactory services are being provided. The information is collected and reported during the operation of the contract based on the terms negotiated in each contract.

Subpart I establishes procedures regarding the donation of excess and surplus Federal property to T/TO, and the acquisition of property with funds provided under a self-determination contract. This subpart addresses the procedures to be followed when the T/TO wish to acquire excess IHS property, and excess or surplus government property from other agencies (*e.g.,* 25 CFR 900.97). This subpart also addresses the process for T/TO to

request that real property be placed ''in trust.'' The IHS uses the information to determine what property the T/TO want to acquire and how the property will be used. The information is collected and reported when the T/TO submit a request for excess and surplus federal property.

Subpart J addresses the process by which the T/TO may contract for construction activities and sets forth minimum requirements for contract proposals (*e.g.,* 25 CFR 900.110–133). Among other things, the subpart requires the T/TO to submit descriptions of standards when proposing to contract a construction project. These standards include use of licensed and qualified architects and engineers; applicable health and safety standards; adherence to applicable Federal, state, or Tribal building codes and engineering standards; structural integrity; accountability for funds; adequate competition for sub-contracting under Tribal or other applicable law; the commencement, performance, and completion of the contract; adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals); the use of proper materials and workmanship; necessary inspection and testing; and a process for changes, modifications, stop work and termination of the work when warranted. In addition to the above, additional information is required when T/TO are proposing to contract design and construction activity.

Subpart L (25 CFR 900.150 *et seq.*) provides the appeal procedures available to the T/TO. Section 900.158 explains how to file a notice of appeal with the Interior Board of Indian Appeals (IBIA) and what the notice should contain. The IBIA receives the notice of appeal from the T/TO; and the IHS receives a copy of information sent to the IBIA; and section 900.166 provides instructions for submitting a written statement of objections concerning an Administrative Law Judge's decision. The information is collected and reported when the T/TO request an appeal conference, file a notice of appeal, or request an appeal time extension, or submit objections for an Administrative Law Judge's decision (*i.e.,* 900.166).

Subpart N covers the process for post-award contract disputes (*e.g.,* 25 CFR 900.215–230). Section 900.219 explains how the T/TO submit a Contract Disputes Act (CDA) claim. The IHS needs and uses the information to evaluate and approve or disapprove a CDA claim. The information is collected and reported as needed when such a claim is filed. The CDA, 41 U.S.C. 7101 *et seq.,* sets forth the information required to be submitted for a claim. The regulations, including at 900.220, only restate those statutory requirements and do not require any additional information.

Affected Public: Federally recognized Indian Tribes and Tribal organizations.

Type of Respondents: Governments and individuals.

Estimated Number of Responses: 243.

Estimated Time per Response: An average of 30 hours per response.

Frequency of Response: Each time programs, functions, services, or activities are contracted from the IHS under the ISDEAA, currently 243 per year.

Estimated Total Annual Hour Burden: 7,290.

There are no capital costs, operating costs and/or maintenance costs to respondents.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) Whether the agency processes the information collected in a useful and timely fashion;

(c) The accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) Whether the methodology and assumptions used to determine the estimates are logical;

(e) Ways to enhance the quality, utility, and clarity of the information being collected; and

(f) Ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

P. Benjamin Smith,

Deputy Director, Indian Health Service.

[FR Doc. 2023–09980 Filed 5–9–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 6396–N–01]

Notice of HUD Vacant Loan Sales (HVLS 2023–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice announces HUD's intention to competitively offer approximately 1,237 reverse mortgage notes secured by vacant properties with a loan balance of approximately $318 million. The sale will consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse. The Secretary will prioritize up to 50 percent of the offered assets for award to nonprofit organizations or governmental entity bidders with a documented housing mission. This notice also generally describes the bidding process for the sale and certain entities who are ineligible to bid. This is the tenth sale offering of its type and will be held on May 23, 2023.

DATES: For this sale action, the Bidder's Information Package (BIP) will be made available to qualified bidders on or about April 24, 2023. Bids for the HVLS 2023–1 sale will be accepted on the Bid Date of May 23, 2023 prior to 12:00 ET (Bid Date). HUD anticipates that award(s) will be made on or about May 25, 2023 (the Award Date).

ADDRESSES: To become an eligible bidder and receive the BIP for the May sale, prospective bidders must complete, execute, and submit a Confidentiality Agreement and Qualification Statement acceptable to HUD. The documents will be available in preview form with free login on the Transaction Specialist (TS), Falcon Capital Advisors, website: *http://www.falconassetsales.com.* This website contains information and links to register for the sale and electronically complete and submit documents.

If you do not submit electronically, please submit executed documents via mail or facsimile to Falcon Capital Advisors: Falcon Capital Advisors, 427 N Lee Street, Alexandria, VA 22314, Attention: Glenn Ervin, HUD HVLS Loan Sale Coordinator. eFax: 1–202–393–4125.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Office of Asset Sales, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone 202–708–2625, extension 3927 (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: This notice announces HUD's intention to sell in HVLS 2023–1 due and payable Secretary-held reverse mortgage loans. HUD is offering 1,237 reverse mortgage notes with a loan balance of approximately $318 million. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

A listing of the mortgage loans will be included in the due diligence materials made available to eligible bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer eligible bidders an opportunity to bid competitively on the mortgage loans.

The Bidding Process

The BIP describes in detail the procedure for bidding in HVLS 2023–1. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement for HVLS 2023–1 (CAA). The CAA will contain first look requirements and mission outcome goals.

HUD will evaluate the bids submitted and determine the successful bids, in terms of the best value to HUD, in its sole and absolute discretion. If a bidder is successful, it will be required to submit a deposit which will be calculated based upon the total dollar value of the bidder's potential award. Award will be contingent on receiving the deposit in the timeframe outlined in the deposit letter. The deposit amount will be applied towards the purchase price at settlement.

This notice provides some of the basic terms of sale. The CAA will be released in the BIP or BIP Supplement, as applicable. These documents provide comprehensive contractual terms and conditions to which eligible bidders will acknowledge and agree. To ensure a competitive bidding process, the terms of the bidding process and the CAA are not subject to negotiation.

Due Diligence Review

The BIP describes how eligible bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove mortgage loans from a sale at any time prior to the Award Date and the settlement date for the mortgage loans. HUD also reserves the right to reject any and all bids, in whole or in part, and include any reverse mortgage loans in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer no later than 60 days after the Award Date.

The reverse mortgage loans offered for sale were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to HUD's authority in section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the reverse mortgage loans for this specific sale transaction. For the HVLS 2023–1 sale, HUD has determined that this method of sale optimizes HUD's return on the sale of these reverse mortgage loans, affords the greatest opportunity for all eligible bidders to bid on the reverse mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the due and payable reverse mortgage loans.

Bidder Ineligibility

In order to bid in HVLS 2023–1 as an eligible bidder, a prospective bidder must complete, execute, and submit a Confidentiality Agreement, a Qualification Statement (HUD–9611), and an Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), as applicable (collectively, for these bidders, the Qualification Statement (HUD–9611) and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), as applicable, shall be defined as the Qualification Statement) that is acceptable to HUD. Eligible bidders seeking to be awarded loans on a priority basis must submit the Confidentiality Agreement, Qualification Statement (HUD–9611), and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), and Housing Mission Supplemental Certification (collectively, for these bidders, the Qualification Statement (HUD–9611) and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), and Housing Mission Supplemental Certification shall be defined as the Qualification Statement), that is acceptable to HUD. In the Qualification Statement, the prospective bidder must provide certain representations and warranties regarding the prospective bidder, including (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or sub-contractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the ''Related Entities''), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans included in HVLS 2023–1 if the prospective bidder, its Related Entities, or its repurchase lenders, are any of the following, unless other exceptions apply as provided for in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred, or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state, or local government agency, division, or department;

4. An entity that has had its right to act as a Government National Mortgage Association (''Ginnie Mae'') issuer terminated and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a Conveyance, Assignment and Assumption Agreement executed for any previous mortgage loan sale of HUD;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor, and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

10. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 10 to assist in preparing any of its bids on the mortgage loans.

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid, or

(b) Is any principal of any entity or individual described in the preceding sentence;

(c) Any employee or subcontractor of such entity or individual during that six-month period; or

(d) Any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan.

In addition, for those eligible bidders seeking to be awarded mortgage loans on a priority basis and signing the Housing Mission Supplemental Certification, each prospective bidder must provide documentation and certify that its charitable or government purpose has a qualifying housing mission and that its participation in the sale is a furtherance of that housing mission.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2023–1, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the mortgage loans. Even if HUD elects not to publicly disclose any information relating to HVLS 2023–1, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HVLS 2023–1 and does not establish HUD's policy for the sale of other mortgage loans.

Julia R. Gordon,

Assistant Secretary for Housing FHA Commissioner.

[FR Doc. 2023–09871 Filed 5–9–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7076–N–12]

60-Day Notice of Proposed Information Collection: Consolidated Public Housing Certification of Completion; OMB Control No.: 2577–0021

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 10, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; or email at *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard, *Colette.Pollard@hud.gov,* telephone 202–402–3400. 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 available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Consolidated Public Housing Certification of Completion.

OMB Approval Number: 2577–0021.

Type of Request: Reinstatement, without change, of previously approved collection for which approval has expired.

Form Number: None.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) certify to HUD that contract requirements and standards have been satisfied in a project development and HUD may authorize payment of funds due the contractor/developer. The Certification is submitted by a Public Housing Agency (PHA) to indicate to HUD that contract requirements have been satisfied for a specific project.

Respondents: Public Housing Authorities.

Estimated Number of Respondents: 58.

Estimated Number of Responses: 58.
Frequency of Response: 1 per project.
Average Hours per Response: 1 hr.
Total Estimated Burdens: 58 hrs.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Certification	58	1	58	1.0	58	$40	$2,320
Total	58	1	58	1.0	58	40	2,320

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Steven Durham,

Acting Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2023–09938 Filed 5–9–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035841; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined they are reasonably believed to be related to lineal descendants in this Notice. The human remains were collected at the Sherman Institute, Riverside County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after June 9, 2023.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual, identified as ''Miwok,'' who was recorded as being 18 years old. Samuel Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Lineal Descent

The human remains and associated funerary objects in this notice are connected to an identifiable individual whose descendants can be traced directly and without interruption by means of a traditional kinship system or by the common law system of descendance.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There are three direct lineal descendants of the identifiable individual described in this notice.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the lineal descendants, Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 9, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the lineal descendants of the individual identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 3, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–09895 Filed 5–9–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035795; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the U.S. Indian School, Flandreau, in Moody County, SD, and the Carson Indian School, Stewart, in Carson City County, NV.

DATES: Repatriation of the human remains in this notice may occur on or after June 9, 2023.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, two individuals were collected at the U.S. Indian School, Flandreau, in Moody County, SD. The U.S. Indian School in Flandreau is also known as the Flandreau Indian School. The human remains are hair clippings collected from two young men recorded as being 17 and 19 years old and identified as ''Oneida.'' George E. Peters took the hair clippings at the U.S. Indian School in Flandreau likely while he was superintendent of the school from 1929 to 1931. Peters sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual were collected at the Carson Indian School, Stewart, in Carson City County, NV. The Carson Indian School is also known as the Stewart Indian School and the Carson Institute. The human remains are hair clippings collected from a young man recorded as being 17 years old and identified as ''Oneida.'' Frederick Snyder took the hair clippings at the Carson Indian School between 1930 and 1933. Snyder was the superintendent of the Carson Indian School from 1919 to 1934. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Oneida Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 9, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 1, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–09894 Filed 5–9–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035799; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the U.S. Indian Vocational School, Albuquerque, in Bernalillo County, NM.

DATES: Repatriation of the human remains in this notice may occur on or after June 9, 2023.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology,

Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, four individuals were collected at the U.S. Indian Vocational School, Albuquerque, in Bernalillo County, NM. The human remains are hair clippings collected from two individuals recorded as being 16 years old and identified as ''Pueblo, Santa Ana''; one individual recorded as being 16 years old and identified as ''Santa Ana''; and one individual recorded as being 15 years old and identified as ''Santa Ana.'' Reuben Perry took the hair clippings at the U.S. Indian Vocational School in Albuquerque between 1930 and 1933. Perry sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Pueblo of Santa Ana, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 9, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 3, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–09899 Filed 5–9–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035796; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Sherman Institute, Riverside County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after June 9, 2023.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, three individuals were collected at the Sherman Institute in Riverside County, CA. The human remains are hair clippings collected from individuals identified as ''Yuma.'' Two individuals were recorded as being 20 years old and one individual was recorded as being 16 years old. Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains

described in this notice and the Quechan Tribe of Fort Yuma Indian Reservation, California & Arizona.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 9, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 3, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–09896 Filed 5–9–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035798; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Fort Mohave Indian School in Mohave County, AZ, and the Sherman Institute in Riverside County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after June 9, 2023.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were collected at the Sherman Institute in Riverside County, CA. The human remains are hair clippings collected from one individual who was recorded as being an 18-year-old female, identified as ''Papago.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual were collected at the Fort Mohave Indian School in Mohave County, AZ. The human remains are hair clippings collected from one individual who was recorded as being a 36-year-old male, identified as ''Papago.'' Timothy G. Mackey took the hair clippings at the Fort Mohave Indian School between 1930 and 1933. Mackey sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Tohono O'odham Nation of Arizona.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 9, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 3, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–09898 Filed 5–9–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035797; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Chilocco Indian Agricultural School, Kay County, OK, and the Pawnee Indian Reservation in Pawnee County, OK.

DATES: Repatriation of the human remains in this notice may occur on or after June 9, 2023.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were collected at the Chilocco Indian Agricultural School, Kay County, OK. The human remains are hair clippings collected from one individual who was recorded as being 16 years old and identified as ''Pawnee.'' Lawrence E. Caroll took the hair clippings at the Chilocco Indian Agricultural School between 1930 and 1933. Caroll sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, nine individuals were collected at the Pawnee Indian Reservation in Pawnee County, OK. The human remains are hair clippings collected from four individuals who were recorded as being 12 years old, three individuals recorded as being 13 years old, and two individuals recorded as being 14 years old; all nine individuals were identified as ''Pawnee.'' Arvel R. Snyder took the hair clippings at the Pawnee Indian Reservation between 1930 and 1933. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Pawnee Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 9, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 3, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–09897 Filed 5–9–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035800; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Government School in Chitina, Valdez-Cordova County, AK.

DATES: Repatriation of the human remains in this notice may occur on or after June 9, 2023.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including

the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, 20 individuals were collected at the Government School, Chitina, in Valdez-Cordova County, AK. The human remains are hair clippings collected from 20 individuals all identified as ''Copper River Indians'': two individuals recorded as being 14 years old; two individuals recorded as being 16 years old; one individual recorded as being 17 years old; one individual recorded as being 18 years old; one individual recorded as being 19 years old; one individual recorded as being 23 years old; one individual recorded as being 24 years old; one individual recorded as being 27 years old; one individual recorded as being 30 years old; one individual recorded as being 35 years old; one individual recorded as being 42 years old; one individual recorded as being 46 years old; one individual recorded as being 48 years old; two individuals recorded as being 50 years old; one individual recorded as being 53 years old; one individual recorded as being 56 years old; and one individual recorded as being 70 years old. An unknown collector described as a ''Government teacher'' took the hair clippings at the Government School in Chitina between 1930 and 1933. The collector sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Native Village of Chitina.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 9, 2023. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 3, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–09900 Filed 5–9–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04093000, XXXR4081G3, RX.05940913.FY19400]

Public Meeting of the Glen Canyon Dam Adaptive Management Work Group; Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Reclamation published a document in the **Federal Register** on May 1, 2023, announcing the Glen Canyon Dam Adaptive Management Work Group's May 2023 meeting. The document contained an incorrect time for the meeting and an incorrect meeting access phone number.

FOR FURTHER INFORMATION CONTACT: Mr. William Stewart, Bureau of Reclamation, telephone (385) 622–2179, email at *wstewart@usbr.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:

Correction

In the **Federal Register** of May 1, 2023, in FR Doc. 2023–09157, on page 26590, in the second column, correct the **DATES** and **ADDRESSES** captions to read:

DATES: The meeting will be held virtually on Wednesday, May 17, 2023, beginning at 9 a.m. and concluding at 3 p.m. (MDT).

ADDRESSES: The virtual meeting may be accessed at: *https://rec.webex.com/rec/j.php?MTID=m069d7dac9f042ce419b775a5d2b462ff;* Meeting Number: 2763 284 1693, Password: May17; Phone Number: (415) 527–5035.

To view a final copy of the agenda and documents related to the May meeting, please visit Reclamation's website at *https://www.usbr.gov/uc/progact/amp/amwg.html.*

William Stewart,

Adaptive Management Group Chief, Resources Management Division, Upper Colorado Basin—Interior Region 7.

[FR Doc. 2023–09970 Filed 5–9–23; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1265]

Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same; Notice of a Commission Determination To Reconsider the Original Remedial Orders and To Issue Orders Modifying Those Remedial Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to reconsider the original remedial orders issued in this investigation and to issue orders modifying those remedial orders.

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on May 19, 2021, based on a complaint filed by DISH DBS Corporation of Englewood, Colorado; DISH Technologies L.L.C. of Englewood, Colorado; and Sling TV L.L.C. of Englewood, Colorado (collectively, ''DISH'' or ''Complainants''). 86 FR 27106–07 (May 19, 2021). The complaint alleged a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fitness devices, streaming components thereof, and systems containing same by reason of infringement of certain claims of U.S. Patent Nos. 9,407,564 (''the '564 patent''); 10,951,680 (''the '680 patent''); 10,469,554 (''the '554 patent''); 10,469,555 (''the '555 patent''); and 10,757,156 (''the '156 patent''). *Id.* at 27106. The notice of investigation named as respondents ICON Health & Fitness, Inc., of Logan, Utah (''ICON'' or ''iFIT Inc.''); FreeMotion Fitness, Inc., of Logan, Utah (''FreeMotion''); NordicTrack, Inc., of Logan, Utah (collectively with ICON and FreeMotion, ''the iFit Respondents''); lululemon athletica inc., of Vancouver, Canada (''lululemon''); Curiouser Products Inc. d/b/a MIRROR, of New York, New York (collectively with lululemon, ''MIRROR''); and Peloton Interactive, Inc., of New York, New York (''Peloton'') (collectively, ''Respondents''). *Id.;* Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm'n Notice (Dec. 6, 2021), 86 FR 70532 (Dec. 10, 2021). The Commission's Office of Unfair Import Investigations (''OUII'') also was named as a party in this investigation. 86 FR at 27106.

Prior to the issuance of the final initial determination (''Final ID''), the complaint and notice of investigation were amended to change the name of ICON to iFIT Inc. Order No. 14 (Nov. 4, 2021), *unreviewed by* Comm'n Notice (Dec. 6, 2021), 86 FR at 70532. The investigation was also terminated in part as to claims 6, 11, and 12 of the '156 patent, claim 22 of the '554 patent, and claim 17 of the '555 patent. Order No. 15 (Nov. 19, 2021), *unreviewed by* Comm'n Notice (Dec. 20, 2021). Moreover, claims 9 and 12 of the '156 patent, claim 19 of the '554 patent, claims 12 and 13 of the '555 patent, and claim 6 of the '564 patent were no longer asserted against the iFit Respondents and Peloton. *Id.* The investigation was further terminated as to claims 6–8, 10, and 13–15 of the '564 patent, claims 3 and 6–12 of the '156 patent, claims 18, 19, 21–25, and 30 of the '554 patent, claims 12, 13, 16, 17, 26, and 27 of the '555 patent, and all asserted claims of the '680 patent. Order No. 21 (Mar. 3, 2022), *unreviewed by* Comm'n Notice (Mar. 23, 2022).

At the time of the Final ID, DISH asserted the following claims against MIRROR and the iFit Respondents: claims 1, 3, and 5 of the '564 patent; claims 16, 17 and 20 of the '554 patent; claims 10, 11, 14, and 15 of the '555 patent; and claims 1, 4, and 5 of the '156 patent. DISH also asserted the following claims against Peloton: claims 1 and 3–5 of the '564 patent; claims 16, 17, and 20 of the '554 patent; claims 10, 11, 14, and 15 of the '555 patent; and claims 1, 2, 4, and 5 of the '156 patent.

On September 9, 2022, the Chief Administrative Law Judge issued the Final ID, which found that Respondents violated section 337.

On September 23, 2022, Respondents and OUII filed petitions for review of the Final ID. On October 3, 2022, DISH and OUII filed responses to the petitions.

On November 18, 2022, the Commission determined to review the Final ID in part. 87 FR 72510, 72510–12 (Nov. 25, 2022).

On February 13, 2023, MIRROR and DISH filed a joint, unopposed motion to partially terminate the investigation as to MIRROR based on a settlement agreement between DISH and MIRROR.

On March 8, 2023, the Commission issued its final determination, finding respondents Peloton, iFIT Inc., FreeMotion, and NordicTrack in violation of section 337 as to the asserted claims of the '156, '554, and '555 patents, but not as to the asserted claims of the '564 patent. 88 FR 15736–38 (Mar. 14, 2023). As a remedy for that violation, the Commission issued a limited exclusion order and cease and desist orders directed to Peloton, iFIT Inc., FreeMotion, and NordicTrack. The remedial orders included repair and replacement exemptions, which included an exemption for parts necessary to service and repair covered products purchased by consumers prior to the date of the orders, and an exemption for covered products that are replacements for covered products purchased by consumers prior to the date of the orders, provided that replacement is pursuant to a warranty for the replaced article. The Commission imposed a bond of zero (0%) (*i.e.,* no bond). *Id.* at 15738. The Commission's final determination also granted the motion to terminate the investigation as to MIRROR. *Id.* at 15737.

On March 22, 2023, Peloton filed a petition for reconsideration of the limited exclusion order and its cease and desist order and requested expedited consideration of the same (the ''Petition''). Peloton's Petition asks the Commission to modify the remedial orders so that the repair and replacement exemptions apply to products purchased prior to the expiration of the 60-day period of Presidential review.

On March 27, 2023, OUII filed a response supporting the Petition. On March 29, 2023, DISH filed a response opposing the Petition.

On April 7, 2023, the iFit Respondents filed a Notice of Joinder, asking to join in the relief requested by Respondent Peloton's Petition. On April 12, 2023, Complainants filed a motion for leave to respond to Respondents' Notice of Joinder and their Response to Respondents' Notice of Joinder, opposing joinder.

Having reviewed the parties' submissions, it has come to the Commission's attention that the mitigation of harm to U.S. consumers underlying the service and repair exemptions in the remedial orders in this investigation did not extend to U.S. consumers who have purchased or may purchase covered products during the Presidential review period. Accordingly, the Commission has determined *sua sponte* to reconsider the remedial orders originally issued in this investigation and to issue orders modifying those remedial orders to reduce their impact on those U.S. consumers as well.[1] [2] 19

[1] Commissioner Schmidtlein agrees with the majority determination *sua sponte* to reconsider the remedial orders originally issued in this investigation and to issue orders modifying those remedial orders to reduce their impact on U.S. consumers. In addition, consistent with her

Continued

CFR 210.47. In light of the Commission's decision, the Commission has determined that Peloton's Petition; the iFit Respondents' Notice of Joinder; and Complainants' motion for leave to respond to Respondents' Notice of Joinder are moot.[3] The Commission's Orders are issued concurrently herewith.

The Commission vote for this determination took place on May 5, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 5, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–09953 Filed 5–9–23; 8:45 am]

BILLING CODE 7020–02–P

previously expressed views, she would also extend the exemption for replacement of the whole article in this case to include those that are not currently under warranty. *See* Comm'n Op. at 91 n.53 (Mar. 23, 2023) (Public Version).

[2] Commissioner Kearns does not join in the decision to reconsider and modify the remedial orders. At the time of the Commission's final determination in this investigation, he found that the appropriate way to mitigate harm to U.S. consumers was through an exemption for repair/replacement of products purchased by consumers prior to the date of the Commission's determination of violation and issuance of the orders. Having made that determination, based on the record and parties' arguments, he sees no reason to reconsider it. He notes that, in some prior investigations, the Commission has similarly granted a repair exemption that covered only products purchased by the date of the order. *See, e.g., Certain Variable Speed Wind Turbine Generators and Components Thereof,* Inv. No. 337–TA–1218, Limited Exclusion Order at 2 (Jan. 18, 2022); *Certain Magnetic Data Storage Tapes and Cartridges Containing the Same,* Inv. No. 337–TA–1012, Limited Exclusion Order at 2 (Mar. 8, 2018). Finally, he notes that he does not view the Petition as meeting the requirements set forth in Commission Rule 210.47 (19 CFR 210.47).

[3] Commissioner Karpel would deny Peloton's Petition for failure to meet the standard set forth in Rule 210.47 of the Commission's Rules of Practice and Procedure. 19 CFR 210.47 (requiring petitions for reconsideration to be ''confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments''). Commissioner Karpel joins the Commission's decision to *sua sponte* reconsider the original remedial orders issued in this investigation and to issue orders modifying the remedial orders previously issued in this investigation to reduce their impact on those U.S. consumers. However, consistent with her views stated in the Commission Opinion, Commissioner Karpel would modify the remedial orders by extending the service and repair exemption to permit Respondents to import and use component parts for service and repair of damaged fitness devices that are or have been purchased by U.S. consumers during the Presidential review period, but would not permit Respondents to supply as a replacement the identical fitness device purchased by the consumer during this period for the reasons she stated in the Commission Opinion. *See* Comm'n Op. at 89 n.51 (Mar. 8, 2023).

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Photovoltaic Connectors and Components Thereof, DN 3680;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Shoals Technologies Group, LLC on May 4, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain photovoltaic connectors and components thereof. The complaint names as respondents: Hikam America, Inc., of Chula Vista, CA; Hikam Electrónica de México, S.A. de C.V., of Baja California; Hikam Tecnologia de Sinaloa of Mexico; Hewtech Philippines Corp. of Philippines; Hewtech Philippines Electronics Corp. of Philippines; Hewtech (Shenzhen) Electronics Co., Ltd. of China; Voltage, LLC of Chapel Hill, NC; and Ningbo Voltage Smart Production Co. of China. The complainant requests that the Commission issue limited exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues

must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3680) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 5, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023–09963 Filed 5–9–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1140–0104]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Application for Alternate Means of Identification of Firearm(s) (Marking Variance)—ATF Form 3311.4

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Daniel Hoffman, Chief, Firearms Technology Industry Services Branch, by mail at Firearms & Ammunition Technology Division, 244 Needy Rd., Suite 1600, Martinsburg, WV 25405, email at *Fire_tech@atf.gov* or telephone at 304–616–4300.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: ATF Form 3311.4 provides a uniform mean for industry members with a valid Federal importer or manufacturer license, to request firearms marking variance.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Application for Alternate Means of Identification of Firearm(s) (Marking Variance)—ATF Form 3311.4.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 3311.4. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector—businesses or other for-profits institutions. The obligation to respond is required to obtain or retain a benefit.

5. *An estimate of the total number of respondents, frequency, and the amount of time estimated for an average respondent to respond:* An estimated 2,064 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the*

collection: The estimated annual public burden associated with this collection is 1,032 hours, which is equal to 2,064 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes).

7. *An estimate of the total cost burden associated with the collection:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
ATF Form 3311.4	2,064	1	2,064	.5	1,032
Unduplicated Totals	2,064		2,064		1,032

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 4, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–09873 Filed 5–9–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0012]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until July 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Melissa Mason, Supervisory Program Analyst/COR, National Firearms Division, by mail at 244 Needy Road, Martinsburg, West Virginia 25405, email at *NFAOMBCOMMENTS@ATF.GOV,* or telephone at 304–616–4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2) is required of (1) a person who is qualified to manufacture National Firearms Act (NFA) firearms, or (2) a person who is qualified to import NFA firearms to register manufactured or imported NFA firearm(s). This revisions to this collection include an increase in the total public burden hours, responses, and associated costs since the last renewal in 2020.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Notice of Firearms Manufactured or Imported.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 2 (5320.2). Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected public: Federal Government,* State, local and Tribal governments, private sector—businesses or other for-profit institutions. The obligation to respond is mandatory per 27 CFR part 555.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,634 respondents will utilize the form approximately 7.68 times annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 10,115 hours, which is equal to 2,634 (total respondents) * 7.68 (# of response per respondent) * .5 (30 minutes).

7. *An estimate of the total cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
ATF Form 2 (5320.2)	2,634	7.68	20,229	30	10,115
Unduplicated Totals	2,634		20,229		10,115

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 4, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–09888 Filed 5–9–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Nonmonetary Determination Activity Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before June 9, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection is authorized under the Social Security Act, Section 303(a)(6). The data reported on the ETA 207 provides current information on the volume and nature of nonmonetary determinations and denials under state Unemployment Insurance (UI), Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Service Members (UCX) programs. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 17, 2023 (88 FR 2638).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Nonmonetary Determination Activity Report.

OMB Control Number: 1205–0150.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 424.

Total Estimated Annual Time Burden: 1,696 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: May 4, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–09913 Filed 5–9–23; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–047]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the National Aeronautics and Space Administration is providing public notice of a modification to a previously announced system of records, NASA Freedom of Information Act System, NASA 10FOIA. This notice updates formats and retention of records, their retrievability, and records access, notification, and contesting procedures. It updates locations and incorporates NASA Standard Routine Uses that were previously published separately from, and cited by reference in, this and other NASA systems of records notices. This notice also adds two new routine uses unique to this system, as set forth below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief

Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: This system notice includes minor revisions to NASA's existing system of records notice to bring its format into compliance with OMB guidance; and to update records access, notification, and contesting procedures consistent with NASA Privacy Act regulations. Significant changes include update of system location to reflect a cloud location, sub-system managers, and applicable retention schedule for the records. It clarifies data fields by which records are retrieved and provides an explanation that any records exempted under other systems of records will carry those exemptions if entered this FOIA system. This notice also adds two new routine uses unique to these records. Finally, it incorporates in whole, as appropriate, information formerly published separately in the **Federal Register** as appendix A, Location Numbers and Mailing Addresses of NASA Installations at which Records are Located, and appendix B, Standard Routine Uses—NASA, and removes references to ''Appendix A'' and ''Appendix B.''

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

NASA Freedom of Information Act System, NASA 10FOIA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

- Mary W. Jackson NASA Headquarters, National Aeronautics and Space Administration (NASA), Washington, DC 20546–0001.
- *Amazon Web Services (AWS):* 410 Terry Avenue North, Seattle, WA 98109.

SYSTEM MANAGER(S):

- *System Manager:* Principal Agency FOIA Officer, Office of Communications, Mary W. Jackson NASA Headquarters, National Aeronautics and Space Administration (NASA), Washington, DC 20546–0001.
- *Subsystem Managers:* See *https://www.nasa.gov/FOIA/Contacts.html* for a list of NASA FOIA Offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- 51 U.S.C. 20113(a).
- 44 U.S.C. 3101.
- 5 U.S.C. 552.
- 5 U.S.C. 552a.
- 14 CFR part 1206.

PURPOSE(S) OF THE SYSTEM:

Records in this system are maintained for the purpose of processing and tracking access requests and administrative appeals, and those received via referral or consultation from another agency under the FOIA and Privacy Act; for the purpose of maintaining a FOIA or Privacy Act administrative record regarding Agency action on such requests and appeals; and for the Agency in carrying out any other responsibilities under the FOIA and Privacy Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals or their representatives who have submitted Freedom of Information Act (FOIA)/Privacy Act (PA) requests for records and/or FOIA administrative appeals with NASA; (2) individuals whose requests for records have been sent for consultation or referred to the Agency by other government agencies; (3) individuals who are the subject of such requests and appeals; (4) individuals who file litigation based on their requests; Department of Justice or other government litigators; (5) and/or the NASA personnel assigned to handle such requests and appeals. Certain information about FOIA requestors, such as requesters' names and a description of the requested records is not exempt under the FOIA and is released to outside entities who request such information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records created, received via referral or consultation from another agency, or compiled in response to FOIA, FOIA/PA or PA requests for records or subsequent administrative appeals or litigations brought under the FOIA and Privacy Act and may include: The requester's name, address, telephone number, email address; the original requests and administrative appeals; responses to such requests and appeals; all related memoranda, correspondence, notes and other related or supporting documentation, and in some instances copies of requested records and records under administrative appeal.

RECORD SOURCE CATEGORIES:

Records are obtained from those individuals who submit initial requests and administrative appeals pursuant to the FOIA and the Privacy Act, or who file litigation regarding such requests and appeals; the agency records searched in the process of responding to such requests and appeals; Agency personnel assigned to handle such requests, appeals, and/or litigation; other agencies or entities that have referred to NASA requests concerning NASA records, or that have consulted with NASA regarding handling of particular requests; and submitters or subjects of records or information that have provided assistance to NASA in making access or amendment determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. Information in this system may be disclosed:

1. To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

2. To the Office of Management and Budget (OMB) or the Department of Justice (DOJ) to obtain advice regarding statutory and other requirements under the FOIA or Privacy Act.

In addition, information may be disclosed under the following NASA Standard Routine Uses:

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information

or other pertinent information, such as current licenses, if necessary, to obtain information relevant to a NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when (a) NASA, or any component thereof; or (b) any employee of NASA in his or her official capacity; or (c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in electronic and paper formats.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information is retrieved by the name of the requester or appellant; or the FOIA tracking number assigned to the request or appeal.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with guidelines defined in NASA Records Retention Schedules, Schedule 1, Item 42.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are maintained on a secure NASA cloud location and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, the cloud location and data management environments employ infrastructure encryption technologies both in data transmission and at rest on cloud locations. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. An approved security plan is in place for the information system containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet or via a secure Virtual Private Network (VPN) connection that requires two-factor hardware token authentication or via employee PIV badge authentication from NASA-issued computers. Non-electronic records are secured in locked rooms or files.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. When seeking records about yourself from this system of records or any other NASA system of records, your request must conform with the Privacy Act regulations set forth in 14 CFR part 1212. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits

statements to be made under penalty of perjury as a substitute for notarization. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle, and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle, and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle, and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records entered this system will carry any exemptions to which they are subject in the primary system of records from which they originated.

HISTORY:

- (15–115, 80 FR 79937, PP. 79937–79947).
- (11–109, 76 FR 67763, pp. 67763–67764).
- (07–081, 72 FR 55817, pp. 55817–55833).
- (06–021, 71 FR 15477, pp. 15477–15478).

[FR Doc. 2023–09934 Filed 5–9–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–048]

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General (OIG), National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the National Aeronautics and Space Administration (NASA) is issuing public notice of modification to a previously announced system of records, The Office of Inspector General Advanced Data Analytics System (ADAS), NASA 10IGDA. This notice incorporates locations and NASA standard routine uses previously published separately from, and cited by reference in, this and other NASA systems of records notices. This notice also updates individual and record categories, technical safeguards and revises routine uses. The system of records is more fully described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: NASA seeks comment on the revised system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments about the new system of records within 30 calendar days from the date of this publication. The changes will take effect at the end of that period if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: This system notice includes minor revisions to NASA's existing system of records notice, to bring its format into compliance with OMB guidance, and to update records access, notification, and contesting procedures consistent with NASA Privacy Act regulations. It incorporates in whole information formerly published separately in the **Federal Register** as appendix A, Location Numbers and Mailing Addresses of NASA Installations at which Records are Located, and appendix B, Standard Routine Uses—NASA, and removes references to appendix A and appendix B. The notice updates the ROUTINE USES section to conform to provisions of the Inspector General Empowerment Act of 2016, which exempted Inspectors General from requirements of the Computer Matching and Privacy Protection Act of 1988, when conducting an audit, investigation, inspection, evaluation, or other review authorized under the Inspector General Act of 1978, as amended, 5 U.S.C. 401 *et seq.* This notice updates CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM, CATEGORIES OF RECORDS IN THE SYSTEM, and RECORD SOURCE CATEGORIES to reflect current information for those categories. Finally, this notice updates PHYSICAL SAFEGUARDS to reflect current information technology security protocols.

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

Office of the Inspector General Advanced Data Analytics System (ADAS), NASA 10IGDA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Electronic records are migrating from a secure NASA server to a secure cloud maintained by Amazon Web Services (AWS), 410 Terry Ave., North Seattle, WA 98109.

Paper records are maintained at the Office of Inspector General, Advanced Data Analytics Program (ADAP), Mary W. Jackson NASA Headquarters, National Aeronautics and Space Administration (NASA), 300 E Street SW, Suite 8W37, Washington, DC 20546, and other OIG field locations.

SYSTEM MANAGER(S):

OIG Chief Data Officer, NASA Office of Inspector General, 300 E Street SW, Suite 8W37, Washington, DC 20546–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 404(a).

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the general purpose of enabling OIG to fulfill the requirements of section 404, para. (a)(1) and (3), of the Inspector General Act of 1978, as amended, 5 U.S.C. 401 *et seq.,* which requires OIG to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of NASA and

to conduct, supervise and coordinate activities for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the programs and operations of NASA. This system is maintained for the purpose of improving the efficiency, quality, and accuracy of existing data collected by NASA. Records in this system will be used to conduct data modeling for indications of fraud, abuse and internal control weaknesses concerning NASA programs and operations. The result of that data modeling may be used in the conduct of audits, investigations, inspections, or other activities as necessary to prevent and detect waste, fraud, and abuse and to promote economy and efficiency in NASA programs and operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on (1) current and former employees of NASA; (2) current and former NASA contractors and subcontractors; (3) current and former NASA grantees and subgrantees; (4) and other persons whose actions may have affected NASA or may have affected individuals listed in (1) through (3) above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data sets pertaining to matters including, but not limited to, the following (1) fraud against the Government; (2) theft of Government property; (3) bribery; (4) misuse of funds; (5) misuse of Government property; (6) conflict of interest; (7) waiver of claim for overpayment of pay; (8) unauthorized disclosure of Source Evaluation Board information; (9) improper personal conduct; (10) irregularities in the procurement process, including but not limited to, contracts, grants, subcontracts, and subgrants; (11) computer crimes; (12) research misconduct; and (13) data relating to statutes and regulations that affect NASA, NASA employees, NASA property, NASA contractors/grantees, and NASA subcontractor/subgrantees. Specific record fields may include, but are not limited to, information such as: name, social security number, date of birth, phone numbers, addresses, pay/leave information, and other data available in systems described in RECORD SOURCE CATEGORIES.

RECORD SOURCE CATEGORIES:

This system contains records taken from, but not limited to, the following NASA systems: Core Financial Management Records (System Number 10CFMR), NASA Education Program Evaluation System (System Number 10EDUA, NASA Guest Operations System (System Number 10GOS), Inspector General Investigations Case Files (System Number 10IGIC), NASA Personnel and Payroll Systems (System Number 10NPPS), Parking and Transit System (System Number 10PATS), Security Records System (System Number 10SECR), Special Personnel Records (System Number 10SPER), Exchange Records on Individuals (System Number 10XROI), as well as data obtained as a result of cooperation efforts between OIGs, the Council of the Inspectors General on Integrity and Efficiency, and the Pandemic Response Accountability Committee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES FOR SUCH USES:

The NASA OIG may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses.

The NASA OIG may make these disclosures on a case-by-case basis, or as part of computerized data comparisons of Federal systems of records, or of a Federal system of records with other records (including non-Federal records) performed in connection with an audit, investigation, inspection, evaluation, or other review authorized under the IG Act and IG Empowerment Act of 2016. Under the following routine uses that are unique to this system of records, information in this system may be disclosed when:

1. Responding to inquiries from the White House, the Office of Management and Budget, and other organizations in the Executive Office of the President.

2. Disclosing to a Federal, State, local, tribal, or territorial government or agency lawfully engaged in the collection of intelligence (including national intelligence, foreign intelligence, and counterintelligence), counterterrorism, or homeland security, law enforcement or law enforcement intelligence, and other information, where disclosure is undertaken for intelligence, counterterrorism, homeland security, or related law enforcement purposes, as authorized by U.S. Law or Executive Order, and in accordance with applicable disclosure policies.

3. Disclosing to any official (including members of the Council of Inspectors General on Integrity and Efficiency (CIGIE) and staff and authorized officials of the Department of Justice and Federal Bureau of Investigation) charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in Office of Inspector General (OIG) operations.

4. Disclosing to members of the CIGIE for the preparation of reports to the President and Congress on the activities of the Inspectors General.

In addition, information may be disclosed under the following NASA Standard Routine Uses wherein references to NASA shall be deemed to include NASA OIG:

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to a NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when (a) NASA, or any component thereof; or (b) any employee of NASA in his or her official capacity; or (c) any employee of NASA

in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to the SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained as hard-copy documents and on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records are retrieved by name or other identifying information of an individual or institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in Agency files and destroyed in accordance with NASA Procedural Requirements (NPR) 1441.1, NASA Records Retention Schedules, Schedule 9. Files containing information of an investigative nature but not related to a specific investigation are destroyed in accordance with NPR 1441.1.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained on a secure NASA server until migration to a secure cloud maintained by AWS. Paper and electronic records and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet, or remotely via a secure Virtual Private Network (VPN) connection requiring two-factor token authentication or via employee PIV badge authentication from NASA-issued computers. Non-electronic records are secured in locked rooms or files.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests

must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

As described above, the ADAS will consist primarily of records compiled from existing systems of records maintained by NASA and other Federal agencies. The OIG will continue to apply to individual records within the ADAS any Privacy Act exemptions which apply to the system(s) from which the relevant record(s) originated. The Privacy Act Systems of Records Notices which describe in detail the exemptions claimed for each NASA system from which ADAS records will be derived can be found online at the following web address: *http://www.nasa.gov/privacy/nasa_sorn_index.html.*

HISTORY:

(15–108, 80 FR 72745, pp. 72745–72750).

[FR Doc. 2023–09935 Filed 5–9–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–043]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the National Aeronautics and Space Administration (NASA) is providing public notice of modification to a previously announced system of records, Earth Observing System Data, and Information System (EOSDIS) User Information, NASA 10EUI. This notice incorporates locations and NASA Standard Routine Uses previously published separately from and cited by reference in this and other NASA systems of records notices. This notice also updates the name of the SORN; location and system manager information; records access, notification, and contesting procedures; categories of records and individuals; technical safeguards; and revises routine uses as set forth below under the caption **SUPPLEMENTARY INFORMATION**.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov*.

SUPPLEMENTARY INFORMATION: The records in this system are used to establish user accounts that enable user notification of improved or altered data and services, as well as actual science data from the Earth Observing System Data and Information System (EOSDIS), most often via on-line mechanisms. This system notice includes minor revisions to NASA's existing system of records notice to bring its format into compliance with Office of Management and Budget (OMB) guidance and to update records access, notification, and contesting procedures consistent with NASA Privacy Act regulations. The SORN name is updated to align with NASA SORN naming conventions. It also includes the following substantial revisions: adds one new location to the System Location section, removes previous locations which are no longer in use and the corresponding subsystem managers from the System Manager section; adds data elements to the Categories of Records in the System; clarifies the Record Access, Contesting Record, and Notification Procedures; and updates the Technical Safeguards to reflect the use of cloud storage. It also incorporates information formerly published separately in the **Federal Register** as appendix A, Location Numbers and Mailing Addresses of NASA Installations at which Records are Located, and appendix B, Standard Routine Uses—NASA.

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

Earth Observing System Data and Information System (EOSDIS) User Information, NASA 10EUI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Electronic records are maintained on secure NASA and NASA partner servers at:

- Goddard Space Flight Center (NASA), Greenbelt, MD 20771–0001. Electronic records will also be kept on NASA CIO-approved, commercial cloud resources provided by and located at:
- Amazon Web Services AWS-West, 410 Terry Avenue N, Seattle, WA 98109.

SYSTEM MANAGER(S):

System Manager: 423/Deputy Project Manager for Operations, ESDIS Project, Goddard Space Flight Center (NASA), Greenbelt, MD 20771–0001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

51 U.S.C. 20113(a).

PURPOSE(S) OF THE SYSTEM:

These records are used to establish user accounts that enable user notification of improved or altered data and services, as well as actual science data from EOSDIS, most often via on-line mechanisms.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from the (1) NASA, university, and research communities who request satellite data or other data products from any of the EOSDIS DAACs indicated above; (2) members of the general public who request satellite data or other data products from any of the EOSDIS DAACs indicated above; or (3) individuals who register to save their data search parameters for reuse in the future.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consist of information obtained from individual users to establish user accounts that enable user notification of improved or altered data and services, as well as actual science data from EOSDIS, most often via on-line mechanisms. Records include an individual's name, email address, organizational affiliation, study area, phone number, and country of residence.

RECORD SOURCE CATEGORIES:

The information is received directly from users needing to obtain or access NASA's Earth science data products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The records and information in these records may be disclosed:

1. To government contractors conducting OMB-approved annual user satisfaction surveys collecting user feedback for aggregating reports to OMB

and enabling NASA to improve its systems, processes, and services to the user community.

2. To the European Space Agency (ESA) in order to achieve ESA member nation awareness of the breadth of their scientific data use (including ESA scientific data hosted by NASA).

In addition, information may be disclosed under the following NASA Standard Routine Uses.

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to a NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when (a) NASA, or any component thereof; or (b) any employee of NASA in his or her official capacity; or (c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored electronically on secure servers.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

User account records are typically indexed and retrieved by user's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Earth Science Data and Information System (ESDIS) Project has a plan under configuration control according to which the original data are deleted in accordance with NASA Records Retention Schedule (NRRS) 2, Item 15A.3. The ESDIS Project and DAACs reauthorize specific users' information on an approved basis and user information is deleted when no longer needed in accordance with NRRS 2, Item 19A. Mailing lists containing user information are maintained in order to permit distribution of newsletters to users and are disposed of according to the NRRS 1, Item 88.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Approved security plans for each of the DAACs at NASA and contractor facilities have been established in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–

130, Management of Federal Information Resources. The aggregation of these plans constitutes the security plan for EOSDIS. Authorized individuals will have access to the system only in accordance with approved authentication methods. With the exception of the records of ESA scientific data users' information posted in accordance with Routine Use (2) above, all user information is protected according to NASA guidelines for managing sensitive information. The NASA SEWP–V Four Points Technology and Amazon Web Services maintain documentation and verification of commensurate safeguards in accordance with FISMA, NASA Procedural Requirements (NPR) 2810.1A, and NASA ITS–HBK–2810.02–05.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

(15–116, 80 FR 79949, pp. 79949–79950).

(12–100, 77 FR 69898, pp. 69898–69899).

(07–080, 72 FR 56388, pp. 56388–56391).

[FR Doc. 2023–09931 Filed 5–9–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–046]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the National Aeronautics and Space Administration is providing public notice of a modification to a previously announced system of records, Core Financial Management Records, NASA 10CFMR. This notice incorporates the text of locations and NASA Standard Routine Uses previously published separately from, and cited by reference in, this and other NASA systems of records notices. This notice also adds an authority; updates technical safeguards and records access, notification, and contesting procedures; and updates title of the System Manager.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: This system of records notice (SORN) is modified to incorporate in whole, as appropriate, information formerly published separately in the **Federal Register** as Appendix A, Location Numbers and Mailing Addresses of NASA Installations at which Records are Located, and Appendix B, Standard Routine Uses—NASA, and removes references to ''Appendix A'' and ''Appendix B.'' This notice updates Technical Safeguards to reflect current information technology security protocols and updates the System Manager to add a new manager position and update the title of the original system manager. Finally, it is also modified to make minor editorial changes.

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

Core Financial Management Records, NASA 10CFMR.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812.

SYSTEM MANAGER(S):

- Director, Agency Financial Systems Office, Mary W. Jackson NASA Headquarters, National Aeronautics and Space Administration, Washington, DC 20546–0001.
- IS90/Associate Chief Information Officer, Applications Division, George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- 51 U.S.C. 20113(a).
- 44 U.S.C. 3101.
- 31 U.S.C. 901.
- 31 U.S.C. 3512.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used to process reimbursement payments to employees for travel, purchase of books or other miscellaneous items; and to process payments and collections in which an individual is reimbursing the Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system of records include former and current NASA employees and non-NASA individuals requiring any type of payment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system are comprised of budget formulation, financial management, and employee

timekeeping records and may include information about the individuals including Social Security Number (Tax Identification Number), home address, telephone number, email address, and bank account information.

RECORD SOURCE CATEGORIES:

The information is received by the Applications & Platform Services (APS) Financial Systems through an electronic interface from the Federal Personnel Payroll System (FPPS). In certain circumstances, updates to this information may be submitted by NASA employees and recorded directly into the APS Financial Systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The following are routine uses:

1. Furnish data to the Department of Treasury for financial reimbursement of individual expenses, such as travel, books, and other miscellaneous items.

2. Furnish data to the Department of Treasury for which an individual is reimbursing the Agency (for example, repayment of an unused travel advance).

In addition, information may be disclosed under the following NASA Standard Routine Uses:

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when (a) NASA, or any component thereof; or (b) any employee of NASA in his or her official capacity; or (c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved from the system by name or SSN (Tax ID).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are stored in the NASA Applications & Platform Services (APS) database and managed, retained and dispositioned in accordance with NASA

Records Retention Schedules, Schedule 9, Items 11 and 16.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained on secure NASA servers and protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Electronic messages sent within and outside of the Agency that convey sensitive data are encrypted and transmitted by staff via pre-approved electronic encryption systems as required by NASA policy. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet or via a secure Virtual Private Network (VPN) connection that requires two-factor hardware token authentication or via employee PIV badge authentication from NASA-issued computers. Non-electronic records are secured in locked rooms or locked file cabinets.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

- (15–115, 80 FR 246, pp. 79937–79947).
- (15–068, 80 FR 193, pp. 60410–60411).
- (11–091, 76 FR 200, pp. 64112–64114).

[FR Doc. 2023–09933 Filed 5–9–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–045]

Privacy Act of 1974; System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the National Aeronautics and Space Administration is providing public notice of a modification to a previously announced system of records, the NASA Education System Records, NASA 10EDUA. Modifications include minor editorial changes and updates to the Purpose and Routine Uses sections. The system of records is more fully described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Submit comments within 30 calendar days from the date of this publication. The changes will take effect at the end of that period if no adverse comments are received.

ADDRESSES: Bill Edwards-Bodmer, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Bill Edwards-Bodmer, (757) 864–7998, *NASA-PAOfficer@nasa.gov.*

SUPPLEMENTARY INFORMATION: This system notice includes minor editorial revisions to NASA's existing system of records notice. It also incorporates in whole, as appropriate, information formerly published separately in the **Federal Register** as appendix A, Location Numbers and Mailing Addresses of NASA Installations at which Records are Located, and appendix B, Standard Routine Uses—NASA, and removes references to ''Appendix A'' and ''Appendix B.'' This notice also updates Technical Safeguards and Records Access, Notification, and Contesting Procedures.

William Edwards-Bodmer,

NASA Privacy Act Officer.

SYSTEM NAME AND NUMBER:

NASA Education System Records, NASA 10EDUA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

- Mary W. Jackson NASA Headquarters, Washington, DC 20546–0001.
- Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, CA 94105.

SYSTEM MANAGER(S):

Performance and Evaluation Manager, NASA Office of STEM Engagement, Mary W. Jackson NASA Headquarters, Washington, DC 20546.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- 51 U.S.C. 20112(a).
- 51 U.S.C. 20113.

PURPOSE(S) OF THE SYSTEM:

This system maintains information on NASA STEM Engagement program, projects and activities that involve NASA civil servants, contractors, grantees, and other partners, as well as members of the public who participate in NASA STEM Engagement program, projects, and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on individuals engaged in the management, planning, implementation, and/or evaluation of NASA STEM Engagement

projects, including former and current NASA civil servants, contractors, grantees, and partners serving as NASA STEM Engagement project managers, primary investigators, project points of contact and volunteers, and session presenters. Information is also maintained on members of the public who apply to, participate in, and/or are supported by NASA STEM Engagement projects and activities, including students (K–12 and higher education), teachers, higher education faculty, advisors, school administrators, and participants' parents/legal guardians.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system contain identifying information about individuals engaged in NASA STEM Engagement endeavors. Records include individuals' names, mailing addresses, school/institution names and addresses, grade levels or higher education degree information, contact information, demographic data (*e.g.,* ethnicity, gender, race, citizenship, military status), birth dates, employment status, disabilities, medical and special needs, academic records, photographic identifiers, resumes, and response or feedback to a NASA STEM Engagement project/activity.

RECORD SOURCE CATEGORIES:

The information is obtained directly from individuals on whom it is maintained, and/or from their parents/legal guardians and individuals who serve as recommenders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any disclosures of information in this system of records will be relevant, necessary, and compatible with the purpose for which the Agency collected the information. Under the following routine uses that are unique to this system of records, records from this system may be disclosed:

1. To an individual's next-of-kin, parent, guardian, or emergency contact in the event of a mishap involving that individual.

2. To the public about an individual's involvement with NASA STEM Engagement with the written consent of that individual.

In addition, information may be disclosed under the following NASA Standard Routine Uses:

1. *Law Enforcement*—When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order, if NASA determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

2. *Certain Disclosures to Other Agencies*—A record from this SOR may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to a NASA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Certain Disclosures to Other Federal Agencies*—A record from this SOR may be disclosed to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice*—A record from this SOR may be disclosed to the Department of Justice when (a) NASA, or any component thereof; or (b) any employee of NASA in his or her official capacity; or (c) any employee of NASA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where NASA determines that litigation is likely to affect NASA or any of its components, is a party to litigation or has an interest in such litigation, and by careful review, the use of such records by the Department of Justice is deemed by NASA to be relevant and necessary to the litigation.

5. *Courts*—A record from this SOR may be disclosed in an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when NASA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

6. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that there has been a breach of the system of records; (2) NASA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, NASA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. *Contractors*—A record from this SOR may be disclosed to contractors, grantees, experts, consultants, students, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish a NASA function related to this SOR. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to NASA employees.

8. *Members of Congress*—A record from this SOR may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

9. *Disclosures to Other Federal Agencies in Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information*—A record from this SOR may be disclosed to another Federal agency or Federal entity, when NASA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. *National Archives and Records Administration*—A record from this SOR may be disclosed as a routine use to the officers and employees of the National Archives and Records

Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. *Audit*—A record from this SOR may be disclosed to another agency, or organization for purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Some of the records are on secure servers and in cloud storage; some are stored in paper format in file folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved from the system by any one or a combination of choices by authorized users to include last name, identification number, zip code, state, grade level, and institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with NASA Records Retention Schedules (NRRS), Schedule 1, Item 68.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records are maintained on secure NASA servers and through a cloud computing provider who manages and operates data storage as a service and are protected in accordance with all Federal standards and those established in NASA regulations at 14 CFR 1212.605. Additionally, server and data management environments employ infrastructure encryption technologies both in data transmission and at rest on servers. Approved security plans are in place for information systems containing the records in accordance with the Federal Information Security Management Act of 2002 (FISMA) and OMB Circular A–130, Management of Federal Information Resources. Only authorized personnel requiring information in the official discharge of their duties are authorized access to records through approved access or authentication methods. Access to electronic records is achieved only from workstations within the NASA Intranet or via a secure Virtual Private Network (VPN) connection that requires two-factor hardware token authentication. Non-electronic records are secured in locked rooms or locked file cabinets. For information systems maintained by NASA partners, who collect, store and process records on behalf of NASA, NASA requires documentation and verification of commensurate safeguards in accordance with FISMA, NASA Procedural Requirements (NPR) 2810.1F and ITS–HBK–AASTEP0.v.1.0.0 through ITS–HBK–AASTEP6.v.1.0.0.

RECORD ACCESS PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

CONTESTING RECORD PROCEDURES:

In accordance with 14 CFR part 1212, Privacy Act—NASA Regulations, information may be obtained by contacting in person or in writing the system or subsystem manager listed above at the location where the records are created and/or maintained. Requests must contain the identifying data concerning the requester, *e.g.,* first, middle and last name; date of birth; description and time periods of the records desired. NASA Regulations also address contesting contents and appealing initial determinations regarding records access.

NOTIFICATION PROCEDURES:

Contact System Manager by mail at NASA Office of STEM Engagement, Mary W. Jackson NASA Headquarters, Washington, DC 20546.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

15–012, 80 FR 13899, pp. 13899–13900.

[FR Doc. 2023–09932 Filed 5–9–23; 8:45 am]

BILLING CODE 7510–13–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; System of Records

AGENCY: Office of Personnel Management.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Office of Personnel Management (OPM) proposes to modify a system of records titled ''OPM/Central-11, Presidential Management Fellows (PMF) Program Records.'' This system of records contains information that OPM collects, maintains, and uses to administer and evaluate the Presidential Management Fellows (PMF) Program.

DATES: Please submit comments on or before June 9, 2023. This modified system is effective upon publication in the **Federal Register**, with the exception of any new routine uses, which become effective June 14, 2023.

ADDRESSES: You may submit written comments via the Federal Rulemaking Portal at *https://www.regulations.gov*. Follow the instructions for submitting comments. All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make them available for public viewing at *https://www.regulations.gov* as they are received, without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Susan Toman-Jones, Acting PMF Program Director, 202–606–1040. For privacy questions, please contact Kellie Cosgrove Riley, Senior Agency Official for Privacy, 202–936–2474.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Office of Personnel Management proposes to modify and republish the system of records titled ''OPM/Central–11, Presidential Management Fellows (PMF) Program Records.'' The Presidential Management Fellows (PMF) Program was established by Executive Order in 1977 to attract to the Federal service outstanding individuals from a variety of academic disciplines and career paths, who have a clear interest in, and commitment to, excellence in the leadership and management of public policies and programs. The PMF Program recruits and develops advanced degree holders to provide a continuing source of trained individuals to meet the future leadership challenges of public service. This system of records includes records about PMF Applicants, Semi-Finalist, Finalists, Fellows, and Alumni.

This system of records is being modified, in part, to conform to the guidance in Office of Management and Budget Circular A–108 and to achieve consistency within OPM SORNs regarding necessary and proper routine uses as reflected in routine uses ''a'' through ''g,'' which replace and clarify current routine uses 1–4, 14, and

routine uses previously added per 87 FR 5874. Other routine uses were edited for clarity with no change to the substance, and one routine use, current routine use ''11'' referred to the use of the records for statistical research and reporting and to identify subjects for research projects; given that it did not identify a routine use involving the external disclosure of records but rather an internal purpose and use of the records, the content was folded into the Purpose section.

In addition to the routine use modifications and administrative updates related to Circular A–108, the system is being modified as follows:

- The System Manager, currently identified as the Presidential Management Fellows Program Office, is being updated to more accurately identify the Associate Director, Human Resources Solutions, who has overall responsibility for the PMF Program.
- The Authorities have been expanded to include the relevant regulations.
- The Purpose section has been rewritten for clarity and to remove repetitive and overlapping information.
- The Categories of Individuals section has been edited to clarify that Applicants are individuals who have recently completed or soon will complete an advanced degree.
- ''Applicant flow data'' is being removed from the categories of records. The categories of applicant flow data for the PMF Program are the same as that collected in connection with all other applications for Federal employment. Those records, collected under the Equal Employment Opportunity Commission's OMB Control No. 3046–0046, are governed for Privacy Act purposes by the OPM/GOVT–7, Applicant Race, Sex, National Origin, and Disability Status Records SORN and the use and disclosure of those records are subject to regulations and guidance promulgated by the Equal Employment Opportunity Commission. Removing these records from this system of records is intended to clarify the appropriate collection, use, and dissemination of those records. Aggregate data, including aggregate applicant flow data, is used as part of the analysis to determine the effectiveness of the PMF Program's recruitment and selection processes, provide general statistics of program participants, and to conduct periodic job analyses. Other records are being added to the Categories of Records to call out certain data elements identified in the Retrievability section of the SORN. These records were included more generally in the current SORN but are being called out in the modification for consistency.
- Other non-substantive edits have been made to the remaining sections where necessary for clarity.

This modified system of records will be included in OPM's inventory of records systems. In accordance with 5 U.S.C. 552a(r), OPM has provided a report of this system of records to Congress and to the Office of Management and Budget.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

SYSTEM NAME AND NUMBER:

Presidential Management Fellows (PMF) Program Records, OPM/Central-11.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The U.S. Office of Personnel Management, Human Resources Solutions, Presidential Management Fellows Program, Suite 2469, 1900 E Street NW, Washington, DC 20415 is responsible for the records in this system of records. Electronic records are stored at contractor facilities located in Baltimore, Maryland.

SYSTEM MANAGER(S):

Associate Director, Human Resource Solutions, U.S. Office of Personnel Management, 1900 E Street NW, Suite 2469, Washington, DC 20415.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 13562, Recruiting and Hiring Students and Recent Graduates (December 27, 2020); and regulations governing the Pathways Programs at 5 CFR 362, subparts A (General Provisions) & D (Presidential Management Fellows Program).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to determine individuals' basic eligibility for the PMF Program and to evaluate applicants to the PMF Program in a structured assessment process conducted by OPM. In addition, this system of records enables OPM to group individuals into various categories (*e.g.,* Candidates, Applicants, Eligibles, Ineligibles, Semi-Finalists, Finalists, Non-Selectees, Fellows, Former Fellows, and Alumni), make a final determination as to those Applicants who will be referred (as Semi-Finalists to Finalists and those Finalists who become Fellows) to participating Federal agencies for employment consideration, and track and document appointments, certifications, conversions, reappointments, withdrawals, resignations, extensions, and deaths of PMF participants.

The records in this system of records are also collected to evaluate the PMF Program to determine the effectiveness of the program and to improve program operations, to schedule and track PMF participation in Program-sponsored training and development events (*e.g.,* leadership development, forums, graduation), to track agency reimbursements for PMF appointments, to facilitate interaction and communication between PMF Program participants and PMF alumni as well as with their academic institutions, and to maintain contact information about individuals at all stages of the PMF Program, including PMF alumni, Agency PMF Coordinators, PMF supervisors, Pathways Programs Officers, and other relevant stakeholders, for outreach and engagement. Finally, the records in this system of records serves as a data source for management information of summary descriptive statistics and analytical studies in support of the PMF Program, for related personnel research functions or manpower studies, and to locate individuals for personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Presidential Management Fellows; registrants to the PMF Talent Management System portal; candidates who begin the PMF application process; applicants to the PMF Program who are students pursuing or who have recently completed an advanced degree, such as a masters or professional degree; and other PMF Program stakeholders (such as Agency PMF Coordinators and Federal supervisors of PMFs).

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contained in this system of records will vary depending on the category of individual, but may include one or more of the following:

- Name
- Last four digits of Social Security number
- Citizenship
- Address (personal residence and/or business)
- Telephone number (home and/or business)
- Email address (home and/or business)
- Academic background (including academic institution attended or attending, degree discipline, and degree type)

- Employment history
- Foreign language (speak, write, and/or read)
- Veterans' preference status
- Academic transcripts
- Any other information obtained during the PMF application, assessment, and selection processes
- Information about PMF training and development activities
- Confidential evaluation information and assessment scores (these records are not available to the public, individuals whose records are contained in this system of records, academic institutions, nor to participating Federal agencies or officials; see Exemptions and Routine Uses, below).

Applicant flow data collected by the PMF Program is not covered by this SORN but rather is collected and governed under the OPM/GOVT–7 Applicant Race, National Origin, Sex, and Disability Records, SORN.

RECORD SOURCE CATEGORIES:

The records in this system of records are obtained from individuals identified in the Categories of Individuals Covered by the System, above; academic institutions; Federal officials involved in the screening and selection process; and Federal agencies who employ Presidential Management Fellows.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

a. To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant and necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

(1) OPM, or any component thereof;

(2) Any employee or former employee of OPM in their official capacity;

(3) Any employee or former employee of OPM in their individual capacity where the Department of Justice or OPM has agreed to represent the employee;

(4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the OPM General Counsel's approval, pursuant to 5 CFR part 295 or otherwise.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of civil or criminal law or regulation.

c. To a member of Congress from the record of an individual in response to an inquiry made at the request of the individual to whom the record pertains.

d. To the National Archives and Records Administration (NARA) for records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

e. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that there has been a breach of the system of records; (2) OPM has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, OPM (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OPM's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

f. To another Federal agency or Federal entity, when OPM determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

g. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for OPM when OPM determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to OPM employees.

h. To the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations related to the PMF Program, investigations of alleged or possible prohibited personnel practices, and such other functions, *e.g.,* as prescribed in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

i. To the Equal Employment Opportunity Commission, when requested, in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal Agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

j. To the Federal Labor Relations Authority, when requested, in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. To Federal agencies to refer Finalists in the PMF Program for employment consideration.

l. To State and local government entities, congressional offices, international organizations, and other public offices, with permission of the individual, to refer individuals for potential employment and developmental opportunities.

m. To Federal agencies that employ Presidential Management Fellows to refer Fellows for consideration for reassignment, reappointment, conversion, and/or promotion within the employing agencies.

n. To a Federal, State, or local agency maintaining civil, criminal or other information when relevant to the agency's decision concerning the hiring or retention of a candidate.

o. To an academic institution to provide information to the institution concerning its graduates' participation in the PMF Program, covering application, selection, appointment to a Federal position, and completion of the PMF Program.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system of records are stored electronically within the contractor's hosting and backup facilities and is encrypted at rest. A complete data backup is stored on a weekly basis and is then replicated to a physically separate datacenter location and kept for the duration of the retention period. The records are accessible only to those OPM and contractor employees who have an official business need to access and use the records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records in this system of records may be retrieved by applicant identification number, name, academic institution, state of residence, last four digits of Social Security number, degree discipline and/or type, veterans' preference, email address, phone number, status in PMF Program (*e.g.,* Candidate, Applicant, Eligible, Ineligible, Semi-Finalist, Finalist, Non-Selectee, Fellow, Former Fellow, and Alumni), citizenship, foreign language, geographic employment preference(s), skill sets/competencies, or any combination of these.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records retention schedule for the records in this system is currently under review and revision and is pending submission to the NARA. Once in place, records about Applicants will be retained for ten years from the end of the application cycle, records about Semi-Finalists and Finalists will be retained for ten years from the year their eligibility expires, certain records about Fellows will be retained for ten years after they complete their fellowship while other records will be retained for twenty years, and non-applicant user account records (*e.g.,* agency points of contact and administrative account users) will be retained for ten years after their last access.

At the end of their lifecycle, records will be destroyed in accordance with applicable media sanitation standards.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are protected from unauthorized access and misuse through various administrative, technical, and physical security measures. The technical security measures used by OPM and OPM's contractors comply with the Federal Information Security Modernization Act (Pub L. 113–203), associated OMB policies, and applicable standards and guidance from the National Institute of Standards and Technology (NIST).

Safeguards are in place within both the primary and alternate hosting facilities. Each facility leverages security equipment, techniques, and procedures to control, monitor, and record access to the facility, including customer cage areas. Data centers are always staffed and all perimeter doors are secured, monitored, and alarmed. Records are accessible only to those whose official duties necessitate such access. All contractor personnel with a need to access records in this system undergo a background investigation prior to being granted access and contractor personnel are required by the terms of the contract to adhere to relevant provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

Certain records in this system have been exempted from the access provisions of the Privacy Act, see Exemptions Promulgated for the System, below. Individuals seeking notification of and access to their non-exempt records in this system of records may do so by submitting a request in writing to the Office of Personnel Management, Office of Privacy and Information Management—FOIA, 1900 E Street NW, Room 5415, Washington, DC 20415–7900 or by emailing *foia@opm.gov*; ATTN: PMF Program. Individuals must furnish the following information for their records to be located:

1. Full name at time of application to the PMF Program, including any former name.

2. Last 4 digits of their Social Security number, when specifically requested.

3. Year applied to the PMF Program.

4. Home Address at the time of application to the PMF Program.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

CONTESTING RECORD PROCEDURES:

Certain records in this system have been exempted from the access provisions of the Privacy Act, see Exemptions Promulgated for the System, below. Individuals wishing to request amendment of their non-exempt records in this system of records may do so by writing to the to the Office of Personnel Management, Office of Privacy and Information Management—FOIA, 1900 E Street NW, Room 5415, Washington, DC 20415–7900 or by emailing *foia@opm.gov*; ATTN: PMF Program. Requests for amendment of records should include the words ''PRIVACY ACT AMENDMENT REQUEST'' in capital letters at the top of the request letter; if emailed, please include those words in the subject line. Individuals must furnish the following information for their records to be located:

1. Full name at time of application to the PMF Program, including any former name.

2. Last 4 digits of their Social Security number, when specifically requested.

3. Year applied to the PMF Program.

4. Home Address at the time of application to the PMF Program.

5. Precise identification of the information to be amended.

Individuals requesting amendment of their records must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR 297).

NOTIFICATION PROCEDURES:

See ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records in this system relate to testing or examining materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information would compromise the objectivity and fairness of the testing or examining process. Accordingly, the records in this system that meet the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records. 5 CFR 297.501(b)(6). See also 5 CFR 300.201.

HISTORY:

77 FR 61791 (Oct 11, 2012); 74 FR 42334; 60 FR 63075 (Dec 12, 1995); 80 FR 74816 (Nov 30, 2015) and 87 FR 5874 (Feb 2, 2022)

[FR Doc. 2023–09943 Filed 5–9–23; 8:45 am]

BILLING CODE 6325–43–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97436; File No. SR–CboeBZX–2023–027]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 4, 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 April 23, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'' or ''BZX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to adopt monthly fees assessed to Users [3] that elect to subscribe to the US Equity Short Volume & Trades Report, effective, April 21, 2023.

The Exchange recently adopted a new data product known as the US Equity Short Volume & Trades Report (the, ''Report'').[4] The Report, which will be available on April 21, 2023, contains (i) an end-of-day report that provides certain equity trading activity on the Exchange, and includes trade date, total volume, sell short volume, and sell short exempt volume, by symbol; [5] and (ii) an end-of-month report that provides a record of all short sale transactions for the month, and includes trade date and time, trade size, trade price, and type of short sale execution, by symbol and exchange.[6] In addition to a monthly or annual subscription, a Member [7] or non-Member may purchase the Report on a historical monthly basis, which provides the end-of-day reports for each day and the corresponding end-of-month report for a given calendar month.

The Exchange proposes to adopt fees applicable to Users that subscribe to the Report. As proposed, the Exchange would assess a monthly [8] fee of $750 per month to an Internal Distributor [9] of the Report, and a fee of $1,250 per month to an External Distributor [10] of the Report. These fees may be paid on a monthly basis or on an annual basis.[11] External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. Some External Distributors incorporate short sale data into their own proprietary products, which they sell to downstream users. These distributors may not charge separately for data included in the Report, but nevertheless gain value from the data by incorporating it into their product. The higher price for External Distributors reflects the additional value these distributors gain from the product.

The Exchange also proposes to adopt fees for the Report provided on a historical basis. The Report will be available for each calendar month dating back to January 2015, and Users of such data will be assessed a fee of $500 per historical monthly Report for which they subscribe.[12] Data provided via the historical Report is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Report or incorporate such data into their product. Nonetheless, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a fee for display use redistribution that reflects the value these distributors gain from the historical product.

The Exchange anticipates that a wide variety of market participants will purchase the Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange.

The Exchange further notes that the Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make the reports or services available and that potential subscribers may purchase it only if they voluntarily choose to do so. Further, the Exchange notes that other exchanges offer similar products for a fee.[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

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[3] A ''User'' of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. *See* the BZX Equities Exchange Fee Schedule at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*.

[4] *See* Securities and Exchange Act No. 97304 (April 13, 2023) (SR–CboeBZX–2023–024).

[5] The end-of-day report was originally titled ''Short Volume Report'' and was displayed as an individual product on the Exchange's Fee Schedule. The end-of-day report is now being incorporated into the Report and as such, the Exchange seeks to amend its Fee Schedule to display the applicable fees for the Report, which will contain both the end-of-day report and an end-of-month report.

[6] *See* Exchange Rule 11.22(f).

[7] *See* Exchange Rule 1.5(n).

[8] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on April 24, 2023, the monthly fee will cover the period of April 24, 2023, through May 23, 2023. If the User cancels its subscription prior to May 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[9] An ''Internal Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *Supra* note 3.

[10] An ''External Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *Supra* note 3.

[11] Users who subscribe to the US Equity Short Volume & Trades Report during the middle of a month will receive the end-of-day report for each day beginning on the date of subscription.

[12] Users who purchase the US Equity Short Volume & Trades report on an annual basis will receive 12 months of historical data free of charge, beginning with the month immediately prior to the date of subscription. Users who purchase the US Equity Short Volume & Trades report on a monthly basis would have the option of purchasing historical data on a per month basis.

[13] *See* the ''Nasdaq Short Sale Volume Reports'' portion of the Nasdaq Fee Schedule at *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN. See also* the ''NYSE Group Summary Data Products'' portion of the NYSE Historical Proprietary Market Data Pricing at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Historical_Market_Data_Pricing.pdf.*

Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with 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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the US Equity Short Volume & Trades Report further broadens the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of short volume data. The Report benefits investors by providing access to the US Equity Short Volume & Trades Report data, which may promote better informed trading, as well as research and studies of the equities industry.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 16% of the equity market share.[16] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced US Equity Short Volume & Trades Report.

The Exchange believes that the proposed fee for the Report is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the value and benefits provided to Users that choose to subscribe to the Report on the Exchange. As discussed above, the Report may be beneficial to Members and non-Members as it may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. Therefore, the Exchange believes that it is reasonable to assess a modest fee to Users that subscribe to the Report.

The Exchange further believes the proposed fee is reasonable because the amount assessed is equal to or comparable to the analogous fees charged by competitor exchanges. For example, the Nasdaq Stock Market LLC (''Nasdaq'') charges $750 to Internal Distributors and $1,250 to External Distributors of the Nasdaq Short Sale Volume Reports provided on both a daily and historical monthly basis,[18] which is identical to the proposed subscription fees for the US Equity Short Volume & Trades Report. Additionally, the New York Stock Exchange LLC (''NYSE'') and its affiliated equity markets (the ''NYSE Group'') also charge for the TAQ NYSE Group Short Sales (Monthly File) and TAQ NYSE Group Short Volume (Daily File). Specifically, NYSE Group charges an access fee of $1,000 per month for an ongoing subscription that includes 12 months of back history, then additional back history charged at $500 per data content month. NYSE Group also charges a back history fee, of $1,000 per data content month for the first 12 months of history, then additional back history charged at $500 per data content month.[19] The Exchange therefore believes that the proposed fees are reasonable and set at a level to compete with other equity exchanges that offer similar reports. Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Although each of these similar data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different equities based on the included data points on any one exchange. As such, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Report and instead purchase another exchange's similar data product, which offers similar data points, albeit based on that other market's trading activity.

In addition, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will apply equally to all Members and non-Members that choose to subscribe to the Report. As stated, the Report is completely optional and not necessary for trading. Rather, the Exchange voluntarily makes the Report available, and Users may choose to subscribe (and pay for) the report based on their own individual business needs. Potential subscribers may subscribe to the Report at any time if they believe it to be valuable or may decline to purchase it.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge an External Distributor of the Report a higher fee than an Internal Distributor as an External Distributor will ordinarily charge a fee to its downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, the Exchange expects products from the Report to be part of a suite of offerings from distributors that generally promote sales. External distribution is also fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. Therefore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a higher fee for a product that generates downstream revenue. Further, the proposed fee will apply equally to Internal and External Distributors, respectively, that choose to distribute data from the Report.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 17, 2023), available at *https://www.cboe.com/us/equities/market_/*.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[18] *See http://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#short.*

[19] *See https://www.nyse.com/publicdocs/nyse/data/NYSE_Historical_Market_Data_.pdf.*

Moreover, as described above, another Exchange similarly charges External Distributors higher fees as compared to Internal Distributors for a similar data product.[20]

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 that is not necessary or appropriate in furtherance of the purposes of the Act because the Report will be available equally to all Members and non-Members that choose to subscribe to the report. As stated, the Report is optional and Members and non-Members may choose to subscribe to such report, or not, based on their view of the additional benefits and added value provided by utilizing the Report. As such, the Exchange believes the proposed rule change imposes no burden on intramarket competition. Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, similar products offered by Nasdaq and the NYSE Group are priced equally or comparable to the Report. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. Accordingly, the Exchange does not believe its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2023–027 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–CboeBZX–2023–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeBZX–2023–027, and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09902 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

[20] *See* Nasdaq Rule 7 Section 152.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97437; File No. SR–CboeBZX–2023–020]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the BZX Equities Fee Schedule To Add and Modify Certain Step-Up Tiers, Add a Non-Displayed Step-Up Tier and Modify Certain Fee Codes

May 4, 2023.

I. Introduction

On March 6, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change (File Number SR–CboeBZX–2023–020) to amend the BZX Equities Fee Schedule (''Fee Schedule'') to add and modify certain Step-Up Tiers, add a Non-Displayed Step-Up Tier and to modify Fee Codes HB, HV and HY.[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on March 16, 2023.[5] The Commission has received no comment letters on the proposed rule change. Under Section 19(b)(3)(C) of the Act,[6] the Commission is hereby: (i) temporarily suspending File Number SR–CboeBZX–2023–020; and (ii) instituting proceedings to determine whether to approve or disapprove File Number SR–CboeBZX–2023–020.

II. Description of the Proposed Rule Change

The Exchange operates a ''Maker-Taker'' model whereby it pays credits to Members[7] that add liquidity and assesses fees to those that remove liquidity.[8] The Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met.[9] According to the Exchange, tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.[10]

The Exchange proposes to amend its Fee Schedule to add and modify certain Step-Up Tiers, add a Non-Displayed Step-Up Tier and to modify Fee Codes HB, HV and HY, which fee changes became effective on March 6, 2023.[11] With respect to the Exchange's Step-Up Tiers, the Exchange currently offers Step-Up Tiers (tiers 1 through 3) that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes B, V, and Y where they increase their relative liquidity each month over a predetermined baseline.[12] The Exchange now proposes to add a new Tier 1 and renumber existing Tiers 1 through 3 (existing Step-Up Tiers 1, 2 and 3 would be renumbered to Tiers 2, 3 and 4 respectively, and will be referred to herein as ''proposed Step-Up Tier'' 2, 3 or 4, as applicable).[13] Specifically, proposed Tier 1 would provide for the following:

- Proposed Tier 1 would offer an enhanced rebate of $0.0031 per share for qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where (1) Member has a Step-Up ADAV[14] from January 2023 ≥10,000,000 or Member has a Step-Up Add TCV[15] from January 2023 ≥0.10%; and (2) Member has an ADV[16] ≥0.60% of the TCV.[17]

Proposed Tiers 2 through 4 would have the same criteria and provide the same enhanced rebate as existing Tiers 1 through 3, respectively.[18]

The Exchange also proposes to amend footnote 2 to add a Non-Displayed Step-Up Tier, which will provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding non-displayed orders that yield fee codes HB,[19] HV,[20] and HY[21] and meet certain required volume-based criteria.[22] The proposed criteria for the Non-Displayed Step-Up Tier is as follows:

- The proposed Non-Displayed Step-Up Tier would offer an enhanced rebate of $0.0025 per share for qualifying orders (*i.e.,* orders yielding fee codes HB, HV, or HY) where (1) Member has a Step-Up ADAV from January 2023 ≥10,000,000 or Member has a Step-Up Add TCV from January 2023 ≥0.10%; and (2) Member has an ADV ≥0.60% of the TCV.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[23] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[24] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

In support of the proposal, the Exchange argues that is operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient.[25] The Exchange believes that its specific proposal reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would

[3] *See* Notice, *infra* note 5, at 16285.

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Securities Exchange Act Release No. 97108 (March 10, 2023), 88 FR 16285 (''Notice''). The Exchange initially filed the proposed fee changes on March 1, 2023 (SR–CboeBZX–2023–017). However, on March 6, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–020.

[6] 15 U.S.C. 78s(b)(3)(C).

[7] *See* BZX Rule 1.5(n). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[8] *See* Notice, *supra* note 5, at 16286.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id. See also* Fee Schedule, Footnotes 2, Step-Up Tiers.

[13] *Id.*

[14] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV. *See* Notice, *supra* note 5, at 16286.

[15] ''Step-Up Add TCV'' means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. ADAV means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis. TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

[16] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. *Id.*

[17] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day. *See* Fee Schedule, Definitions.

[18] *See* Notice, *supra* note 5, at 16286.

[19] Orders yielding Fee Code ''HB'' are non-displayed orders adding liquidity to BZX (Tape B). *See* Fee Schedule, Fee Codes and Associated Fees. To reflect eligibility for the Non-Displayed Step-Up Tier for Fee Code HB, the Exchange added footnote to 2 to Fee Code HB.

[20] Orders yielding Fee Code ''HV'' are non-displayed orders adding liquidity to BZX (Tape A). *Id.* To reflect eligibility for the Non-Displayed Step-Up Tier for Fee Code HV, the Exchange added footnote to 2 to Fee Code HV.

[21] Orders yielding Fee Code ''HY'' are non-displayed orders adding liquidity to BZX (Tape C). *Id.* To reflect eligibility for the Non-Displayed Step-Up Tier for Fee Code HY, the Exchange added footnote to 2 to Fee Code HY.

[22] *See* Notice, *supra* note 5, at 16286.

[23] 15 U.S.C. 78s(b)(3)(C).

[24] 15 U.S.C. 78s(b)(1).

[25] *See* Notice, *supra* note 5, at 16287.

enhance market quality to the benefit of all Members.[26] The Exchange states that the Step-Up Tiers in general are designed to provide Members with additional opportunities to receive enhanced rebates by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants.[27] According to the Exchange, like other Step-Up Tiers, the proposed Step-Up Tier 1 is designed to give members an additional opportunity to receive an enhanced rebate for orders meeting the applicable criteria.[28] Furthermore, the Exchange states that the proposed Non-Displayed Step-Up Tier is designed to increase the Members' provision of liquidity to the Exchange, which increases execution opportunities and provides for overall enhanced price discovery and price improvement opportunities on the Exchange.[29] The Exchange believes that increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.[30]

Additionally, the Exchange believes the proposed Step-Up Tier 1 and Non-Displayed Step-Up Tier are reasonable as they serve to incentivize Members to increase their liquidity-adding, displayed volume (Step-Up Tier 1) and liquidity-adding, non-displayed volume (Non-Displayed Step-Up Tier), which benefit all market participants by incentivizing continuous liquidity and thus, deeper, more liquid markets as well as increased execution opportunities.[31] The Exchange states that the proposed incentives to provide displayed liquidity are designed to incentivize continuous displayed liquidity, which signals other market participants to take the additional execution opportunities provided by such liquidity, while the proposed incentives to provide non-displayed liquidity will further contribute to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices.[32] According to the Exchange, this overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency, and improves market quality for all investors.[33]

The Exchange also believes the proposed Step-Up Tier 1 and Non-Displayed Step-Up Tier represent an equitable allocation of rebates and are not unfairly discriminatory because all Members are eligible for those tiers and would have the opportunity to meet a tier's criteria and would receive the proposed rebate if such criteria is met.[34] Further, according to the Exchange, the proposed rebates are commensurate with the proposed criteria.[35] The Exchange states that the rebates reasonably reflect the difficulty in achieving the applicable criteria as proposed.[36] The Exchange also states that the proposed tier/rebate will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers.[37] Should a Member not meet the proposed criteria under the modified tier, the Member will merely not receive that corresponding enhanced rebate.[38]

Additionally, the Exchange states that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns.[39] According to the Exchange, competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.[40]

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[41] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [42]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), requires the rules of an exchange to (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;[43] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[44] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[45]

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the proposal, in particular the proposed modifications to add and modify certain Step-Up Tiers and add a Non-Displayed Step-Up Tier, is consistent with the statutory requirements applicable to a national securities exchange under the Act. The Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[46]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[47]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant

[26] *Id.*

[27] *See* Notice, *supra* note 5, at 16286.

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *See* Notice, *supra* note 5, at 16287.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[42] *Id.*

[43] 15 U.S.C. 78f(b)(4).

[44] 15 U.S.C. 78f(b)(5).

[45] 15 U.S.C. 78f(b)(8).

[46] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[47] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to Sections 19(b)(3)(C)[48] and 19(b)(2)(B) of the Act[49] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[50] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [51]
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers;'' [52] and
- Whether the Exchange has demonstrated how the proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [53]

As discussed in Section III above, the Exchange argues that all Members will be eligible for the proposed new tiers and have the opportunity to meet the tiers' criteria. The Exchange further states the proposal provides a reasonable means to incentivize Members to continue to send certain types of order flow to the Exchange. Because the proposed Step-Up Tier and Non-Displayed Step-Up Tier are designed to provide more favorable pricing to Members with volume increases over specified baseline months, questions are raised as to whether the Exchange has satisfied its burden to demonstrate that such tiers will, as the Exchange argues, continue to provide a reasonable means to incentivize Members to send certain types of order flow to the Exchange, in a manner consistent with the Act and the rules thereunder when the specified baseline months remain the same and may continue indefinitely.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [54] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[55] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[56]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act, specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities; are designed to perfect the operation of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act; [57] as well as any other provision of the Act, or the rules and regulations thereunder.

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by May 31, 2023. Rebuttal comments should be submitted by June 14, 2023. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[58]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposal 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 No. SR–CboeBZX–2023–020 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–CboeBZX–2023–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[48] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[49] 15 U.S.C. 78s(b)(2)(B).

[50] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[51] 15 U.S.C. 78f(b)(4).

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78f(b)(8).

[54] 17 CFR 201.700(b)(3).

[55] *See id.*

[56] *See id.*

[57] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[58] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeBZX–2023–020 and should be submitted on or before May 31, 2023. Rebuttal comments should be submitted by June 14, 2023.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[59] that File Number SR–CboeBZX–2023–020 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09904 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97432; File No. SR–CboeEDGA–2023–007]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 4, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2023, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGA Equities'') by introducing new fee code DX and modifying the description of existing fee code DQ. The Exchange proposes to implement these changes effective May 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00180 [sic] per share for orders that remove liquidity and assesses a fee of $0.0030 per share for orders that add liquidity.[4] For orders in securities priced below $1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity.[5] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Fee Codes DQ and DX

The Exchange currently offers fee code DQ, which is appended to Midpoint Discretionary Orders (''MDOs'')[6] using the Quote Depletion Protection (''QDP'')[7] order instruction. QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGA Book[8] and enabling Users to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when

[59] 15 U.S.C. 78s(b)(3)(C).

[60] 17 CFR 200.30–3(a)(57) and (58).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 21, 2023), available at *https://www.cboe.com/us/equities/market_statistics/*.

[4] *See* EDGA Equities Fee Schedule, Standard Rates.

[5] *Id.*

[6] *See* Exchange Rule 11.8(e).

[7] *See* Exchange Rule 11.8(e)(10).

[8] *See* Exchange Rule 1.5(d).

QDP has been triggered.[9] Currently, MDOs entered with the QDP instruction are appended fee code DQ and assessed a flat fee of $0.00040 per share in securities at or above $1.00 and 0.30% of dollar value for securities priced below $1.00. The Exchange now proposes to amend fee code DQ to be appended to MDOs entered with a QDP instruction that add liquidity to the Exchange. The Exchange also proposes to amend the fee associated with fee code DQ from $0.00040 per share in securities at or above to $1.00 to $0.0010 per share. The Exchange also proposes to introduce fee code DX, which would be appended to MDOs with a QDP instruction that remove liquidity from the Exchange. Orders appended with fee code DX would be assessed a fee of $0.00040 per share in securities at or above $1.00 and 0.30% of dollar value for securities priced below $1.00.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[13] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes the proposed addition of fee code DX and the revised applicability of fee code DQ are reasonable as the Exchange offers many other fee codes that are specifically designed for orders that add liquidity to the Exchange or remove liquidity from the Exchange.[14] In addition, the Exchange notes that its affiliate exchanges have adopted a similar pricing structure for MDOs containing a QDP instruction.[15] While the fee assessed for orders appended with fee code DQ will be slightly higher than the fee assessed for orders appended with fee code DX, the Exchange believes that promoting liquidity-removing MDOs containing a QDP instruction represents an equitable allocation of fees and rebates and is not unfairly discriminatory because the fees will apply to all Members who add or remove liquidity utilizing an MDO with a QDP instruction, equally. Furthermore, the Exchange believes that assessing a lower fee under fee code DX will promote a reasonable means to encourage liquidity removing volume to the Exchange for MDOs utilizing a QDP instruction. While Members are assessed a small fee to utilize MDOs with a QDP instruction, the Exchange believes that promoting liquidity removing activity would help deepen the Exchange's liquidity pool, support the quality of price discovery, and improve market quality, for all investors.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees associated with fee code DX would apply to all Members equally in that all Members would be subject to the same flat fee for the execution of an MDO with a QDP instruction that removes liquidity from the Exchange. Although MDOs entered with the QDP instruction would be subject to the pricing described in this proposed rule change, the Exchange does not believe that pricing would impose any significant burden on intramarket competition as this fee would be applied in the same manner to the execution of any MDO entered with a QDP instruction that removes liquidity from the Exchange. Both MDO and the associated QDP instruction are available to all Members on an equal and non-discriminatory basis. As a result, any Member can decide to use (or not use) the QDP instruction based on the benefits provided by that instruction in potentially avoiding unfavorable executions, and the associated charge that the Exchange proposes to introduce. As discussed, any firm that chooses to use the QDP instruction with an MDO that removes liquidity would be charged the same flat fee for the execution of orders that are entered with this instruction. The proposal to modify fee code DQ to apply only to MDO orders using the QDP instruction that add liquidity to the Exchange similarly does not impose a burden on intramarket competition in that the applicability of the fee code will apply equally to all Members in that all Members would be subject to the same, revised flat fee for the execution of an MDO with a QDP instruction that adds liquidity to the Exchange.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market.

[9] *See* Securities Exchange Act Release No. 89016 (June 4, 2020), 85 FR 35488 (June 10, 2020) (SR–CboeEDGA–2020–005) (''Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Rule Relating to MidPoint Discretionary Orders to Allow Optional Offset or Quote Depletion Protection Instructions'').

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78f(b)(4).

[14] *See e.g.,* EDGA Equities Fee Schedule, Fee Codes 3 and 6.

[15] *See e.g.,* EDGX Equities Fee Schedule, Fee Codes DQ and DX.

Based on publicly available information, no single equities exchange has more than 16% of the market share.[16] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[18] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2023–007 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–CboeEDGA–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeEDGA–2023–007, and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09905 Filed 5–9–23; 8:45 am]

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[16] *Supra* note 3.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97429; File No. SR–ICEEU–2023–010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Clearing Rules

May 4, 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 April 21, 2023, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. On May 2, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Form 19b–4 and Exhibit 1A.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 (hereafter, ''the proposed rule change'') from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, amends and restates in its entirety the Form 19b–4 and Exhibit 1A in order to correct the narrative description of the proposed rule change.

proposes to amend its Clearing Rules (the ''Rules'') [4] to address more consistently the treatment of certain losses that do not result from Clearing Member default, including certain investment losses and custodial losses.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend its Rules to address more consistently the treatment of certain losses that do not arise from the default of a Clearing Member, generally referred to as non-default losses, including certain investment losses and custodial losses, as discussed in more detail herein.

I. Summary of Proposed Amendments [5]

As amended, the Rules would, among other matters:

- Define several exclusive categories of relevant losses: (1) Investment Losses, (2) Custodial Losses, (3) Pledged Collateral Losses, (4) Title Transfer Collateral Losses and (5) Non-Default Losses.
- Specify the resources of the Clearing House, if applicable, that will be applied to cover such categories of losses.
- Specify the responsibility of Clearing Members, in defined circumstances, to make contributions with respect to Investment Losses and Custodial Losses.
- Specify the responsibility of Clearing Members for Pledged Collateral Losses and Title Transfer Collateral Losses.
- Address the treatment of recoveries by the Clearing House with respect to such categories of losses.

II. Definitions of Relevant Loss Categories

In Rule 101, new definitions would be added for ''Custodial Losses,'' ''Pledged Collateral Losses,'' ''Title Transfer Collateral Loss'' (and related terms) and the definitions of ''Investment Losses'' and ''Non-Default Losses'' (and related terms) would be revised, as follows.

Custodial Losses

Custodial Losses would be defined as losses suffered by the Clearing House with respect to Custodial Assets, including from declines in the value thereof, arising as a result of or in connection with (1) a default, insolvency, system failure, force majeure event or similar event with respect to a Custodian or Delivery Facility, a breach of agreement by the Custodian or Delivery Facility or pursuant to any loss allocation or contribution provisions of the Custodian or Delivery Facility, or (2) any theft, cyber attack or similar event with respect to Custodial Assets by any person (other than the Clearing House and its directors, officers or employees). Custodial Losses are defined to exclude both Pledged Collateral Losses or Title Transfer Collateral Losses. Custodial Losses would also exclude any losses subject to a power of assessment for default losses under Rule 909 or any mechanism that has the effective of reducing such losses pursuant to reduced gains distributions under Rule 914, partial tear-up under Rule 915 or contract termination under Rule 916. The existing definition of Custodian would be revised to specifically reference approved financial institutions, concentration banks, intermediary financial institutions, investment agent banks, system banks and TARGET2 Concentration Banks, as defined in the Rules (in additional to the more general categories of financial institution currently included). The changes reflect the currently understood scope of the Custodian definition in its existing form but would provide greater clarity in light of the amendments discussed herein. Custodial Assets would be defined as any asset or property of the Clearing House (or any person acting on its behalf or holding assets for it) representing original or initial margin, variation margin, guaranty fund contributions or permitted cover, deliverables or settlement amounts. As discussed below, Custodial Losses would be allocated through the use of Custodial Loss Assets of the Clearing House and thereafter contributions of Clearing Members under Rule 919.

Pledged Collateral Losses

The amendments would define Pledged Collateral Losses as those losses arising out of or relating to the holding of Pledged Collateral [6] or the assets in any Pledged Collateral Account. Such losses with respect to Pledged Collateral are addressed in the existing Rules, and the amendments would not change the treatments of such losses. (Under the existing Rules, and as discussed below for the Rules as proposed to be amended, such losses would be solely the responsibility of the relevant Clearing Member under the Rules.) For clarity and consistency, a defined term for Pledged Collateral Losses would be added in Rule 101 (based on the existing defined term for ''Custodial Losses'' in Rule 502(j), which would be deleted). Relevant existing provisions addressing such losses would be moved to Rule 919, as discussed below, so that all non-default losses are addressed in the same section of the Rules.

Title Transfer Collateral Losses

Title Transfer Collateral Losses would be defined as losses resulting from a reduction in value or change of exchange rates of initial or original margin, guaranty fund contributions or permitted cover, which have been transferred to the Clearing House (other than as Pledged Collateral) [7] and which are not invested or reinvested by the Clearing House but are held with a Custodian. Such losses are not currently subject to an express loss-sharing mechanism under the Rules. Accordingly, ICE Clear Europe is proposing to formally define this category of loss, and as discussed below, such losses would be solely the responsibility of the relevant Clearing Member under the Rules. In this respect, the resulting treatment would be

[4] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[5] The amendments are intended to comprehensively and consistently address non-default losses in a manner consistent with relevant UK law applicable to the Clearing House and relevant internationally accepted principles for clearing organizations. See Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001/995, Schedule, Pt. 5, para. 29A, which requires the central counterparty to maintain effective arrangements for ensuring that losses that arise otherwise than as a result of clearing member default and threaten the solvency of the central counterparty are allocated with a view to ensuring that the central counterparty can continue to operate. See also CPMI–IOSCO, Principles for Financial Market Infrastructures (Principles 15 and 16); CPMI–IOSCO, Discussion Paper on Central Counterparty Practices to Address Non-Default Loss (Aug. 2022).

[6] Pledged Collateral and Pledged Collateral Accounts are currently only used in connection with the Customer Accounts of FCM/BD Clearing Members.

[7] Currently, most collateral received by the Clearing House is pursuant to a title transfer collateral arrangement.

generally consistent with that applicable to Pledged Collateral Losses under the current and revised Rules.

Investment Losses

Conforming changes would be made to the definition of Investment Losses, an existing category of loss identified in the Rules, to expressly exclude Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses. A sentence excluding losses from the default of a Custodian would be deleted as such losses would be expressly covered by the Custodial Loss definition (which in turn would be excluded from the Investment Loss definition as noted above). For consistency with the other new definitions, the definition would also explicitly reference losses from assets representing variation margin and settlement amounts in addition to the other listed categories.

Non-Default Losses

Conforming changes to the definition of Non-Default Losses would be made to exclude Custodial Losses, Pledged Collateral Losses and Title Transfer Collateral Losses. The definition would also expressly exclude losses incorporated in the calculation of the ICE Deposit Rate under the Finance Procedures (such as arising from negative interest rates). The amendments would eliminate a requirement that the Non-Default Losses threaten the Clearing House's solvency in order to qualify as such. ICE Clear Europe does not believe the limitation to losses that threaten solvency is needed (as all such Non-Default Losses should be addressed by the Rules).

Loss Assets and Other Definitions

The amendments would add new defined terms for Investment Loss Assets and Custodial Loss Assets, which are assets of the Clearing House available to be applied to Investment Losses or Custodial Losses, respectively, and Non-Default Losses. The existing term Loss Assets would be revised accordingly to refer to Investment Loss Assets and Custodial Loss Assets. New defined terms for Investment Loss Amount and Custodial Loss Amount would also be added, reflecting the amount of Investment Losses or Custodial Losses, as applicable, as determined under Rule 919 after application of applicable Loss Assets.

III. Treatment of Losses in Various Categories

The proposed amendments to Rule 919 would incorporate the concepts of Custodial Loss, Pledged Collateral Loss and Title Transfer Collateral Loss.

Rule 919(b) would be amended to provide that Non-Default Losses will be met first by Investment Loss Assets and Custodial Loss Assets available to the Clearing House. The amendments would clarify that the first portion of any Investment Loss will be met by the Clearing House applying Investment Loss Assets available to it at the time of the relevant event giving rise to the loss. Similarly, a new provision would be added that the first portion of any Custodial Loss would be met by the Clearing House applying Custodial Loss Assets available to it at the time of the relevant event. Rule 919(b) would also provide that the obligations in the subsection only apply to the extent the relevant Loss Assets remain available to the Clearing House and have not themselves been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss. Rule 919(c) would be amended to address Custodial Losses in addition to Investment Losses, such that if there are Investment Losses or Custodial Losses exceeding the available amount of Investment Loss Assets or Custodial Loss Assets, respectively, Clearing Members would be required to pay Collateral Offset Obligations to the Clearing House. The relevant formula for calculating Collateral Offset Obligations under Rule 919(d) would be amended to reflect Custodial Losses as well as Investment Losses, as applicable. In addition, the relevant fraction for purposes of determining a particular Clearing Member's obligation in respect of Collateral Offsets Obligations would be revised to take into account amounts recorded as variation margin, deliverables and settlement amounts. In addition, a clarification would be made that, in the case of a Defaulter, the calculation would include the Defaulter's Guaranty Fund Contributions only to the extent not used to offset default losses, an approach which is consistent with the treatment of other specified assets of the Defaulter. Similarly, under Rule 919(e), the maximum Collateral Offset Obligation would be amended to include the variation margin, deliverables and settlement amounts transferred (or due to be transferred) to the Clearing House. Rule 919(f) would be amended to provide that Collateral Offset Obligations may be offset or netted against obligations to pay or return variation margin, deliverables or settlement amounts in addition to other margin payments and guaranty fund contributions.

Rule 919(g) would provide that Collateral Offset Obligations resulting from an Investment Loss could be applied solely to Investment Losses, and Collateral Offset Obligations resulting from a Custodial Loss could be applied solely to Custodial Losses. Rule 919(h), which addresses the allocation by the Clearing House of recoveries in respect of Investment Losses, would be expanded to cover recoveries from Custodial Losses as well. Certain additional clarifications in this subsection would be made to contemplate recovery and allocation of assets other than cash and to state that the Clearing House's obligation to reimburse for recoveries only applies to the extent the relevant assets remain available to the Clearing House. Rule 919(i), which provides, among other things, that Clearing Members remain liable to make margin and guaranty fund contributions notwithstanding Collateral Offset Obligations, would be revised to reference payment of variation margin, payment of settlement amounts and delivery of deliverables as well. A drafting clarification would also be made regarding Clearing Members' obligations to make and receive timely delivery to improve readability of the provision. Rule 919(j), which provides for return of excess Collateral Offset Obligations, would be revised to account for Collateral Offset Obligations in respect of Custodial Losses and to clarify that the obligation to return only applies to the extent the relevant amounts remain available to the Clearing House. Rule 919(k) would clarify that Collateral Offset Obligations are independent of obligations in respect of Assessment Contributions, Cash Loser Adjustments or Cash Gainer Adjustments, Partial Tear-Up Prices or Product Termination Amounts. A clarifying cross-reference to Rule 209 would be added to an existing statement that caps on Assessment Contributions under relevant rules do not limit liability for Collateral Offset Obligations. A statement that the conditions for contract termination under Rule 916(a)(ii)(B)(2) will not be met solely because of a Non-Default Loss or Investment Loss would be removed as unnecessary in light of the other amendments to Rule 919(k). A conforming change would be made in Rule 919(n), which provides that Rule 919 does not require the Clearing House is not required to pursue any litigation against any Person, to specifically reference Delivery Facilities.

Pursuant to revised Rule 919(p), the Clearing House would be obligated to

notify Clearing Members by Circular of the amount of Investment Loss Assets and Custodial Loss Assets as determined by ICE Clear Europe from time to time. ICE Clear Europe has removed a specific reference to the total amount of Loss Assets from the Rule. ICE Clear Europe believes that it is appropriate for the Clearing House to have the flexibility to update the amount of Investment Loss Assets and Custodial Loss Assets from time to time in light of its ongoing business and other relevant factors, without the need to amend the Rules. Such updates may, for example, reflect changes in relevant components of its capital requirements, in particular the capital requirements for credit, counterparty and market risks and operational and legal risks, that ICE Clear Europe considers in determining the appropriate level of such loss assets. Market participants would be notified of any change through published Circular. ICE Clear Europe intends that with the adoption of the amendments, the amount of Investment Loss Assets would be increased to USD 195 million and the initial amount of Custodial Loss Assets would be set at USD 80 million, as would be confirmed by Circular. Such amounts will remain in effect until a subsequent Circular, and the Clearing House's liability under Rule 919(b) would be limited to the notified amount of such assets.

Rule 919(q) would be amended to provide for notification of the amount of Loss Assets applied in connection with Non-Default Losses, Investment Losses or Custodial Losses, as applicable. The amendments would further clarify that replenishment of regulatory capital may be made using the resources of third parties (in addition to the Clearing House and its Affiliates). The Clearing House would be obligated to issue a new Circular pursuant to Rule 919(p) following any such replenishment. In the case of replenishment, the replenished or new Loss Assets or capital would not be applied to any pre-existing Non-Default Loss, Custodial Loss or Investment Loss. Various conforming and clarifying changes would be made to Rule 919(r), including to refer to Delivery Facilities and to remove an unnecessary reference to Approved Financial Institutions.

Under Rule 919(s), the Clearing House would not be liable to any Clearing Member, Customer or other Person for any Pledged Collateral Losses. Accordingly, the Clearing Member (or its Customer) would bear the risks of Pledged Collateral Losses, except to the extent directly resulting from fraud, bad faith, gross negligence or willful misconduct by the Clearing House or its directors, officers, employees or committees. While a new provision, Rule 919(s) would essentially be equivalent in substance to the relevant part of current Rule 502(j). The corresponding portions of current Rule 502(j) would be deleted as unnecessary in light of Rule 919(s). Under Rule 919(t), if the Clearing House recovers any amount in respect of Pledged Collateral Losses (less expenses), it would be obligated to pay such amounts to the Clearing Members that bore such losses on a pro rata basis, after application of any amounts applied by the Clearing House or other Person to meet such losses.

For Title Transfer Collateral Losses, Rule 919(u) would provide that the Clearing House would not be liable to any Clearing Member, Customer or other Person for such losses. The provision would expressly be without limitation of the Clearing House's ability to charge a negative ICE Deposit Rate under the Finance Procedures. Rule 919(u) would further provide that where title transfer collateral is provided, the Clearing Member is entitled to the redelivery of an equivalent asset, without any compensation for Title Transfer Collateral Losses or other losses, and accordingly the Clearing Member (or its Customer, if applicable) would bear the risk of Title Transfer Collateral Losses.

Rule 919(v) would clarify that a negative yield or interest rate on assets provided as initial or original margin, guaranty fund contributions, permitted cover or a deliverable will not constitute an Investment Loss or Non-Default Loss and will be for the account of the Clearing Member (or its Customer, if applicable). Under Rule 919(w), ICE Clear Europe would have no liability for any loss relating to any investment decision by any Clearing Member, Customer or other person, including any choice as between different kinds of Permitted Cover, or for the results of any such choices or investments.

IV. Additional Amendments

In various locations in the Rules, clarifications would be made that obligations of the Clearing House to return or provide certain funds or property to Clearing Members apply only to the extent such assets are received by and remain available to the Clearing House, reflecting the consequences of Rule 919. This includes Rules 301(f), 908(b)(iii), 908(c)(iii), 908(d)(iii), 908(g)(iii), 913(a)(iv), 914(j) and 916(n). In the case of Rule 301(f), 914(j) and 916(n), the amendments would further provide that the relevant funds or assets must not have been subject to an event similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss. Similarly, Rule 1102(k) would provide that the obligation of the Clearing House to apply amounts received from the Defaulter to repay guaranty fund contributions used in the default, retain assets in respect of Clearing House Contributions or reimburse insurers for default insurance proceeds, as applicable, would be subject to the Clearing House not having suffered a loss equivalent to an Investment Loss, Custodial Loss, Pledged Collateral Loss or Title Transfer Collateral Loss in respect of such amounts. Rule 1103(e) would be amended to address the potential situation where amounts received in respect of default insurance may themselves be subject to losses similar to a Custodial Loss, Investment Loss, Pledged Collateral Loss or Title Transfer Collateral Loss. Accordingly, application of such amounts could only be made to the extent that such amounts remain available to the Clearing House, reflecting the consequences of Rule 919.

A number of other non-substantive drafting and formatting updates would also be made.

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Rules are consistent with the requirements of Section 17A of the Act[8] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[9] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

As discussed herein, the proposed rule changes are designed to address the risks posed to ICE Clear Europe by a significant loss event not resulting from a default by one or more Clearing Members. These events may include investment, custodial and collateral losses with respect to margin, guaranty fund contributions, deliverables and settlement amounts as well as other losses resulting from general business risk, operational risk or other non-default scenarios. ICE Clear Europe, like all clearing organizations, faces the risk that such a loss event could affect its

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(F).

ability to continue orderly clearing operations or otherwise affect its viability as a going concern. The amendments are thus intended to enhance the ability of ICE Clear Europe to manage those risks by providing for a comprehensive framework to address such losses. The amendments enhance and clarify the existing procedures for handling Investment Losses and adopt parallel procedures to address Custodial Losses. As amended, the Rules would provide a mechanism for fully allocating Investment Losses and Custodial Losses, first to Loss Assets provided by the Clearing House and thereafter to Clearing Members by way of Collateral Offset Obligations. The amendments would distinguish such losses from Pledged Collateral Losses and Title Transfer Collateral Losses, which would remain the responsibility of the Clearing Member that provided such assets (or its customer), consistent with the existing Rules for Pledged Collateral. The amendments would also clarify the responsibility of ICE Clear Europe for Non-Default Losses. The amendments thus enhance ICE Clear Europe's ability to address general business risk and other risks that may otherwise threaten the viability of the clearing house as a going concern. The amendments also enhance the ability of ICE Clear Europe to manage custody and investment risk (and similar risks from delivery facilities, settlement systems and the like) in the remote circumstances where its ordinary course procedures are insufficient and a custodian, investment counterparty, settlement bank, delivery facility or similar system fails. Overall, the amendments will strengthen the ability of the Clearing House to manage the risks of, and withstand and/or recover from, significant non-default loss events.

The amendments also more clearly allocate certain losses as among ICE Clear Europe and Clearing Members, which will provide greater clarity, consistency and legal certainty. ICE Clear Europe believes that the amendments reflect the legitimate interests of Clearing Members and their customers. As proposed to be amended, the Rules would be designed to plan for remote and unprecedented, but potentially extreme, types of loss event, including Investment Losses, Custodial Losses, Pledged Collateral Losses, Title Transfer Collateral Losses and Non-Default Losses. In particular, Investment Losses and Custodial Losses, to the extent they exceed Loss Assets dedicated by the Clearing House for such purposes, will necessarily and adversely affect some or all Clearing Members, customers or other stakeholders. ICE Clear Europe believes that the amendments take a balanced approach that distributes potential Investment Losses and Custodial Losses to both ICE Clear Europe and Clearing Members. With respect to Pledged Collateral Losses, by contrast, and consistent with the existing Rules, ICE Clear Europe believes it is appropriate for Clearing Members (or their customers, if applicable) to continue to bear such losses. The treatment of Pledged Collateral Losses reflects the position that the providing Clearing Member (or its customer) remains the beneficial owner of such assets notwithstanding that they are pledged to ICE Clear Europe. ICE Clear Europe believes that such persons, rather than ICE Clear Europe, should bear such losses. ICE Clear Europe believes that Title Transfer Collateral Losses should be treated similarly. Title Transfer Collateral Losses reflect a potential diminution of value of particular non-cash assets provided as collateral; the allocation of the loss to Clearing Members reflects the fact that the Clearing Member is entitled only to the return of an equivalent asset, even if it has declined in value.

ICE Clear Europe also believes that the amendments further the interests of Clearing Members and their customers in having greater certainty as to the consequences of such losses, their potential liability for them and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

For the foregoing reasons, ICE Clear Europe believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme non-default loss scenario. ICE Clear Europe further believes that the approach taken will facilitate the ability of the Clearing House to allocate such losses so that it can continue clearing operations. The amendments therefore further the prompt and accurate clearance and settlement of cleared transactions. In so doing, in light of the importance of clearing houses to the financial markets they serve, the policy in favor of clearing of financial transactions as set out in the Act, and the potential consequences of a clearing house failure, the amendments will support the stability of the broader financial system and the public interest. Accordingly, in ICE Clear Europe's view, the amendments are consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[10]

The amendments are also consistent with relevant requirements of Rule 17Ad–22,[11] as set forth in the following discussion.

Rule 17Ad–22(b)(3) [12] provides that a clearing agency ''that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain sufficient financial resources to withstand, at a minimum . . . a default by the two participant families to which it has the largest exposure in extreme but plausible market conditions.'' ICE Clear Europe does not propose in these amendments to change the amount or composition of financial resources required of Clearing Members as margin or guaranty fund contributions. ICE Clear Europe is also not proposing to change its own resources that it contributes to default resources. The amendments are designed, however, to address and mitigate the risk to the Clearing House that its financial resources available to cover Clearing Member defaults could be lost or reduced in value as a result of Custodial Losses, Investment Losses or other types of non-default loss.

Specifically, under the amendments, with respect to Custodial Losses, ICE Clear Europe would be responsible for losses up to the amount of Custodial Loss Assets, which is to be determined by ICE Clear Europe from time to time. ICE Clear Europe has determined the initial level of Custodial Loss Assets taking into account components of its capital requirements applicable to central counterparties, in particular the capital requirements for credit, counterparty and market risks.

The amendments would provide for allocation of Custodial Losses in excess of Custodial Loss Assets to Clearing Members, who would be obligated to pay Collateral Offset Obligations to the extent of such excess. ICE Clear Europe's existing policies are intended to mitigate the risk of Custodian failure and Custodial Loss through appropriate selection and ongoing monitoring of Custodians. These procedures are designed to permit the Clearing House to hold assets in a manner that minimizes the risk of loss or delay in the access of ICE Clear Europe to such

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22.

[12] 17 CFR 240.17Ad–22(b)(3).

assets. Nonetheless, a Custodial Loss from a custodial failure is ultimately outside the control of the Clearing House. ICE Clear Europe is not itself a depository but is rather an intermediary. It is ultimately not in a position to backstop or guarantee performance by third-party Custodians. If ICE Clear Europe were responsible for all Custodial Losses in excess of the defined resources, a custodial failure could lead to a clearing house failure or other interference with clearing operations. As a result, ICE Clear Europe believes it is appropriate for Clearing Members to share in Custodial Losses that exceed Custodial Loss Assets as set out in the proposed Rules. Further, as set forth above, ICE Clear Europe believes that Title Transfer Collateral Losses and Pledged Collateral Losses, given the particular nature of such losses, are outside the control of the Clearing House, since they result from the choice of asset provided by the Clearing Member, and are appropriately borne by Clearing Members.

Under the amendments, Custodial Losses in excess of the amount of Custodial Loss Assets would be shared among Clearing Members proportionally based on their respective aggregate margin, guaranty fund contributions, deliverables and settlement amounts recorded across all account categories. This approach is largely consistent with the allocation of Investment Losses under the current Rules, with certain clarifications intended to capture variation margin, deliverable and settlement amounts in the calculation. The approach mutualizes both Investment Losses and Custodial Losses across all Clearing Members, in these remote loss scenarios where such losses exceed applicable Clearing House resources allocated to such losses. While Clearing Members may be required to make Collateral Offset Obligations that are independent of the particular mix of cash and securities provided by the Clearing Member as margin or guaranty fund contributions, ICE Clear Europe believes that the approach is appropriate in light of the remote nature of the potential losses, the fact that margin and guaranty fund assets are invested and custodied collectively in accordance with investment policies that are reviewed by the applicable risk committee and are transparent to Clearing Members, and the practical and operational considerations that would be required for an approach that attempted to allocate losses based on a Clearing Member's particular assets and elections. All Clearing Member assets are held and invested on an aggregate basis (such that investments cannot be allocated to particular Clearing Member), and all Clearing Members receive a blended rate of return on cash assets based on aggregate clearing house investment activity. As a result, ICE Clear Europe does not believe it would be operationally feasible, or beneficial to Clearing Members, to attempt to allocate Investment Losses or Custodial Losses based on the particular mix of assets provided by individual Clearing Members. Instead, ICE Clear Europe believes it is more appropriate, in light of these operational and other considerations, to allocate Investment Losses and Custodial Losses, if any, to Clearing Members based on their respective aggregate amount of margin and guaranty fund contributions and deliverables and settlement amounts recorded in its accounts at the Clearing House.

As a result, the amendments clarify the resources available to address Investment Losses, Custodial Losses and other losses not resulting from Clearing Member default. The provisions relating to Investment and Custodial Losses, in effect, provide protection against the loss of the financial resources provided by Clearing Members to support the default waterfall. The amendments thus enhance the ability of ICE Clear Europe to manage the risk of certain losses that do not arise from Clearing Member default or defaults, thereby ensuring that ICE Clear Europe continues to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[13]

Rule 17Ad–22(e)(3)(ii) provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable . . . maintain a sound risk management framework that . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk or any other losses. . . .'' [14] Specifically, the amendments are intended to address, and to fully cover, Investment Losses, Custodial Losses, Pledged Collateral Losses, Title Transfer Collateral Losses and Non-Default Losses. The amendments will thus facilitate recovery from such potential losses, even if extreme, and permit the continued operation of the Clearing House. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(ii).[15]

Rule 17Ad–22(e)(9) provides that a ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.'' [16] The new provisions relating to Custodial Losses would, among other matters, protect against the risk of losses relating to a failure of a settlement bank, and provide a means for allocating such losses to the Clearing House, to the extent of Custodial Loss Assets, and thereafter to Clearing Members through Collateral Offset Obligations. As such, the amendments will help the Clearing House manage and mitigate the risks of settlement bank failure, consistent with the requirements of Rule 17Ad–22(e)(9).[17]

Rule 17Ad–22(e)(15) requires that a ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable [. . .] identify, monitor and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize. . . .'' [18] Under the amended Rules, Loss Assets (including both Investment Loss Assets and Custodial Loss Assets) will be available to cover Non-Default Losses, which include losses from general business risk. Such losses will thereafter be covered by the Clearing House's capital and other assets. ICE Clear Europe does not propose to change the level of its own equity capital, which supports its operations and covers general business losses. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad–22(e)(15).[19]

Rule 17A–22(e)(16) provides that the ''covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonable designed to, as applicable

[13] 17 CFR 240.17Ad–22(b)(3).

[14] 17 CFR 240.17Ad–22(e)(3)(ii).

[15] 17 CFR 240.17Ad–22(e)(3)(ii).

[16] 17 CFR 240.17Ad–22(e)(9).

[17] 17 CFR 240.17Ad–22(e)(9).

[18] 17 CFR 240.17Ad–22(e)(15).

[19] 17 CFR 240.17Ad–22(e)(15).

[. . .] safeguard [its] own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.'' [20] ICE Clear Europe's existing investment policies and procedures provide for the investment of cash provided by Clearing Members as margin or guaranty fund contributions in investments with minimal credit, market and liquidity risks. Similarly, the policies provide for the use by ICE Clear Europe of Custodians to hold cash and securities in a manner designed to minimize the risk of loss or delay in access to such assets. ICE Clear Europe is not proposing to change such policies and procedures in connection with these amendments. Rather, the amendments address the remote scenario where, despite the protections under such procedures, there is a failure by an investment issuer or counterparty or custodian resulting in an Investment Loss or Custodial Loss. Such a circumstance would be remote in ICE Clear Europe's view, and in any event, outside its control. In such circumstances, the amendments would allocate the loss as between ICE Clear Europe and Clearing Members, with ICE Clear Europe being responsible for a first loss position up to the amount of defined Loss Assets and with Clearing Members being responsible for the remaining loss, in proportion to their margin, guaranty fund and other relevant deposits to the Clearing House. The amendments would thus enhance the protection of funds and assets provided to ICE Clear Europe as margin or guaranty fund contributions and are therefore consistent with the requirements of Rule 17Ad–22(e)(16).[21]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are designed to allocate Investment Losses and Custodial Losses between ICE Clear Europe and Clearing Members, to allocate Pledged Collateral Losses and Title Transfer Collateral Losses to Clearing Members, and to allocate Non-Default Losses to the Clearing House. Although the amendments may thus impose certain potential losses and costs upon Clearing Members, ICE Clear Europe believes that such result is appropriate in the case of significant investment, custodial and other non-default loss events in order to permit the continued operation of the Clearing House. The amendments to the Rules will apply uniformly across Clearing Members. ICE Clear Europe does not believe that the proposed amendments will impact competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate or unnecessary in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe conducted a public consultation with respect to the proposed amendments.[22] ICE Clear Europe did not receive any written responses to the public consultation. In addition, prior to the consultation, ICE Clear Europe engaged in a number of discussions concerning the proposed amendments with an industry group representing numerous market participants. Through this process, market participants raised a number of questions concerning the amount of resources being allocated as Investment Loss Assets and Custodial Loss Assets and the basis for the determination of such amounts. Market participants also raised questions about the scope of Custodial Losses subject to allocation under the proposed Rules and the overall approach to the treatment of Custodial Losses in light of the manner in which ICE Clear Europe holds assets. As discussed with market participants, ICE Clear Europe believes that the approach taken is appropriate in light of the fact that assets are generally held either with relevant central banks or central securities depositories. The Clearing House also believes that the definition of Custodial Losses is appropriate to cover the appropriate range of risks of custodian failure, which are inherently fact- and situation-specific and may be difficult to predict in advance. ICE Clear Europe further explained in these discussions the basis for determination of relevant amounts, in light of the applicable capital requirements for credit, counterparty and market risks and operational and legal risks under relevant UK and EU law. ICE Clear Europe did not ultimately change the approach to Custodial Losses or the amount specified as Loss Assets in connection with these discussions. ICE Clear Europe will notify the Commission of any additional written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–ICEEU–2023–010 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–ICEEU–2023–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[20] 17 CFR 240.17Ad–22(e)(16).

[21] 17 CFR 240.17Ad–22(e)(16).

[22] See ICE Clear Europe Circular No. C22143 (Dec. 15, 2022).

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 such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–ICEEU–2023–010 and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09903 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97431; File No. SR–CboeEDGA–2023–006]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 4, 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 April 21, 2023, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'' or ''EDGA Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to adopt monthly fees assessed to Users [3] that elect to subscribe to the US Equity Short Volume & Trades Report, effective, April 21, 2023.

The Exchange recently adopted a new data product known as the US Equity Short Volume & Trades Report (the, ''Report'').[4] The Report, which will be available on April 21, 2023, contains (i) an end-of-day report that provides certain equity trading activity on the Exchange, and includes trade date, total volume, sell short volume, and sell short exempt volume, by symbol; [5] and (ii) an end-of-month report that provides a record of all short sale transactions for the month, and includes trade date and time, trade size, trade price, and type of short sale execution, by symbol and exchange.[6] In addition to a monthly or annual subscription, a Member [7] or non-Member may purchase the Report on a historical monthly basis, which provides the end-of-day reports for each day and the corresponding end-of-month report for a given calendar month.

The Exchange proposes to adopt fees applicable to Users that subscribe to the Report. As proposed, the Exchange would assess a monthly [8] fee of $750 per month to an Internal Distributor [9] of the Report, and a fee of $1,250 per month to an External Distributor [10] of the Report. These fees may be paid on a monthly basis or on an annual basis.[11] External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. Some External Distributors incorporate short sale data into their own proprietary products, which they sell to downstream users. These distributors may not charge separately for data included in the Report, but nevertheless gain value from the data by incorporating it into their product. The higher price for External Distributors reflects the additional value these distributors gain from the product.

The Exchange also proposes to adopt fees for the Report provided on a historical basis. The Report will be available for each calendar month dating back to January 2015, and Users of such data will be assessed a fee of $500 per historical monthly Report for which they subscribe.[12] Data provided

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''User'' of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. *See* the EDGA Equities Exchange Fee Schedule at *https://www.cboe.com/us/equities/membership/fee_schedule/EDGA/.*

[4] *See* Securities and Exchange Act No. 97301 (April 13, 2023) (SR–CboeEDGA–2023–005).

[5] The end-of-day report was originally titled ''Short Volume Report'' and was displayed as an individual product on the Exchange's Fee Schedule. The end-of-day report is now being incorporated into the Report and as such, the Exchange seeks to amend its Fee Schedule to display the applicable fees for the Report, which will contain both the end-of-day report and an end-of-month report.

[6] *See* Exchange Rule 13.8(h).

[7] *See* Exchange Rule 1.5(n).

[8] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on April 24, 2023, the monthly fee will cover the period of April 24, 2023, through May 23, 2023. If the User cancels its subscription prior to May 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[9] An ''Internal Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *Supra* note 3.

[10] An ''External Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *Supra* note 3.

[11] Users who subscribe to the US Equity Short Volume & Trades Report during the middle of a month will receive the end-of-day report for each day beginning on the date of subscription.

[12] Users who purchase the US Equity Short Volume & Trades report on an annual basis will receive 12 months of historical data free of charge,

via the historical Report is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Report or incorporate such data into their product. Nonetheless, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a fee for display use redistribution that reflects the value these distributors gain from the historical product.

The Exchange anticipates that a wide variety of market participants will purchase the Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange.

The Exchange further notes that the Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make the reports or services available and that potential subscribers may purchase it only if they voluntarily choose to do so. Further, the Exchange notes that other exchanges offer similar products for a fee.[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with 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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the US Equity Short Volume & Trades Report further broadens the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of short volume data. The Report benefits investors by providing access to the US Equity Short Volume & Trades Report data, which may promote better informed trading, as well as research and studies of the equities industry.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 16% of the equity market share.[16] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced US Equity Short Volume & Trades Report.

The Exchange believes that the proposed fee for the Report is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the value and benefits provided to Users that choose to subscribe to the Report on the Exchange. As discussed above, the Report may be beneficial to Members and non-Members as it may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. Therefore, the Exchange believes that it is reasonable to assess a modest fee to Users that subscribe to the Report.

The Exchange further believes the proposed fee is reasonable because the amount assessed is equal to or comparable to the analogous fees charged by competitor exchanges. For example, the Nasdaq Stock Market LLC (''Nasdaq'') charges $750 to Internal Distributors and $1,250 to External Distributors of the Nasdaq Short Sale Volume Reports provided on both a daily and historical monthly basis,[18] which is identical to the proposed subscription fees for the US Equity Short Volume & Trades Report. Additionally, the New York Stock Exchange LLC (''NYSE'') and its affiliated equity markets (the ''NYSE Group'') also charge for the TAQ NYSE Group Short Sales (Monthly File) and TAQ NYSE Group Short Volume (Daily File). Specifically, NYSE Group charges an access fee of $1,000 per month for an ongoing subscription that includes 12 months of back history, then additional back history charged at $500 per data content month. NYSE Group also charges a back history fee, of $1,000 per data content month for the first 12 months of history, then additional back history charged at $500 per data content month.[19] The Exchange therefore believes that the proposed fees are reasonable and set at a level to compete with other equity exchanges that offer similar reports. Indeed, proposing fees

beginning with the month immediately prior to the date of subscription. Users who purchase the US Equity Short Volume & Trades report on a monthly basis would have the option of purchasing historical data on a per month basis.

[13] *See* the ''Nasdaq Short Sale Volume Reports'' portion of the Nasdaq Fee Schedule at *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN. See also* the ''NYSE Group Summary Data Products'' portion of the NYSE Historical Proprietary Market Data Pricing at *https://www.nyse.com/publicdocs/nyse/data/NYSE_Historical_Market_Data_Pricing.pdf.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 17, 2023), available at *https://www.cboe.com/us/equities/market_statistics/.*

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[18] *See http://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#short.*

[19] *See https://www.nyse.com/publicdocs/nyse/data/NYSE_Historical_Market_Data_Pricing.pdf.*

that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Although each of these similar data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different equities based on the included data points on any one exchange. As such, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Report and instead purchase another exchange's similar data product, which offers similar data points, albeit based on that other market's trading activity.

In addition, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will apply equally to all Members and non-Members that choose to subscribe to the Report. As stated, the Report is completely optional and not necessary for trading. Rather, the Exchange voluntarily makes the Report available, and Users may choose to subscribe (and pay for) the report based on their own individual business needs. Potential subscribers may subscribe to the Report at any time if they believe it to be valuable or may decline to purchase it.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge an External Distributor of the Report a higher fee than an Internal Distributor as an External Distributor will ordinarily charge a fee to its downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, the Exchange expects products from the Report to be part of a suite of offerings from distributors that generally promote sales. External distribution is also fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. Therefore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a higher fee for a product that generates downstream revenue. Further, the proposed fee will apply equally to Internal and External Distributors, respectively, that choose to distribute data from the Report. Moreover, as described above, another Exchange similarly charges External Distributors higher fees as compared to Internal Distributors for a similar data product.[20]

[20] *See* Nasdaq Rule 7 Section 152.

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 that is not necessary or appropriate in furtherance of the purposes of the Act because the Report will be available equally to all Members and non-Members that choose to subscribe to the report. As stated, the Report is optional and Members and non-Members may choose to subscribe to such report, or not, based on their view of the additional benefits and added value provided by utilizing the Report. As such, the Exchange believes the proposed rule change imposes no burden on intramarket competition. Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, similar products offered by Nasdaq and the NYSE Group are priced equally or comparable to the Report. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. Accordingly, the Exchange does not believe its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGA–2023–006 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–CboeEDGA–2023–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeEDGA–2023–006, and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09907 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97434; File No. SR-CboeBYX–2023–007]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

May 4, 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 April 21, 2023, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'' or ''BYX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to adopt monthly fees assessed to Users[3] that elect to subscribe to the US Equity Short Volume & Trades Report, effective, April 21, 2023.

The Exchange recently adopted a new data product known as the US Equity Short Volume & Trades Report (the, ''Report'').[4] The Report, which will be available on April 21, 2023, contains (i) an end-of-day report that provides certain equity trading activity on the Exchange, and includes trade date, total volume, sell short volume, and sell short exempt volume, by symbol;[5] and (ii) an end-of-month report that provides a record of all short sale transactions for the month, and includes trade date and time, trade size, trade price, and type of short sale execution, by symbol and exchange.[6] In addition to a monthly or annual subscription, a Member[7] or non-Member may purchase the Report on a historical monthly basis, which provides the end-of-day reports for each day and the corresponding end-of-month report for a given calendar month.

The Exchange proposes to adopt fees applicable to Users that subscribe to the Report. As proposed, the Exchange would assess a monthly[8] fee of $750 per month to an Internal Distributor[9] of the Report, and a fee of $1250 per month to an External Distributor[10] of the Report. These fees may be paid on a monthly basis or on an annual basis.[11] External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. Some External Distributors incorporate short sale data into their own proprietary products, which they sell to downstream users. These distributors may not charge separately for data included in the Report, but nevertheless gain value from the data by incorporating it into their product. The higher price for External Distributors reflects the additional value these distributors gain from the product.

The Exchange also proposes to adopt fees for the Report provided on a historical basis. The Report will be available for each calendar month

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''User'' of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. *See* the BYX Equities Exchange Fee Schedule at *https://www.cboe.com/us/equities/membership/fee_schedule/byx/*.

[4] *See* Securities and Exchange Act No. 97303 (April 13, 2023) (SR–CboeBYX–2023–006).

[5] The end-of-day report was originally titled ''Short Volume Report'' and was displayed as an individual product on the Exchange's Fee Schedule. The end-of-day report is now being incorporated into the Report and as such, the Exchange seeks to amend its Fee Schedule to display the applicable fees for the Report, which will contain both the end-of-day report and an end-of-month report.

[6] *See* Exchange Rule 11.22(f).

[7] *See* Exchange Rule 1.5(n).

[8] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on April 24, 2023, the monthly fee will cover the period of April 24, 2023, through May 23, 2023. If the User cancels its subscription prior to May 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[9] An ''Internal Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *Supra* note 3.

[10] An ''External Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *Supra* note 3.

[11] Users who subscribe to the US Equity Short Volume & Trades Report during the middle of a month will receive the end-of-day report for each day beginning on the date of subscription.

dating back to January 2015, and Users of such data will be assessed a fee of $500 per historical monthly Report for which they subscribe.[12] Data provided via the historical Report is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Report or incorporate such data into their product. Nonetheless, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a fee for display use redistribution that reflects the value these distributors gain from the historical product.

The Exchange anticipates that a wide variety of market participants will purchase the Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange.

The Exchange further notes that the Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make the reports or services available and that potential subscribers may purchase it only if they voluntarily choose to do so. Further, the Exchange notes that other exchanges offer similar products for a fee.[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with 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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the US Equity Short Volume & Trades Report further broadens the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of short volume data. The Report benefits investors by providing access to the US Equity Short Volume & Trades Report data, which may promote better informed trading, as well as research and studies of the equities industry.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 16% of the equity market share.[16] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced US Equity Short Volume & Trades Report.

The Exchange believes that the proposed fee for the Report is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the value and benefits provided to Users that choose to subscribe to the Report on the Exchange. As discussed above, the Report may be beneficial to Members and non-Members as it may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. Therefore, the Exchange believes that it is reasonable to assess a modest fee to Users that subscribe to the Report.

The Exchange further believes the proposed fee is reasonable because the amount assessed is equal to or comparable to the analogous fees charged by competitor exchanges. For example, the Nasdaq Stock Market LLC (''Nasdaq'') charges $750 to Internal Distributors and $1,250 to External Distributors of the Nasdaq Short Sale Volume Reports provided on both a daily and historical monthly basis, [18] which is identical to the proposed subscription fees for the US Equity Short Volume & Trades Report. Additionally, the New York Stock Exchange LLC (''NYSE'') and its affiliated equity markets (the ''NYSE Group'') also charge for the TAQ NYSE Group Short Sales (Monthly File) and TAQ NYSE Group Short Volume (Daily File). Specifically, NYSE Group charges an access fee of $1,000 per month for an ongoing subscription that includes 12 months of back history, then additional back history charged at $500 per data content month. NYSE Group also charges a back history fee, of $1,000 per data content month for the first 12 months of history, then additional back history charged at $500 per data content

[12] Users who purchase the US Equity Short Volume & Trades report on an annual basis will receive 12 months of historical data free of charge, beginning with the month immediately prior to the date of subscription. Users who purchase the US Equity Short Volume & Trades report on a monthly basis would have the option of purchasing historical data on a per month basis.

[13] *See* the ''Nasdaq Short Sale Volume Reports'' portion of the Nasdaq Fee Schedule at *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN. See also* the ''NYSE Group Summary Data Products'' portion of the NYSE Historical Proprietary Market Data Pricing at *https://www.nyse.com/publicdocs/nyse//NYSE_Historical_Market_Data_Pricing.pdf.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 17, 2023), available at *https://www.cboe.com/us/equities/market_/.*

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[18] *See http://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#short*

month.[19] The Exchange therefore believes that the proposed fees are reasonable and set at a level to compete with other equity exchanges that offer similar reports. Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Although each of these similar data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different equities based on the included data points on any one exchange. As such, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Report and instead purchase another exchange's similar data product, which offers similar data points, albeit based on that other market's trading activity.

In addition, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will apply equally to all Members and non-Members that choose to subscribe to the Report. As stated, the Report is completely optional and not necessary for trading. Rather, the Exchange voluntarily makes the Report available, and Users may choose to subscribe (and pay for) the report based on their own individual business needs. Potential subscribers may subscribe to the Report at any time if they believe it to be valuable or may decline to purchase it.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge an External Distributor of the Report a higher fee than an Internal Distributor as an External Distributor will ordinarily charge a fee to its downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, the Exchange expects products from the Report to be part of a suite of offerings from distributors that generally promote sales. External distribution is also fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. Therefore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a higher fee for a product that generates downstream revenue. Further, the proposed fee will apply equally to Internal and External Distributors, respectively, that choose to distribute data from the Report. Moreover, as described above, another Exchange similarly charges External Distributors higher fees as compared to Internal Distributors for a similar data product.[20]

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 that is not necessary or appropriate in furtherance of the purposes of the Act because the Report will be available equally to all Members and non-Members that choose to subscribe to the report. As stated, the Report is optional and Members and non-Members may choose to subscribe to such report, or not, based on their view of the additional benefits and added value provided by utilizing the Report. As such, the Exchange believes the proposed rule change imposes no burden on intramarket competition. Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, similar products offered by Nasdaq and the NYSE Group are priced equally or comparable to the Report. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''. Accordingly, the Exchange does not believe its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and paragraph (f) of Rule 19b–4[22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBYX–2023–007 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–CboeBYX–2023–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[19] *See https://www.nyse.com/publicdocs/nyse/data/NYSE_Historical_Market_Data_.pdf.*

[20] *See* Nasdaq Rule 7 Section 152.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeBYX–2023–007, and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09901 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97430; File No. SR–CboeEDGX–2023–031]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 4, 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 April 21, 2023, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'' or ''EDGX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to adopt monthly fees assessed to Users[3] that elect to subscribe to the US Equity Short Volume & Trades Report, effective, April 21, 2023.

The Exchange recently adopted a new data product known as the US Equity Short Volume & Trades Report (the, ''Report'').[4] The Report, which will be available on April 21, 2023, contains (i) an end-of-day report that provides certain equity trading activity on the Exchange, and includes trade date, total volume, sell short volume, and sell short exempt volume, by symbol;[5] and (ii) an end-of-month report that provides a record of all short sale transactions for the month, and includes trade date and time, trade size, trade price, and type of short sale execution, by symbol and exchange.[6] In addition to a monthly or annual subscription, a Member[7] or non-Member may purchase the Report on a historical monthly basis, which provides the end-of-day reports for each day and the corresponding end-of-month report for a given calendar month.

The Exchange proposes to adopt fees applicable to Users that subscribe to the Report. As proposed, the Exchange would assess a monthly[8] fee of $750 per month to an Internal Distributor[9] of the Report, and a fee of $1,250 per month to an External Distributor[10] of the Report. These fees may be paid on a monthly basis or on an annual basis.[11] External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. Some External Distributors incorporate short sale data into their own proprietary products, which they sell to downstream users. These distributors may not charge separately for data included in the Report, but nevertheless gain value from the data by incorporating it into their product. The higher price for External Distributors reflects the additional value these distributors gain from the product.

The Exchange also proposes to adopt fees for the Report provided on a historical basis. The Report will be available for each calendar month

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''User'' of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. *See* the EDGX Equities Exchange Fee Schedule at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*.

[4] *See* Securities and Exchange Act No. 97300 (April 13, 2023) (SR–CboeEDGX–2023–026).

[5] The end-of-day report was originally titled ''Short Volume Report'' and was displayed as an individual product on the Exchange's Fee Schedule. The end-of-day report is now being incorporated into the Report and as such, the Exchange seeks to amend its Fee Schedule to display the applicable fees for the Report, which will contain both the end-of-day report and an end-of-month report.

[6] *See* Exchange Rule 13.8(h).

[7] *See* Exchange Rule 1.5(n).

[8] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on April 24, 2023, the monthly fee will cover the period of April 24, 2023, through May 23, 2023. If the User cancels its subscription prior to May 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[9] An ''Internal Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *Supra* note 3.

[10] An ''External Distributor'' of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *Supra* note 3.

[11] Users who subscribe to the US Equity Short Volume & Trades Report during the middle of a month will receive the end-of-day report for each day beginning on the date of subscription.

dating back to January 2015, and Users of such data will be assessed a fee of $500 per historical monthly Report for which they subscribe.[12] Data provided via the historical Report is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Report or incorporate such data into their product. Nonetheless, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a fee for display use redistribution that reflects the value these distributors gain from the historical product.

The Exchange anticipates that a wide variety of market participants will purchase the Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange.

The Exchange further notes that the Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make the reports or services available and that potential subscribers may purchase it only if they voluntarily choose to do so. Further, the Exchange notes that other exchanges offer similar products for a fee.[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with 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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the US Equity Short Volume & Trades Report further broadens the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of short volume data. The Report benefits investors by providing access to the US Equity Short Volume & Trades Report data, which may promote better informed trading, as well as research and studies of the equities industry.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 16% of the equity market share.[16] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced US Equity Short Volume & Trades Report.

The Exchange believes that the proposed fee for the Report is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the value and benefits provided to Users that choose to subscribe to the Report on the Exchange. As discussed above, the Report may be beneficial to Members and non-Members as it may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. Therefore, the Exchange believes that it is reasonable to assess a modest fee to Users that subscribe to the Report.

The Exchange further believes the proposed fee is reasonable because the amount assessed is equal to or comparable to the analogous fees charged by competitor exchanges. For example, the Nasdaq Stock Market LLC (''Nasdaq'') charges $750 to Internal Distributors and $1,250 to External Distributors of the Nasdaq Short Sale Volume Reports provided on both a daily and historical monthly basis,[18] which is identical to the proposed subscription fees for the US Equity Short Volume & Trades Report. Additionally, the New York Stock Exchange LLC (''NYSE'') and its affiliated equity markets (the ''NYSE Group'') also charge for the TAQ NYSE Group Short Sales (Monthly File) and TAQ NYSE Group Short Volume (Daily File). Specifically, NYSE Group charges an access fee of $1,000 per month for an ongoing subscription that includes 12 months of back history, then additional back history charged at $500 per data content month. NYSE Group also charges a back history fee, of $1,000 per data content month for the first 12 months of history, then additional back history charged at $500 per data content

[12] Users who purchase the US Equity Short Volume & Trades report on an annual basis will receive 12 months of historical data free of charge, beginning with the month immediately prior to the date of subscription. Users who purchase the US Equity Short Volume & Trades report on a monthly basis would have the option of purchasing historical data on a per month basis.

[13] *See* the ''Nasdaq Short Sale Volume Reports'' portion of the Nasdaq Fee Schedule at *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN. See also* the ''NYSE Group Summary Data Products'' portion of the NYSE Historical Proprietary Market Data Pricing at *https://www.nyse.com/publicdocs/nysedataNYSE_Historical_Market_Data_Pricing.pdf.*

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 17, 2023), available at *https://www.cboe.com/us/equities/market_statistics/.*

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[18] *See http://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata#short.*

month.[19] The Exchange therefore believes that the proposed fees are reasonable and set at a level to compete with other equity exchanges that offer similar reports. Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Although each of these similar data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different equities based on the included data points on any one exchange. As such, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's Report and instead purchase another exchange's similar data product, which offers similar data points, albeit based on that other market's trading activity.

In addition, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will apply equally to all Members and non-Members that choose to subscribe to the Report. As stated, the Report is completely optional and not necessary for trading. Rather, the Exchange voluntarily makes the Report available, and Users may choose to subscribe (and pay for) the report based on their own individual business needs. Potential subscribers may subscribe to the Report at any time if they believe it to be valuable or may decline to purchase it.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge an External Distributor of the Report a higher fee than an Internal Distributor as an External Distributor will ordinarily charge a fee to its downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, the Exchange expects products from the Report to be part of a suite of offerings from distributors that generally promote sales. External distribution is also fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. Therefore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a higher fee for a product that generates downstream revenue. Further, the proposed fee will apply equally to Internal and External Distributors, respectively, that choose to distribute data from the Report. Moreover, as described above, another Exchange similarly charges External Distributors higher fees as compared to Internal Distributors for a similar data product.[20]

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 that is not necessary or appropriate in furtherance of the purposes of the Act because the Report will be available equally to all Members and non-Members that choose to subscribe to the report. As stated, the Report is optional and Members and non-Members may choose to subscribe to such report, or not, based on their view of the additional benefits and added value provided by utilizing the Report. As such, the Exchange believes the proposed rule change imposes no burden on intramarket competition. Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, similar products offered by Nasdaq and the NYSE Group are priced equally or comparable to the Report. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''. Accordingly, the Exchange does not believe its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and paragraph (f) of Rule 19b–4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2023–031 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–CboeEDGX–2023–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[19] *See https://www.nyse.com/publicdocs/nyse/data/NYSE_Historical_Market_Data_Pricing.pdf.*

[20] *See* Nasdaq Rule 7 Section 152.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CboeEDGX–2023–031, and should be submitted on or before May 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09906 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34907; File No. 812–15365]

Lafayette Square USA, Inc. et al.

May 4, 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 (''Act'') for an exemption from section 18(a) and 61(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the Company to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly owned subsidiary of the Company that is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 as a small business investment company (''*SBIC*'') and relies on Section 3(c)(7) for an exclusion from the definition of ''investment company'' under the Act.

APPLICANTS: Lafayette Square USA, Inc. (the ''Company''), LS BDC Adviser, LLC (the ''Adviser''), Lafayette Square SBIC, LP (the ''Lafayette Square SBIC''), and Lafayette Square SBIC GP, LLC (the ''SBIC GP'').

FILING DATES: The application was filed on July 11, 2022 and amended on February 3, 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 the 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 May 29, 2023, and should be accompanied by proof of service on the 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:* David Kraut, *kraut@lafayettesquare.com,* Thomas Friedmann, *thomas.friedmann@dechert.com,* and Jonathan Gaines, *jonathan.gaines@dechert.com.*

FOR FURTHER INFORMATION CONTACT: Toyin Momoh, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated February 3, 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. 2023–09911 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97435; File No. SR–NYSEARCA–2023–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Rule 7.44–E Relating to the Retail Liquidity Program

May 4, 2023.

On January 10, 2023, NYSE Arca, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Retail Liquidity Program. The proposed rule change was published for comment in the **Federal Register** on January 30, 2023.[3] The Commission received no comment letters on the proposed rule change. On March 15, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On April 25, 2023, the Exchange withdrew the proposed rule change (SR–NYSEARCA–2023–06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–09908 Filed 5–9–23; 8:45 am]

BILLING CODE 8011–01–P

[23] 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. 96741 (Jan. 24, 2023), 88 FR 5948.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97145 (Mar. 15, 2023), 88 FR 17071 (Mar. 21, 2023). The Commission designated April 28, 2023 as the date by it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17909 and #17910; ILLINOIS Disaster Number IL–00079]

Administrative Declaration of a Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 05/03/2023.

Incident: Severe Storms and Tornadoes.

Incident Period: 04/04/2023.

DATES: Issued on 05/03/2023.

Physical Loan Application Deadline Date: 07/03/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/05/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fulton.

Contiguous Counties:

Illinois: Knox, Mason, McDonough, Peoria, Schuyler, Tazewell, Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17909 C and for economic injury is 17910 0.

The States which received an EIDL Declaration # is Illinois.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–09914 Filed 5–9–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17907 and #17908; ILLINOIS Disaster Number IL–00078]

Administrative Declaration of a Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 05/03/2023.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/31/2023.

DATES: Issued on 05/03/2023.

Physical Loan Application Deadline Date: 07/03/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/05/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Crawford.

Contiguous Counties:

Illinois: Clark, Jasper, Lawrence, Richland.

Indiana: Knox, Sullivan.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17907 C and for economic injury is 17908 0.

The States which received an EIDL Declaration # are Illinois, Indiana.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–09915 Filed 5–9–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12070]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''The World Outside: Louise Nevelson at Midcentury'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''The World Outside: Louise Nevelson at Midcentury'' at the Amon Carter Museum of American Art, Fort Worth, Texas; the Colby College Museum of Art, Waterville, Maine; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of

the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; *email: section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–09919 Filed 5–9–23; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will conduct its regular business meeting on June 15, 2023, in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are in this notice's **SUPPLEMENTARY INFORMATION** section. Also, the Commission published a document in the **Federal Register** on April 12, 2023, concerning its public hearing on May 4, 2023, in Harrisburg, Pennsylvania.

DATES: The meeting will be held on Thursday, June 15, 2023, at 9 a.m.

ADDRESSES: This public meeting will be conducted in person and digitally from the Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, Pennsylvania 17110.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: 717–238–0423; fax: 717–238–2436.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) election of Commission officers for FY2024; (2) reconciliation of FY2024 budget; (3) approval of contracts, grants, and agreements; (4) action on proposed general permit General Permit GP–02 Groundwater Withdrawals for Emergency Uses or Maintenance Activities; (5) proposed Water Resources Program; and (6) actions on 28 regulatory program projects, including one Commission-initiated project approval modification.

This agenda is complete at the time of issuance, but other items may be added and some stricken without further notice. Listing an item on the agenda does not necessarily mean that the Commission will take final action at this meeting. When the Commission does take final action, a notice of these actions will be published in the **Federal Register** after the meeting. Any actions specific to projects will also be provided directly to project sponsors in writing.

The meeting will be conducted in person at the Susquehanna River Basin Commission Harrisburg headquarters and digitally. The public is invited to attend the Commission's business meeting. You can access the Business Meeting remotely via Zoom: *https://us02web.zoom.us/j/82472805136?pwd=VlpHaElpeWF2U0RhWVFQRHhTbU40UT09;* Meeting ID 824 7280 5136; Passcode: SRBC4423! or via telephone: 309–205–3325 or 312–626–6799; Meeting ID 824 7280 5136.

Written comments pertaining to items on the agenda at the business meeting may be mailed to the Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pennsylvania 17110–1788, or submitted electronically through *www.srbc.net/about/meetings-events/business-meeting.html.* Such comments are due to the Commission on or before May 15, 2023. Comments will not be accepted at the business meeting noticed herein.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: May 5, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–09944 Filed 5–9–23; 8:45 am]

BILLING CODE 7040–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. ET on May 10, 2023.

PLACE: Norris Middle School, 5 Norris Square, Norris, Tennessee.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Meeting No. 23–02

The TVA Board of Directors will hold a public meeting on May 10, 2023, at the Norris Middle School, 5 Norris Square, Norris, Tennessee.

The meeting will be called to order at 9:00 a.m. ET to consider the agenda items listed below. TVA management will answer questions from the news media following the Board meeting.

On May 9, at the Norris Middle School, the public may comment on any agenda item or subject at a board-hosted public listening session which begins at 2 p.m. ET and will last until 4:00 p.m. Preregistration is required to address the Board.

Agenda

1. Chair's Welcome
2. Report of the External Stakeholders and Regulation Committee
   A. BVU Authority Power Contract Amendment
3. Report of the Audit, Finance, Risk, and Cybersecurity Committee
4. Report of the Operations and Nuclear Oversight Committee
   A. Proposed Endorsement and Delegation Amendment
5. Report of the People and Governance Committee
6. Report from President and CEO

CONTACT PERSON FOR MORE INFORMATION: For more information: Please call Ashton Davies, TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 3, 2023.

Edward C. Meade,

Agency Liaison.

[FR Doc. 2023–10107 Filed 5–8–23; 4:15 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–0188; Summary Notice No. 2023–16]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal

Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 30, 2023.

ADDRESSES: Send comments identified by docket number FAA–2023–0188 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Deana Stedman, AIR–646, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3187, email *deana.stedman@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 5, 2023.

Daniel J. Commins,

Acting Manager, Integration and Performance Branch.

Petition for Exemption

Docket No.: FAA–2023–0188.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: Petitioner is seeking relief from 14 CFR 25.813(e), which specifies that no door may be installed between any passenger seat that is occupiable for takeoff and landing and any passenger emergency exit, such that the door crosses any egress path (including aisles, crossaisles, and passageways). Specifically, The Boeing Company is proposing to install up to 32 mini-suites, each with a door, on its Model 737–7, 737–8, 737–8200, 737–9, and 737–10 airplanes.

[FR Doc. 2023–09971 Filed 5–9–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Meeting of the Treasury Advisory Committee on Racial Equity

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury is hosting its Fiscal Year 2023 Quarter 3 meeting of the Treasury Advisory Committee on Racial Equity (''TACRE'' or ''Committee''). The Committee is composed of 25 members who will provide information, advice, and recommendations to the Department of the Treasury on matters relating to the advancement of racial equity. This notification provides the date, time, and location of the meeting and the process for participating and providing comments.

DATES: June 8, 2023, at 1–5 p.m. eastern time.

FOR FURTHER INFORMATION CONTACT: Snider Page, Designated Federal Official, Department of the Treasury, by emailing *TACRE@Treasury.gov* or by calling (202) 622–0341 (this is not a toll-free number). For persons who are deaf, hard of hearing, have a speech disability or difficulty speaking may dial 7–1–1 to access telecommunications relay services.

Check: https://home.treasury.gov/about/offices/equity-hub/TACRE for any updates to the June 8th meeting.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001 *et seq.*), the Department has established the Treasury Advisory Committee on Racial Equity. The Department has determined that establishing this Committee was necessary and in the public interest in order to carry out the provisions of Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Throughout the Federal Government.*

Background

Objectives and Duties

The purpose of the Committee is to provide advice and recommendations to Secretary of the Treasury Janet L. Yellen and Deputy Secretary Wally Adeyemo on efforts to advance racial equity in the economy and address acute disparities for communities of color. The Committee will identify, monitor, and review aspects of the domestic economy that have directly and indirectly resulted in unfavorable conditions for communities of color. The Committee plans to address topics including but not limited to: financial inclusion, access to capital, housing stability, federal supplies diversity, and economic development. The duties of the Committee shall be solely advisory and shall extend only to the submission of advice and recommendations to the Offices of the Secretary and Deputy Secretary, which shall be non-binding to the Department. No determination of fact or policy shall be made by the Committee.

The agenda for the meeting includes opening remarks from the Chair and Vice-Chair of TACRE; an overview of work conducted by the TACRE subcommittees since the March 9th TACRE meeting; briefings from government officials on the requirements to implement Executive Order 14091, *Further Advancing Racial Equity and Support for Underserved Communities,* and Treasury's report on the feasibility of implementing a Direct File requirement at the Internal Revenue Service; and a review, and possible discussion, of any comments received from the public. Meeting times and topics are subject to change.

Quarterly Periodic Meeting: In accordance with section 10(a)(2) of the FACA and implementing regulations at 41 CFR 102–3.150, Snider Page, the Designated Federal Officer of TACRE, has ordered publication of this notice to inform the public that the TACRE will convene its FY 2023 Quarter 3 meeting on Thursday, June 8, 2023, from 1 p.m.–5 p.m. eastern time, at the Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

Process for Submitting Public Comments: Members of the public wishing to comment on the business of the TACRE are invited to submit written comments by emailing *TACRE@Treasury.gov*. Comments are requested no later than 15 calendar days before the public meeting in order to be considered by the Committee.

In general, the Department will post all comments received on its website *https://home.treasury.gov/about/offices/equity-hub/TACRE* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department will also make these comments available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Process for Attending In-Person: Treasury is a secure facility, that requires all visitors to get cleared by security prior to arrival at the building. In addition, all visitors will be required to undergo COVID screening. The COVID screening will be a self-administered test provided by Treasury and visitors will have to wait for a negative result before proceeding to the meeting. Anyone testing positive will need to immediately leave the building. Please register for the Public Meeting by visiting: *https://events.treasury.gov/s/event-template/a2m3d0000000fESAAY.* The registration process will require submission of personally identifiable information, such as, full name, email address, date of birth, social security number, citizenship, residence, and if you have recently traveled outside of the United States.

Due to the limited size of the meeting room, public attendance will be limited to the first 20 people that complete the registration process. Members of the public will need to bring a government issued identification that matches the information provided during the registration process and present that to Security, for entry into the building. Please plan on arriving 30–45 minutes prior to the meeting to allow time for security and COVID screening. If you require reasonable accommodation, please contact the Departmental Offices Reasonable Accommodations Coordinator at *ReasonableAccommodationRequests@treasury.gov.* If requesting a sign language interpreter, please make sure your request to the Reasonable Accommodations Coordinator is made at least five (5) days prior to the event if at all possible.

Dated: May 4, 2023.

Snider Page,

Acting Chief, Office of Diversity, Equity, Inclusion and Accessibility and Designated Federal Officer.

[FR Doc. 2023–09892 Filed 5–9–23; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

Vol. 88 Wednesday,

No. 90 May 10, 2023

Part II

The President

Notice of May 8, 2023—Continuation of the National Emergency With Respect to the Actions of the Government of Syria

Federal Register
Vol. 88, No. 90
Wednesday, May 10, 2023

Presidential Documents

Title 3—

The President

Notice of May 8, 2023

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

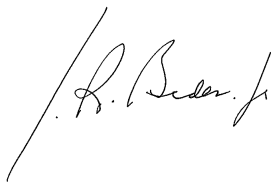
On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Public Law 108–175), the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. The national emergency was modified in scope and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, Executive Order 13606 of April 22, 2012, and Executive Order 13608 of May 1, 2012.

The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq.

The regime's brutality and repression of the Syrian people, who have called for freedom and a representative government, not only endangers the Syrian people themselves, but also generates instability throughout the region. The Syrian regime's actions and policies, including with respect to chemical weapons and supporting terrorist organizations, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared in Executive Order 13338, which was expanded in scope in Executive Order 13572, and with respect to which additional steps were taken in Executive Order 13399, Executive Order 13460, Executive Order 13573, Executive Order 13582, Executive Order 13606, and Executive Order 13608, must continue in effect beyond May 11, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared with respect to the actions of the Government of Syria.

In addition, the United States condemns the brutal violence and human rights violations and abuses of the Assad regime and its Russian and Iranian enablers. The United States calls on the Assad regime, and its backers, to stop its violent war against its own people, enact a nationwide ceasefire, facilitate the unhindered delivery of humanitarian assistance to all Syrians in need, and negotiate a political settlement in Syria in line with United Nations Security Council Resolution 2254. The United States will consider changes in policies and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 8, 2023.

[FR Doc. 2023–10143
Filed 5–9–23; 11:15 am]
Billing code 3395–F3–P

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