FEDERAL REGISTER

Vol. 88 Friday,

No. 178 September 15, 2023

Pages 63513–63832

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1398; Project Identifier AD–2023–00472–P; Amendment 39–22525; AD 2023–16–06]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Hamilton Sundstrand Corporation (Hamilton Sundstrand) Model 14SF–17 and 14SF–19 propellers. This AD was prompted by a report of an auxiliary motor and pump failing to feather a propeller in flight. This AD requires replacement of a certain auxiliary motor and pump. This AD also prohibits installation of a certain auxiliary motor and pump on any propeller. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1398; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Hamilton Sundstrand, One Hamilton Road, Windsor Locks, CT 06096; phone: (877) 808–7575; email: *CRC@collins.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1398.

FOR FURTHER INFORMATION CONTACT: Isabel Saltzman, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7649; email: *9-AVS-AIR-BACO-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Hamilton Sundstrand Model 14SF–17 and 14SF–19 propellers. The NPRM published in the **Federal Register** on June 27, 2023 (88 FR 41513). The NPRM was prompted by a report of an auxiliary motor and pump installed on a non-Hamilton Sundstrand propeller failing to feather the propeller in flight through either the primary or the backup means. The failure was caused by motor magnets in the auxiliary motor and pump that were de-bonded due to corrosion at the magnet and housing interface. The de-bonded motor magnets prevented motor rotation. Hamilton Sundstrand Model 14SF–17 and 14SF–19 propellers use the same auxiliary motor and pump. These propellers are installed on, but not limited to, Viking Air Limited (type certificate previously held by Bombardier Inc.; Canadair Limited) Model CL–215–6B11 (CL–215T & CL–415 Variants) airplanes. In the NPRM, the FAA proposed to require the removal from service of an auxiliary motor and pump having part number (P/N) 782655–3 (Aerocontrolex P/N 4122–006009) and replacement with an auxiliary motor and pump having P/N 782655–4 (Aerocontrolex P/N 4122–056000). In the NPRM, the FAA also proposed to prohibit installation of an auxiliary motor and pump having P/N 782655–3 (Aerocontrolex P/N 4122–006009) on any propeller. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Hamilton Sundstrand Corporation Service Bulletin (SB) 14SF–61–168, Revision 1, dated December 21, 2016. This service information specifies instructions for replacing the auxiliary motor and pump. Hamilton Sundstrand Corporation is a UTC Aerospace Systems Company. This service information is identified as both Hamilton Sundstrand Corporation and UTC Aerospace Systems. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 20 propellers installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace auxiliary motor and pump	2 work-hours × $85 per hour = $170	$11,000	$11,170	$223,400
Perform post-installation system test	1 work-hour × $85 per hour = $85	0	85	1,700

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–16–06 Hamilton Sundstrand Corporation: Amendment 39–22525; Docket No. FAA–2023–1398; Project Identifier AD–2023–00472–P.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hamilton Sundstrand Corporation (Hamilton Sundstrand) Model 14SF–17 and 14SF–19 propellers.

Note 1 to paragraph (c): These propellers are known to be installed on, but not limited to, Viking Air Limited (type certificate previously held by Bombardier Inc.; Canadair Limited) Model CL–215–6B11 (CL–215T and CL–415 Variants) airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 6123, Propeller Feathering/Reversing.

(e) Unsafe Condition

This AD was prompted by a report of an auxiliary motor and pump failing to feather a propeller in flight. The FAA is issuing this AD to prevent the failure of a certain auxiliary motor and pump to feather propellers. The unsafe condition, if not addressed, could result in reduced controllability of the aircraft and consequent loss of control of the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, remove from service an auxiliary motor and pump having part number (P/N) 782655–3 (Aerocontrolex P/N 4122–006009) and replace with an auxiliary motor and pump having P/N 782655–4 (Aerocontrolex P/N 4122–056000) in accordance with the Accomplishment Instructions, paragraphs 3.B., 3.C., and 3.E. of Hamilton Sundstrand Corporation Service Bulletin (SB) 14SF–61–168, Revision 1, dated December 21, 2016 (Hamilton Sundstrand SB 14SF–61–168, Revision 1).

(2) After replacement of the auxiliary motor and pump, perform a post-installation system test in accordance with the Accomplishment Instructions, paragraph 3.F. of Hamilton Sundstrand SB 14SF–61–168, Revision 1.

(h) Installation Prohibition

After the effective date of this AD, do not install an auxiliary motor and pump having P/N 782655–3 (Aerocontrolex P/N 4122–006009) on any propeller.

(i) No Return of Parts

Where the service information referenced in the Accomplishment Instructions, paragraph 3.B. of Hamilton Sundstrand SB 14SF–61–168, Revision 1, specifies returning certain parts to the manufacturer for modification, this AD does not include that requirement.

(j) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Hamilton Sundstrand SB 14SF–61–168, Original Issue, dated December 14, 2016.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the branch office, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-AVS-AIR-BACO-COS@faa.gov*.

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

(l) Related Information

(1) For more information about this AD, contact Isabel Saltzman, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (781) 238–7649; email: *9-AVS-AIR-BACO-COS@faa.gov*.

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

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference

(IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) Hamilton Sundstrand Corporation Service Bulletin 14SF–61–168, Revision 1, dated December 21, 2016.

Note 2 to paragraph (m)(2)(i): Hamilton Sundstrand Corporation is a UTC Aerospace Systems Company. This service information is identified as both Hamilton Sundstrand Corporation and UTC Aerospace Systems.

(ii) [Reserved]

(3) For service information identified in this AD, contact Hamilton Sundstrand, One Hamilton Road, Windsor Locks, CT 06096; phone: (877) 808–7575; email: *CRC@collins.com.*

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

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

Issued on August 24, 2023.

Victor Wicklund,

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

[FR Doc. 2023–19932 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0763; Airspace Docket No. 22–ANM–81]

RIN 2120–AA66

Modification of Class E Airspace; Burley Municipal Airport, Burley, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace designated as a surface area, modifies Class E airspace extending upward from at least 700 feet above the surface, and modifies Class E airspace extending upwards from 1,200 feet above the surface at Burley Municipal Airport, Burley, ID. Additionally, this action makes administrative amendments to update the airport's existing Class E airspace legal descriptions. These actions support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective date 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace to support IFR operations at Burley Municipal Airport, Burley, ID.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–0763 in the **Federal Register** (88 FR 29569; May 8, 2023), proposing to modify Class E airspace at Burley Municipal Airport, Burley, ID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

Subsequent to the publication of the NPRM, the FAA discovered that the proposed legal description for Burley's Class E airspace designated as a surface area required editing to better align with the intended airspace design, as well as to better match the Airspace Class definition. The legal description titled ''ANM ID E2 Burley, ID [Amended]'' (88 FR 29571; May 8, 2023) has been revised in this final rule to read: ''That airspace extending upward from the surface within a 5-mile radius of Burley Municipal Airport, and that airspace extending upward from the surface between a 5-mile radius to a 7-mile radius southwest of the airport, from the 208° bearing clockwise to the 274° bearing from the airport.''

Additionally, the FAA discovered that the proposed legal description for Burley's Class E airspace extending upward from 700 feet or more above the surface required editing to better align with adjacent airspace and to correct geographical coordinates. The legal description titled ''ANM ID E5 Burley, ID [Amended]'' (88 FR 29571; May 8, 2023) has been revised in this final rule to read: ''That airspace extending upward from 700 feet above the surface within a 5.6-mile radius of the airport, and within a 6.5-mile radius of the airport between the 274° bearing clockwise to the 074° bearing, and within a 7-mile radius of the airport, from the 208° bearing clockwise to the 274° bearing; That airspace extending upward from 1,200 feet above the surface beginning at lat. 42°36′45″ N, long. 114°14′48″ W; to lat. 43°0′1″ N, long. 114°2′9″ W; to lat. 42°59′59″ N, long. 112°59′57″ W; to lat. 42°29′59″ N, long. 113°0′0″ W; to lat. 42°4′13″ N, long. 114°30′42″ W; lat. 42°36′20″ N, long. 114°14′35″ W; lat. 42°36′27″ N, long. 114°14′55″ W, thence to the point of beginning.''

None of these edits make substantive changes to the airspace volumes the FAA proposed.

Incorporation by Reference

Class E2 and E5 airspaces areas are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this

document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by modifying the Class E airspace designated as a surface area, modifying the Class E airspace extending upward from 700 feet or more above the surface, and modifying the administrative portions of the Class E airspace legal descriptions at Burley Municipal Airport, Burley, ID.

The Class E airspace designated as a surface area is oversized for the purpose of containing instrument flight procedures. The extensions to the northwest clockwise through the southeast are no longer needed and are removed. The central area is expanded to be within a 5-mile radius of the airport, with a southwest portion extending to the airport's 7-mile radius between the airport's 208° bearing clockwise to the 274° bearing to more appropriately contain IFR arrival operations while between the surface and 1,000 feet above the surface, and IFR departure operations while between the surface and the base of adjacent controlled airspace.

The existing Class E airspace extending upward from 700 feet above the surface is greatly reduced to more appropriately contain arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach the next adjacent airspace. The west-to-northeast portion of the airspace is reduced to be within a 6.5-mile radius of the airport, from the airport's 274° bearing clockwise to the 074° bearing. The southeast portion of the airspace is reduced to be within a 5.6-mile radius of the airport, from the airport's 074° bearing clockwise to the 208° bearing. Lastly, the southwest portion of the airspace had been expanded to be within a 7-mile radius of the airport, from the airport's 208° bearing clockwise to the 274° bearing.

Finally, the FAA modified the administrative portions of Burley's Class E airspace legal descriptions. The Burley very high frequency omni-directional range/tactical air navigation (VORTAC) navigational aid (NAVAID) is no longer needed to describe the airspace at Burley and should be removed.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM ID E2 Burley, ID [Amended]

Burley Municipal Airport, ID
(Lat. 42°32′33″ N, long. 113°46′18″ W)

That airspace extending upward from the surface within a 5-mile radius of the Burley Municipal Airport, and that airspace extending upward from the surface between a 5-mile radius to a 7-mile radius southwest of the airport, from the 208° bearing clockwise to the 274° bearing from the airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM ID E5 Burley, ID [Amended]

Burley Municipal Airport, ID
(Lat. 42°32′33″ N, long. 113°46′18″ W)

That airspace extending upward from 700 feet above the surface within a 5.6-mile radius of the airport, and within a 6.5-mile radius of the airport between the 274° bearing clockwise to the 074° bearing, and within a 7-mile radius of the airport, from the 208° bearing clockwise to the 274° bearing; That airspace extending upward from 1,200 feet above the surface beginning at lat. 42°36′45″ N, long. 114°14′48″ W; to lat. 43°0′1″ N, long. 114°2′9″ W; to lat. 42°59′59″ N, long. 112°59′57″ W; to lat. 42°29′59″ N, long. 113°0′0″ W; to lat. 42°4′13″ N, long. 114°30′42″ W; lat. 42°36′20″ N, long. 114°14′35″ W; lat. 42°36′27″ N, long. 114°14′55″ W; thence to the point of beginning.

* * * * *

Issued in Des Moines, Washington, on September 6, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–19597 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1471; Airspace Docket No. 22–AAL–63]

RIN 2120–AA66

Modification of Class E Airspace; Ralph M. Calhoun Memorial Airport, Tanana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace designated as a surface area and modifies the Class E airspace extending upward from 700 feet above the surface at Ralph M. Calhoun Memorial Airport, Tanana, AK. Additionally, this action updates the administrative portion of the airport's Class E airspace legal descriptions. These modifications support the safety

and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective date 0901 UTC, November 30, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace to support IFR operations at Ralph M. Calhoun Memorial Airport, AK.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–1471 in the **Federal Register** (88 FR 30687; May 12, 2023), proposing to modify Class E airspace at Ralph M. Calhoun Memorial Airport, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E2 and E5 airspace areas are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by modifying the Class E airspace designated as a surface area and modifying the Class E airspace extending upward from 700 feet above the surface at Ralph M. Calhoun Memorial Airport, AK.

The Class E surface area airspace at the airport is increased from a 3.9-mile radius around the airport to a 5.1-mile radius to fully contain IFR arrival operations between the surface and 1,000 feet above the surface when executing the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 7 approach or the Area Navigation (RNAV) (Global Positioning System [GPS]) RWY 7 approach. Additionally, the two westward extensions to the Class E surface area at the airport are removed, as they are no longer needed for containing IFR operations. Finally, the Class E surface area is extended 1.4 miles to the southwest to fully contain aircraft departing on the RWY 25 Obstacle Departure Procedure (ODP) between the surface and the base of adjacent controlled airspace.

The Class E airspace extending upward from 700 feet above the surface at the airport is also modified. The Class E airspace area extending upward from 700 feet above the surface that provided a procedure turn area east of the airport is no longer needed and is removed. Furthermore, the airspace radius is increased by 0.2 miles to more appropriately accommodate arriving IFR operations below 1,500 feet above the surface when executing the VOR/DME RWY 7 or RNAV (GPS) RWY 7 approaches. Lastly, the Class E airspace extending upward from 700 feet above the surface is extended to 10.5 miles east of the airport to fully contain departing IFR operations until they reach 1,200 feet above the surface while conducting the RWY 25 ODP.

Finally, the FAA is modifying the administrative text headers to the airport's legal descriptions. The geographic coordinates located on line three of both legal description text headers are updated to match the FAA's database. The Bear Creek nondirectional beacon was decommissioned on December 2, 2021, and reference to it is removed from both legal descriptions. Lastly, reference to the Tanana VOR/DME navigational aid is no longer needed and is removed from both legal descriptions.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AAL AK E2 Tanana, AK [Amended]

Ralph M. Calhoun Memorial Airport, AK
(Lat. 65°10′28″ N, long. 152°06′29″ W)

That airspace within a 5.1-mile radius of the airport, and within 3.6 miles each side of the airport's 214° bearing extending from the 5.1-mile radius to 6.5 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Tanana, AK [Amended]

Ralph M. Calhoun Memorial Airport, AK
(Lat. 65°10′28″ N, long. 152°06′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the airport, and within 1.9 miles each side of the airport's 082° bearing extending from the 6.6-mile radius to 10.5 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the airport.

* * * * *

Issued in Des Moines, Washington, on August 31, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–19295 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 89

[Docket No. FAA–2019–1100; Amdt. No. 89–2]

RIN 2120–AL31

Enforcement Policy Regarding Operator Compliance Deadline for Remote Identification of Unmanned Aircraft

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

ACTION: Notification of enforcement policy.

SUMMARY: For noncompliance with the remote identification operating requirements applicable to unmanned aircraft, which occurs on or before March 16, 2024, the FAA will consider all circumstances, in particular, unanticipated issues with the available supply and excessive cost of remote identification broadcast modules and unanticipated delay in the FAA's approval of FAA-recognized identification areas, when exercising its discretion in determining whether to take enforcement action.

DATES: This policy is effective September 15, 2023.

FOR FURTHER INFORMATION CONTACT: Ben Walsh, Flight Technologies and Procedures Division, Federal Aviation Administration, 800 Independence Ave. SW, Building 10A/8th Floor, Washington, DC 20591; telephone 1–844–FLY–MY–UA (1–844–359–6981); email: *UAShelp@faa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this document may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this document will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.*

Background

On January 15, 2021, the Remote Identification of Unmanned Aircraft final rule (RIN 2120–AL31) published in the **Federal Register**.[1] Unless otherwise authorized by the Administrator or as prescribed in 14 CFR 89.120, no person may operate an unmanned aircraft subject to the applicability in § 89.101 after September 16, 2023, outside the boundaries of an FAA-recognized identification area (FRIA) unless it is a standard remote identification unmanned aircraft or equipped with a remote identification broadcast module.[2] The application and approval process for FRIAs is set forth in 14 CFR 89 subpart C. The majority of the final rule became effective on April 21, 2021.[3]

In accordance with the final rule, standard remote identification unmanned aircraft and remote identification broadcast modules must be designed and produced to meet the requirements of Title 14 of the Code of Federal Regulations part 89 (14 CFR part 89). A person designing or producing a standard remote identification unmanned aircraft or remote identification broadcast module for operation in the United States must show that the unmanned aircraft or broadcast module meets the requirements of an FAA accepted means of compliance. A means of compliance describes the methods by which the person complies with the performance-based requirements for remote identification.

On September 12, 2022, the FAA published an Enforcement Policy indicating that the FAA would exercise its discretion in determining how to handle any apparent noncompliance with the manufacturing deadline set forth in the final rule, due to the delay in acceptance of the ASTM means of compliance.[4]

In recent months, the FAA has received significant public feedback regarding remote identification requirements, including multiple requests for an extension of the September 16, 2023, remote identification operational compliance date. Additionally, the FAA has

[1] *Remote Identification of Unmanned Aircraft* final rule, 86 FR 4390, January 15, 2021, *available at https://www.federalregister.gov/documents/2021/01/15/2020-28948/remote-identification-of-unmanned-aircraft.*

[2] 14 CFR 89.105.

[3] *Remote Identification of Unmanned Aircraft; Delay,* 86 FR 13629, March 10, 2021, *available at https://www.federalregister.gov/documents/2021/03/10/2021-04882/remote-identification-of-unmanned-aircraft-delay.*

[4] *Enforcement Policy Regarding Production Requirements for Standard Remote Identification Unmanned Aircraft,* 87 FR 55685, September 12, 2022, *available at https://www.federalregister.gov/documents/2022/09/12/2022-19644/enforcement-policy-regarding-production-requirements-for-standard-remote-identification-unmanned.*

received hundreds of inquiries through emails, phone calls, and in-person questions about the remote identification operational compliance date. Flight Standards District Offices alone are receiving over 10 emails a day related to remote identification requirements. The FAA UAS Support Center has received over 380 inquires over the past 60 days. Their primary inquiry was about the compliance date and the inability to obtain remote identification modules. UAS operators within the Commercial Drone Alliance, the Association of Uncrewed Vehicle Systems International, multiple public safety agencies such as the Nebraska Department of Transportation and the Iowa Department of Transportation, as well as FAA Lead Participants in the BEYOND program, have all indicated that they are encountering significant difficulty obtaining remote identification broadcast modules, which would allow continued operation of existing unmanned aircraft instead of purchasing new standard remote identification unmanned aircraft. Those difficulties are primarily related to availability of broadcast modules, the shipping timelines for broadcast modules, and the cost of those modules. Data from the FAA Drone Zone as of August 28, 2023, shows that there are 261,143 operators flying with a remote pilot certificate under 14 CFR part 107 and 328,372 recreational flyers operating under the provisions of 49 U.S.C. 44809 who are not remote identification equipped. The FAA has also received feedback from operators, including numerous public safety agencies, about difficulties in obtaining firmware updates to some existing models of unmanned aircraft to activate standard remote identification capabilities and make them remote identification compliant.

As a separate matter, as of August 18, 2023, the FAA has approved 412 applications for FRIAs, with 1,206 yet to be reviewed. The FAA has endeavored to review these FRIA applications as quickly as possible but expects a large increase in applications as the mandatory compliance date approaches. This influx is expected to increase the application processing backlog and impair the ability of recreational operators to comply with the rule. The FAA anticipates that the supply of remote identification broadcast modules, resolution of firmware issues, and approval of FAA-recognized identification areas will increase in the next six months.

Statement of Policy

The FAA recognizes that it has yet to evaluate a majority of submitted applications for FAA-recognized identification areas. The FAA also recognizes the unanticipated issues that operators are facing related to the availability of remote identification broadcast modules. The FAA has continued to monitor this situation as long as possible before making a determination, but with less than a month remaining until the operational compliance date, the FAA acknowledges that for many operators, compliance with § 89.105 may prove difficult or impossible in the timeframe presented. While some operators, such as those who are using standard remote identification unmanned aircraft or those operating in FRIAs that have already been approved by the FAA, will be able to comply with the rule, the cumulative effect of the current state of the compliance issues reported to the FAA could otherwise cause a cessation of numerous UAS operations, which is not consistent with the FAA's intent for this rule or its statutory mandate to integrate UAS operations into the National Airspace System.

Accordingly, the FAA will exercise its discretion in determining how to handle any apparent noncompliance, including exercising discretion to not take enforcement action, if appropriate, for any noncompliance that occurs on or before March 16, 2024—the six-month period following the compliance deadline for operators initially published in the Remote Identification of Unmanned Aircraft final rule, RIN 2120–AL31. The exercise of enforcement discretion herein creates no individual right of action and establishes no precedent for future determinations.

Issued in Washington, DC, on September 12, 2023.

Taneesha Dobyne Marshall,

Assistant Chief Counsel for Aviation Litigation, Federal Aviation Administration.

[FR Doc. 2023–20074 Filed 9–13–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2018–0838; Amdt. No. 91–352B]

RIN 2120–AL90

Extension of the Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP)

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

ACTION: Final rule.

SUMMARY: This action extends the prohibition against certain flight operations in the Pyongyang Flight Information Region (FIR) (ZKKP) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier, for an additional five years, from September 18, 2023, until September 18, 2028. The FAA finds this action necessary to address significant safety-of-flight risks to U.S. civil aviation associated with the Democratic People's Republic of Korea's (DPRK's) military capabilities and activities. The FAA also republishes the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

DATES: This final rule is effective on September 15, 2023.

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8166; email *bill.petrak@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the expiration date of SFAR No. 79, § 91.1615 of title 14 Code of Federal Regulations (CFR), from September 18, 2023, until September 18, 2028. SFAR No. 79 prohibits certain flight operations in the Pyongyang FIR (ZKKP) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator

of such aircraft is a foreign air carrier. The FAA finds this action necessary to address significant safety-of-flight risks to U.S. civil aviation associated with the DPRK's military capabilities and activities. These risks include, but are not limited to, extensive unannounced ballistic missile test launches associated with the DPRK's strategic weapons development activities, DPRK air defense and tactical aircraft capabilities that now cover the entire Pyongyang FIR (ZKKP), the DPRK's potential use of electronic warfare (EW) capabilities during periods of heightened tensions, and potential DPRK weapons of mass destruction (WMD) testing, which would likely increase inadvertent risks to civil aviation, both within and potentially beyond the Pyongyang FIR (ZKKP), if it were to occur. Consistent with other recently published flight prohibition SFARs, this action also republishes the approval process and exemption information for this flight prohibition SFAR.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 79, § 91.1615, from conducting flight operations in the Pyongyang FIR (ZKKP) due to the significant safety-of-flight risks to U.S. civil flight operations in that airspace, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be impracticable and contrary to the public interest.

Providing notice and the opportunity for the public to comment here would be impracticable. The FAA's flight prohibitions, and any amendments thereto, need to include appropriate boundaries that reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting or under-restricting U.S. operators' routing options. However, the risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving fighting, extremist and militant activity, or periods of heightened tensions, particularly where weapons capable of targeting or otherwise negatively affecting U.S. civil aviation are or may be present. This fluidity, and the potential for rapid changes in the risks to U.S. civil aviation, significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. The delay that would be occasioned by providing an opportunity to comment on this action would significantly increase the risk that the resulting final action would not accurately reflect the current risks to U.S. civil aviation associated with the situation and thus would not establish boundaries for the flight prohibition commensurate with those risks.

While the FAA sought and responded to public comments, the boundaries of the area in which unacceptable risks to the safety of U.S. civil aviation existed might change due to: evolving military or political circumstances; violent extremist and militant group activity; the introduction, removal, or repositioning of more advanced anti-aircraft weapon systems; or other factors. As a result, if the situation improved while the FAA sought and responded to public comments, the rule the FAA finalized might be over-restrictive, unnecessarily limiting U.S. operators' routing options and potentially causing them to incur unnecessary additional fuel and operations-related costs, as well as potentially causing passengers to incur unnecessarily some costs attributed to their time. Conversely, if the situation deteriorated while the FAA sought and responded to public comments, the rule the FAA finalized might be under-restrictive, allowing U.S. civil aviation to continue operating in areas where unacceptable risks to their safety had developed. Such an outcome would endanger the safety of these aircraft, as well as their passengers and crews, exposing them to unacceptable risks of death, injury, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Pyongyang FIR (ZKKP).

Alternatively, if the FAA made changes to the area in which U.S. civil aviation operations would be prohibited between a notice of proposed rulemaking and a final rule due to changed conditions, the version of the rule the public commented on would no longer reflect the FAA's current assessment of the risk environment for U.S. civil aviation.

In addition, seeking comment would be contrary to the public interest because some of the rational basis for the rulemaking is based upon classified information and controlled unclassified information not authorized for public release. In order to meaningfully provide comment on a proposal, the public would need access to the basis for the agency's decision-making, which the FAA cannot provide. Disclosing classified or controlled unclassified information in order to seek meaningful comment on the proposal would harm the public interest. Accordingly, the FAA meaningfully seeking comment on the proposal is contrary to the public interest.

Therefore, providing notice and the opportunity for comment would be impracticable, as it would hinder the FAA's ability to maintain appropriate flight prohibitions based on up-to-date risk assessments of the risks to the safety of U.S. civil aviation operations in airspace managed by other countries, and contrary to the public interest, as the FAA cannot protect classified and controlled unclassified information and meaningfully seek public comment.

For the same reasons discussed above, the potential safety impacts and the need for prompt action on up-to-date information that is not public would make delaying the effective date impracticable and contrary to the public interest.

Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background

Since 1997, the FAA has prohibited U.S. civil aviation operations in the Pyongyang FIR (ZKKP), or portions thereof, and has issued various advisory Notices to Air Missions (NOTAMs) regarding the potential risks to civil aviation operations in the adjacent airspace.[1] On September 8, 2020, the FAA published a final rule in the **Federal Register** extending its existing flight prohibition for U.S. civil aviation operations in the entire Pyongyang FIR (ZKKP) for an additional three years.[2] At that time, the FAA determined the situation in the Pyongyang FIR (ZKKP) continued to present an unacceptable level of risk for U.S. civil aviation safety. The DPRK continued to conduct no-notice ballistic missile launches to meet its weapons development program goals and to signal its resolve, and displeasure with the lack of a diplomatic breakthrough and sanctions relief, to the international community. The DPRK consistently failed to issue any NOTAMs or other aeronautical information to warn civil aircraft operators of the hazards associated with these missile launches. Additionally, at the time of the 2020 final rule, the DPRK maintained air defense and tactical aircraft capabilities that, if forward deployed, would have had ranges covering the entire Pyongyang FIR (ZKKP). The FAA assessed these weapons could present an inadvertent risk to U.S. civil aviation operations during periods of heightened tensions.

IV. Discussion of the Final Rule

The FAA has determined the situation in the Pyongyang FIR (ZKKP) continues to present an unacceptable level of risk for U.S. civil aviation safety. The DPRK continues to increase its military capabilities and activities in ways that would pose unacceptable safety-of-flight risks to U.S. civil aviation operations if they were permitted to fly in the Pyongyang FIR (ZKKP). Most notably, in 2022 and continuing into 2023, the DPRK conducted extensive unannounced ballistic missile test launches, the overwhelming majority of which impacted in the Pyongyang FIR (ZKKP). The DPRK's strategic weapons development activities and the associated missile test launches are expected to continue, including launches associated with the DPRK's intercontinental ballistic missile (ICBM) and hyper-glide technologies, which demonstrate increased weapons ranges and sophistication in launch operations. To the extent that they continue to be conducted without adequate advance notice to the international civil aviation community, these longer-range missile test launches contribute to the unacceptable safety-of-flight risks for U.S. civil aviation operations in the Pyongyang FIR (ZKKP) and pose potential risks to civil aviation operations in adjacent FIRs.

The rate of unannounced DPRK missile test launches increased significantly in 2022 in comparison to previous years to nearly 70 such launches. The high rate of unannounced DPRK missile launches continued into 2023, with more than 26 unannounced missile launches occurring between January 1, 2023, and April 14, 2023. Many of the DPRK's ballistic missiles are also related to its WMD program, as they can carry conventional, chemical, or nuclear warheads.

On May 29, 2023, the DPRK publicly announced an impending satellite launch via state media. Subsequently, the Republic of Korea (ROK), Japan, and the Philippines issued NOTAMs establishing warning areas for rocket-associated debris in the Yellow Sea and the Philippine Sea for the period of May 30, 2023, to June 11, 2023. On May 31, 2023, the DPRK conducted a failed space launch from its northwest coastal area. The rocket body flew approximately six minutes before it crashed into the Yellow Sea, approximately 200 km west of Eocheong Island, Republic of Korea. This location places the impact of the launched rocket body near one of the announced closure areas. The DPRK's advance notice to the international civil aviation community of activity potentially hazardous to civil aviation in this instance is a positive development. However, it is unknown whether the DPRK will make providing adequate advance notice to the international community of activities potentially hazardous to civil aviation, including but not limited to ballistic missile test launches both within and outside the Pyongyang FIR (ZKKP), its normal operating practice in the future.

As the DPRK continues its strategic weapons development programs, including sea and land-based ballistic missile launch capabilities, fewer indications provide advance warning of potential missile test launches. The reduced warning can be attributed to the DPRK's increased concealment of key indicators associated with missile launch preparations. This is due to the DPRK's underground infrastructure, its sea-launched ballistic missile (SLBM) developments, and the increasing sophistication of its weapons. For example, the DPRK's recent testing of a solid fuel ICBM reduces its missile support footprint and launch preparation timelines and, consequently, decreases insight into its missile test launch cycles. The reduction in indicators providing potential advance warning, in conjunction with the DPRK's failure in most cases to issue NOTAMs or other appropriate aeronautical information to inform the international civil aviation community of planned ballistic missile testing activities hazardous to civil aviation, increases the risk of the DPRK inadvertently striking a civil aircraft in flight with a missile or with falling debris from an unannounced missile launch. This situation further contributes to the already unacceptable safety-of-flight risks for U.S. civil aviation operations in the Pyongyang FIR (ZKKP) and poses potential risks to civil aviation operations in adjacent FIRs.

In addition to the DPRK's significant recent history of unannounced missile test launch activities, the DPRK maintains air defense and tactical aircraft capabilities covering the entire Pyongyang FIR (ZKKP), which have been active in conjunction with recent show-of-force exercises and unannounced missile test launches. These weapons could present an inadvertent risk to U.S. civil aviation operations in the Pyongyang FIR (ZKKP) during periods of heightened tensions. While the FAA has not observed any significant Global Positioning System (GPS) jamming emanating from the DPRK in recent years, it assesses the DPRK maintains electronic warfare capabilities that it would likely use in a conflict scenario or in conjunction with military exercises or other show of force operations during periods of heightened tensions. Such electronic interference could negatively affect communications and navigation systems for civil aviation operating in the Pyongyang FIR (ZKKP), as well as in adjacent airspace.

[1] For a more detailed history of SFAR No. 79, § 91.1615, see *Amendment of the Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP)* final rule, 83 FR 47059 (Sept. 18, 2018).

[2] *Extension of the Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP)* final rule, 85 FR 55372 (Sept. 8, 2020).

Therefore, as a result of the significant and unacceptable risks to the safety of U.S. civil aviation operations in the Pyongyang FIR (ZKKP) described in this preamble, the FAA extends the expiration date of SFAR No. 79, § 91.1615, from September 18, 2023, until September 18, 2028.

Further amendments to SFAR No. 79, § 91.1615, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the Pyongyang FIR (ZKKP).

The FAA also republishes the details concerning the approval and exemption processes in sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 79, § 91.1615.

V. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the Pyongyang FIR (ZKKP). If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 79, § 91.1615, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the Pyongyang FIR (ZKKP), that department, agency, or instrumentality may request the FAA to approve persons described in SFAR No. 79, § 91.1615, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.[3] The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267–8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 79, § 91.1615, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Pyongyang FIR (ZKKP) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Pyongyang FIR (ZKKP) and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the Pyongyang FIR (ZKKP). The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the Pyongyang FIR (ZKKP). The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtain from the Air Transportation Division by calling (202) 267–8166.

If an approval request includes classified information or controlled unclassified information not authorized for public release, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

The FAA's approval of an operation under SFAR No. 79, § 91.1615, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

[3] This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA authorization.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Pyongyang FIR (ZKKP); and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Pyongyang FIR (ZKKP).

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under 49 U.S.C. chapter 443.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 79, § 91.1615. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standards described in 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation(s);
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the Pyongyang FIR (ZKKP) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Pyongyang FIR (ZKKP) and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 79, § 91.1615. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 79, § 91.1615.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

VII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866 and Executive Order 13563, as amended by Executive Order 14094 (''Modernizing Regulatory Review''), direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866 as amended by Executive Order 14094. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or Tribal governments, or on the private

sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This action extends the expiration date of the SFAR prohibiting U.S. civil flight operations in the Pyongyang FIR (ZKKP) for an additional five years due to the significant risks to U.S. civil aviation described in the preamble of this final rule. The FAA acknowledges this flight prohibition might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of deaths, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Pyongyang FIR (ZKKP).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the Pyongyang FIR (ZKKP), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $177 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a ''significant energy action'' under the Executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive

Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

IX. Additional Information

A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121), requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, North Korea.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.1615 by revising paragraph (e) to read as follows:

§ 91.1615 Special Federal Aviation Regulation No. 79—Prohibition Against Certain Flights in the Pyongyang Flight Information Region (FIR) (ZKKP).

* * * * *

(e) *Expiration.* This SFAR will remain in effect until September 18, 2028. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

Polly Trottenberg,

Acting Administrator.

[FR Doc. 2023–20017 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0632]

RIN 1625–AA00

Safety Zone; Bay St. Louis, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters at the opening of Bay St. Louis, extending the entire width of the channel, approximately ½ mile south of the Hwy 90 Bridge. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the 2023 Swim Across the Bay. Entry of vessels or persons into this zone is prohibited unless specifically authorized the Captain of the Port Sector Mobile (COTP) or a designated representative.

DATES: This rule is effective from 7 a.m. through 10 a.m. on September 17, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0632 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Lawrence J. Schad, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251–441–5678, email *sectormobilewaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone by September 17th, 2023, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule is contrary to public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with the 2023 Swim Across the Bay. Immediate action is needed to protect vessels and mariners from the safety hazards associated with 2023 Swim Across the Bay.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Mobile (COTP) has determined that potential

hazards associated with the 2023 Swim Across the Bay on September 17th, 2023, will be a safety concern for any vessels or persons at the opening of Bay St. Louis, approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS. This rule is needed to protect the public, mariners, and vessels from the potential hazards associated with the 2023 Swim Across the Bay.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone, effective from 7 a.m. to 10 a.m. on September 17, 2023. The safety zone encompasses the opening of Bay St. Louis, extending the entire width of the channel, approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS. The location and duration of this safety zone is intended to protect persons and vessels during the 2023 Swim Across the Bay that will take place on this navigable waterway. No person or vessel will be permitted to enter or transit within the safety zone, unless specifically authorized by the COTP or a designated representative. Public notifications will be made to the local maritime community through Broadcast Notice to Mariners (BNM). To enter the zone, mariners and other members of the public must also contact the COTP or designated representative to ask permission to enter the safety zone on VHF–FM channels 15 and 16 or by telephone at 251–382–8653. If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action, under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration, of the safety zone. This temporary safety zone will only restrict navigation for 3 hours near the opening of Bay St. Louis, approximately ½ mile south of the Hwy. 90 Bridge in Bay St. Louis, MS, extending the entire width of the channel. Moreover, the Coast Guard will issue a Local Notice to Mariners (LNM) about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit mariners and the public near the opening of Bay St. Louis, extending the entire width of the channel approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A

Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add§ 165.T08–0632 to read as follows:

§ 165.T08–0632 Safety Zone; Bay St. Louis, MS.

(a) *Location.* The following area is a safety zone: the opening of Bay St. Louis, extending the entire width of the channel, approximately ½ mile south of the Hwy 90 Bridge in Bay St. Louis, MS.

(b) *Enforcement period.* This section will be enforced on September 17, 2023 from 7 a.m. through 10 a.m.

(c) *Regulations.* (1) The general regulations contained in § 165.23 as well as the regulations in this section apply to the regulated area.

(2) Entry into the zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

(3) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM channels 15 and 16 or by telephone at 251–441–5678.

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

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone.

Dated: September 11, 2023.

U.S. Mullins,

Captain, U.S. Coast Guard, Captain of the Port Sector Mobile.

[FR Doc. 2023–20099 Filed 9–14–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0466]

RIN 1625–AA00

Safety Zone; Wilmington River, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the Causton Bluff Bridge, on the Wilmington River, Savannah, GA. This action is necessary to provide for the safety of life on these navigable waters for the planned demolition and removal of structural components of the original bridge, in preparation of the construction of a new span. This rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Savannah or a designated representative.

DATES: This temporary interim rule is effective from 12:01 a.m. on September 18, 2023, through 11:59 p.m. on November 20, 2023.

ADDRESSES: You may submit comments under docket number USCG–2023–0466 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Anthony Harris, Shoreside Compliance, Marine Safety Unit Savannah, U.S. Coast Guard; telephone 912–652–4353 ext. 240, *Anthony.E.Harris@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this temporary interim rule because doing so would be impracticable. This safety zone must be established by September 18, 2023, in order to protect vessels and waterway users from the potential hazards associated with demolition operations on the Causton Bluff Bridge. We lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be contrary to the public's interest because we must ensure the protection of vessels and waterway users during the demolition operations.

We are soliciting comments on this rulemaking. If we determine that changes to this rulemaking action are necessary, the Coast Guard will consider comments received in a subsequent temporary interim rule or temporary final rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Savannah (COTP) has determined that potential hazards associated with the demolition operations of the Causton Bluff Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the demolition project continues.

IV. Discussion of the Rule

This rule establishes a safety zone from September 18, 2023, until November 20, 2023. A fixed temporary

safety zone will be established on the Wilmington River within a 300-yard radius of position: 32° 3.73′ N, 81° 1.78′ W in the vicinity of the Causton Bluff Bridge, Savannah, GA.

Demolition operations will take place Monday through Sunday during daylight hours. Periodically while the safety zone is implemented, all vessel traffic will be permitted to transit when deemed safe by the project site manager. This will commence at 7:00 p.m. on Mondays concluding at 12:00 p.m. Tuesdays and each subsequent Monday through Tuesday until project completion, and Thursdays beginning at 12:00 p.m. and concluding at 7:00 a.m. on Fridays until project completion. Restricted vessels with a beam of 30 ft or less may transit daily at the conclusion of the workday starting at 7:00 p.m. with the transit period ending by 7:00 a.m. the following day.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the demolition project continues. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The duration of the zone is intended to ensure the safety of vessels through the duration of the vessel's inbound and outbound transit and offload. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting several hours daily that would prohibit entry within 300 yards of the Causton Bluff Bridge. The zone will prohibit entry while in effect. It is categorically excluded from further review under paragraph L60(a)of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0466 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0466 to read as follows:

§ 165. T07–0466 Safety Zone; Wilmington River, Savannah, GA.

(a) *Location.* All navigable waters, from surface to bottom, of the Wilmington River within a 300-yard radius of position: 32° 3.73′ N, 81° 1.78′ W in the vicinity of the Causton Bluff Bridge, Savannah, GA.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (912) 247–0073. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* The safety zone in paragraph (a) of this section is in effect from 12:01 a.m. on September 18, 2023, through 11:59 p.m. on November 20, 2023. This section will be subject to enforcement periodically during daylight hours as needed by the project manager to safely remove all remaining bridge structural components. Mariners will be informed of enforced zone and enforcement periods by Broadcast Notice to Mariners, Myrick's safety boat on scene during working hours.

Dated: September 12, 2023.

Nathaniel L. Robinson,

Commander, U.S. Coast Guard, Captain of the Port, Savannah, GA.

[FR Doc. 2023–20004 Filed 9–14–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2023–0279; FRL–10989–02–R7]

Air Plan Approval; Missouri; Revisions to the Cross-State Air Pollution Rule SO_2 Group 1 Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the State Implementation Plan (SIP) submitted on November 29, 2021, by the State of Missouri. This final action approves revisions to a state regulation related to the Cross-State Air Pollution Rule SO_2 Group 1 Trading Program. The revisions alter the amounts of CSAPR SO_2 Group 1 emission allowances that are allocated to two of the state's units from the state's annual emissions budgets. Additionally, the revisions make non-substantive revisions to rule language that excludes certain provisions in the Code of Federal Regulations from incorporation by reference into the state's regulations. Approval of these revisions will ensure Federal enforceability of the State's rules. The EPA's approval of these SIP revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective October 16, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2023–0279. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Gerald McIntyre, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 608–

8349; email address: *mcintyre.gerald@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Background

In the Notice of Proposed Rulemaking (NPRM) for this action (88 FR 39801), the EPA explained the background for the Cross-State Air Pollution Rule (CSAPR) and its relationship to the proposed revision to Missouri's SIP. In this final rule, the EPA is providing additional background information from previous CSAPR actions that does not alter the EPA's analysis or decision to approve the proposed revision to Missouri's SIP.

As detailed in the NPRM, the Cross-State Air Pollution Rule (CSAPR) addresses air pollution from upwind states that crosses state lines and affects air quality in downwind states. CSAPR requires fossil fuel-fired electric generating units at coal-, gas-, and oil-fired facilities in 27 states, including Missouri, to reduce emissions to help downwind areas attain fine particle and/or ozone National Ambient Air Quality Standards (NAAQS).

The emissions reductions required by CSAPR are implemented through requirements for affected sources to participate in several CSAPR allowance trading programs for emissions of sulfur dioxide (SO_2) and/or nitrogen oxides. Under a given allowance trading program, after each control period, each affected source is required to surrender an amount of tradable emission allowances based on the source's emissions during the control period. The trading programs achieve the required emissions reductions by limiting the total quantities of allowances made available for use by all participating sources rather than by imposing unit-specific emission control requirements. The total amount of allowances that may be newly allocated among the sources in each state for a given control period is referred to as the state's emissions budget for the control period.

CSAPR was initially promulgated in the form of Federal Implementation Plan (FIP) requirements (76 FR 48208). However, the CSAPR regulations include provisions under which the EPA will approve certain types of optional SIP revisions—referred to as ''abbreviated CSAPR SIP'' and ''full CSAPR SIP'' revisions—to modify or replace the FIP provisions while allowing states to continue to meet their underlying obligations using the CSAPR trading programs.[1]

An approved abbreviated CSAPR SIP revision replaces the EPA's default unit-level allowance allocation provisions for the state's units with the state's own unit-level allowance allocation provisions while leaving the corresponding CSAPR FIP and all other provisions of the relevant Federal trading program in place for the state's units. Under such a SIP revision, a state has complete flexibility as to how to initially allocate allowances among its units for each control period, as long as the overall quantity of allowances allocated does not exceed the state's emission budget for the control period.

An approved full CSAPR SIP revision replaces a CSAPR Federal trading program for the state's units with a state trading program integrated with the Federal trading program. For a full CSAPR SIP revision to be approvable, the state's trading program regulations must be substantively identical to the corresponding Federal CSAPR trading program regulations with two exceptions. First, the state has the same flexibility with respect to unit-level allowance allocations it would have under an abbreviated CSAPR SIP revision. Second, the state must not regulate units located in Indian country not subject to the state's Clean Air Act planning jurisdiction, with the consequence that if the state's trading program regulations incorporate the relevant Federal trading program regulations by reference, the incorporation by reference must exclude the provisions of the Federal regulations that relate to units in Indian country.

In 2015, Missouri adopted state regulations at 10 Code of State Regulations (CSR) 10–6.376 establishing state-determined unit-level allocations of CSAPR SO_2 Group 1 allowances to replace the EPA's default allocations. The EPA approved the state's regulations as an abbreviated CSAPR SIP revision on June 28, 2016 (see 81 FR 41838). Missouri's allocations replicated the EPA's default allocations with the exception that the state allocated 1,300 more allowances to Asbury Unit 1 and 1,300 fewer allowances to Iatan Unit 1.

In 2018, Missouri adopted revisions to 10 CSR 10–6.376 incorporating into the state's regulations by reference all the provisions of the Federal CSAPR SO_2 Group 1 Trading Program regulations at 40 CFR 97.602 through 97.635 except the EPA's default unit-level allowance allocation provisions and the provisions relating to units located in Indian country. The EPA approved the revisions as a full CSAPR SIP revision on December 4, 2019 (see 84 FR 66316). The revisions replaced the Federal CSAPR SO_2 Group 1 Trading Program regulations for Missouri units with Missouri's CSAPR SO_2 Group 1 Trading Program regulations but made no changes to the previously adopted provisions of 10 CSR 10–6.376 concerning Missouri's unit-level allowance allocations.

On November 29, 2021, Missouri submitted further revisions to 10 CSR 10–6.376 for approval by the EPA into the state's SIP.

II. What is being addressed in this document?

The EPA is approving the SIP revision submitted by the State of Missouri on November 29, 2021. Missouri requested the EPA to approve revisions to 10 CSR 10–6.376 in the Missouri SIP.

First, the state has revised its rule to reallocate 1,300 CSAPR SO_2 Group 1 emission allowances for each control period from Asbury Unit 1, which was retired in March 2020, to Iatan Unit 1. The total amount of CSAPR SO_2 Group 1 allowances allocated by the state to Iatan Unit 1 will increase from 9,833 to 11,133. The total amount of CSAPR SO_2 Group 1 allowances allocated by the state to Asbury Unit 1 will decrease from 4,480 to 3,180. (Under other existing provisions of 10 CSR 10–6.376, the remaining 3,180 allowances allocated to Asbury Unit 1 will be transferred to the new unit set-aside and then redistributed to other units in the state.) The state's revisions do not change the overall quantity of allowances made available under the trading program and will therefore have no environmental effect. Because the regulations at 40 CFR 52.39 governing approvability of CSAPR SIP revisions give a state complete flexibility as to how the state initially allocates the allowances in its emissions budget for each control period among the state's units, Missouri's revision to the unit-level allocation provisions of its rule is approvable.

Second, Missouri has made non-substantive revisions to the rule language concerning the provisions excluded from incorporation by reference. The revisions do not change

[1] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their underlying obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

the set of provisions of the Federal regulations that are excluded from the state's regulations—*i.e.,* the provisions relating to the EPA's default unit-level allowance allocations and the provisions relating to units located in Indian country. The regulations at 40 CFR 52.39 do not prescribe specific language that must be used to accomplish the exclusion of these provisions, so Missouri's editorial revision to the rule language is approvable.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from April 15, 2021 to May 27, 2021 and received no comments. The NPRM and supporting information contained in the docket were made available for public comment from June 20, 2023, to July 20, 2023 (88 FR 39801) and no comments were received. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is taking final action to amend the SIP by approving the State's request in its submission dated November 29, 2021 to revise 10 CSR 10–6.376 ''Cross-State Air Pollution Rule Annual SO_2 Group 1 Trading Program.'' Because the EPA has already recorded Missouri's previously submitted unit-level allocations of CSAPR SO_2 Group 1 allowances issued for control periods through 2024 in the sources' compliance accounts, Missouri's revised unit-level allocations will take effect starting with allowances issued for the 2025 control period, in accordance with 40 CFR 52.39(f)(1)(iv) and 10 CSR 10–6.376(3)(A)1.D.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revised version of Missouri 10 CSR 10–6.376, state effective date July 29, 2021, setting forth the revised version of the state's CSAPR SO_2 Group 1 Trading Program. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Missouri did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2023. Filing a petition for reconsideration by the Administrator of

[2] 62 FR 27968, May 22, 1997.

this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 11, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.376'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.376	Cross-State Air Pollution Rule SO_2 Group 1 Trading Program.	7/29/2021	9/15/2023, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–19947 Filed 9–14–23; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 302

[Notice–MA–2023–08; Docket No. 2023–0002; Sequence No. 31]

Federal Travel Regulation (FTR); Relocation Allowances—Waiver of Certain Provisions for Official Relocation Travel to Locations in Florida and South Carolina Impacted by Hurricane Idalia

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notification of GSA Bulletin FTR 23–08.

SUMMARY: GSA Bulletin FTR 23–08, Waiver of certain Federal Travel Regulation (FTR) provisions for official relocation travel to locations in Florida and South Carolina impacted by Hurricane Idalia, informs Federal agencies that certain provisions of the FTR governing official relocation travel are temporarily waived for Florida and South Carolina locations impacted by Hurricane Idalia. As a result of the storm damage caused by Hurricane Idalia, agencies should consider delaying all non-essential relocations to the affected areas given the statutory 120-day maximum for payment of temporary quarters subsistence expenses (TQSE). Due to the lasting effects of the storm damage to these affected areas, finding lodging facilities and/or adequate meals may be difficult, and distance involved may be great, resulting in increased cost for relocation subsistence expenses.

DATES: *Applicability date:* The notification is retroactively applicable for official relocation travel impacted by Hurricane Idalia that is/was performed on or after the incident period start dates: (a) August 27, 2023, based on Presidential Disaster Declaration EM–3596–FL dated August 28, 2023, to designated areas in Florida, (b) August 27, 2023, based on Presidential Disaster Declaration DR–4734–FL dated August 31, 2023, to designated areas in Florida, and (c) August 29, 2023, based on Presidential Disaster Declaration EM–3597–SC dated August 31, 2023, to designated areas in South Carolina. The FTR Bulletin expires 180 days from the respective applicability dates, unless extended or rescinded by this office.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Miller, Senior Policy Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–501–3822 or by email at *travelpolicy@gsa.gov.* Please cite Notice of GSA Bulletin FTR 23–08.

SUPPLEMENTARY INFORMATION:

Background

Federal agencies authorize relocation entitlements to those individuals listed at FTR § 302–1.1 and those assigned under the Government Employees Training Act (GETA) (5 U.S.C. Chapter 41) which must be used within one year. Some agencies will authorize TQSE and a Househunting trip (HHT) to assist employees with temporary expenses incurred in connection with relocating to a new duty station. The FTR limits where temporary lodging may occur, how long employees may

receive assistance, and what per diem rates are paid. Hurricane Idalia has affected locations in Florida and South Carolina, which has resulted in various travel-related disruptions to relocating employees. Accordingly, this GSA FTR Bulletin allows agencies to determine whether to implement waivers of time limits established by the FTR for completion of all aspects of relocation, permissible locations of temporary quarters, and per diem rates for HHTs and TQSE.

GSA Bulletin FTR 23–08 can be viewed at *https://www.gsa.gov/ftrbulletins.*

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2023–20050 Filed 9–14–23; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–347; RM–11932; DA 23–826; FR ID 171264]

Television Broadcasting Services Lincoln, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On September 26, 2022, the Federal Communications Commission's Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by The University of Nebraska (Petitioner), the licensee of noncommercial educational (NCE) television station KUON–TV (KUON–TV or Station), channel *12, Lincoln, Nebraska, requesting the substitution of UHF channel *27 for VHF channel *12 at Lincoln in the Table of TV Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel *27 for channel *12 at Lincoln.

DATES: Effective September 15, 2023.

FOR FURTHER INFORMATION CONTACT: Emily Harrison, Media Bureau, at (202) 418–1665 or *Emily.Harrison@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 87 FR 60956 on October 7, 2022. The Petitioner filed comments in support of the petition, as required by the Commission's rules reaffirming its commitment to apply for channel *27. As described in the *Report and Order,* comments were filed by Flood Communications of Omaha, LLC (Flood) in opposition to the Petition, but such comments were ultimately withdrawn in favor of a settlement agreement between Petitioner and Flood. *See* Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Derek Teslik, Esq. and Seth Williams, Esq. (Sept. 8, 2023).

The Bureau believes the public interest would be served by substituting channel *27 for channel *12 at Lincoln, Nebraska. In support of its channel substitution request, the Petitioner states that the Station has a history of severe reception problems as a result of its operation on a VHF channel. The Petitioner also discussed the challenges and characteristics of VHF channels that have been recognized by the Commission regarding viewer reception. The Petitioner asserts that the proposed channel substitution will improve viewers' access to the Station's PBS and other public television programming by improving reception issues. According to the Petitioner, although the channel *27 facilities would result in a reduction in the Station's predicted population served within its noise limited service contour, almost all of the predicted loss area is served by other PBS stations licensed to communities in Nebraska and Iowa, which largely air the same NCE programming as KUON–TV. According to the Petitioner, once terrain-limitations are factored into the analysis, the new loss area that would be created by the proposed channel substitution would contain only 342 persons, which it asserts is *de minimis.* Although the Petitioner's proposal would result in a loss of PBS network programming to a limited number of viewers, the Bureau finds that the overall benefits of the proposed channel change by resolving reception issues outweighs any possible harm to the public interest.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 22–347; RM–11932; DA 23–826, adopted September 8, 2023, and released September 8, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in paragraph (j), amend the Table of TV Allotments, under Nebraska, by revising the entry for Lincoln to read as follows:

§ 73.622 digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
Nebraska	
* * * * *	
Lincoln	8, 10, 15, *27
* * * * *	

[FR Doc. 2023–19983 Filed 9–14–23; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 88, No. 178
Friday, September 15, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 109, 115, 120, and 123

RIN 3245–AI03

Criminal Justice Reviews for the SBA Business Loan Programs and Surety Bond Guaranty Program

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend regulations governing SBA's business loan programs (7(a) Loan Program, 504 Loan Program, Microloan Program, Intermediary Lending Pilot Program (ILP), Surety Bond Guarantee Program (SBG), and the Disaster Loan Program (except for the COVID Economic Injury Disaster Loan (EIDL) Disaster Loan Program) for criminal background reviews. The amendments are designed to improve equitable access based on criminal background review of applicants seeking to participate in one or more of these programs.

DATES: SBA must receive comments on this proposed rule on or before November 14, 2023.

ADDRESSES: You may submit comments, identified by RIN 3245–AI03, through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the information via email to *Dianna.Seaborn@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Director, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205–3645 or *Dianna.Seaborn@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The mission of SBA is to ''aid, counsel, assist and protect the interests of small business concerns in order to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation.'' 15 U.S.C. 631(a). SBA accomplishes this mission, in part, through Capital Access programs that bridge the financing gap in the private market and help businesses of all sizes to recover from disasters. Further, 15 U.S.C. 636(a)(1)(B) states that the Administrator may verify criminal background of the applicant, which grants SBA the flexibility to determine whether and how to consider criminal history in the context of issuing loan guarantees. After conducting a comprehensive study of SBA capital programs' current policies on individuals with criminal histories, SBA believes the changes proposed herein specifically honor and incorporate other statutory mandates of 15 U.S.C. 631 that recognize the importance of small business development in general as well as the responsibility to increase opportunities for certain groups that may not historically have had equitable opportunities for small business ownership. Supporting these statutory mandates and based on changing conditions in how state and local governments and the private sector have broadened access to business capital and employment opportunities coupled with data and empirical research demonstrating the public safety and economic benefits of doing so. Federal laws have also evolved regarding recidivism and second chances for formerly incarcerated individuals. SBA has determined the need to update regulations to reduce barriers to participation in these programs for equitable support for small business entrepreneurs with criminal history records. Throughout this proposed rule, ''currently incarcerated'' means ''a person who is currently serving a sentence of imprisonment imposed upon an adjudication of guilt. It does not include a person who is detained but not convicted, such as people in jails.''

SBA is proposing to update the 7(a), 504, Microloan, ILP, SBG and Disaster Loan Program regulations requiring criminal background reviews. Specifically, SBA is revising 13 CFR 109.400(b)(15) on ''Eligible Small Business Concerns''; 13 CFR 115.13(a)(2)(i) on ''Eligibility of Principal''; 13 CFR 120.110(n) on ''What businesses are ineligible for SBA business loans?''; 13 CFR 120.707(a) on ''What conditions apply to loans by Intermediaries to Microloan borrowers?''; 13 CFR 123.101(i) on ''When am I not eligible for a home disaster loan?''; 13 CFR 123.502(c) on ''Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?''; and 13 CFR 123.702(c)(1) and (2) on ''Character requirements''.

SBA proposes to revise 13 CFR 109.400(b)(15) for ILP loans to small businesses to remove the restrictions on Associates of an Applicant who are on probation, parole, or who have been indicted but not convicted of a felony or crime of moral turpitude; SBA proposes to revise 13 CFR 115.13(a)(2)(i) for surety bond applicants to remove restrictions on a Principal bidding for a contract (as defined in 13 CFR 115.10) who is under indictment but not convicted, or previously convicted of a felony or received civil judgment regarding business transactions; 13 CFR 120.110(n) for 7(a) and 504 loans to remove restrictions on businesses with an Associate who is on probation, on parole, or is under indictment but not convicted of a felony or any crime involving or relating to financial misconduct or a false statement; 13 CFR 120.707(a) for Microloans to remove restrictions on businesses with an Associate who is currently on probation or parole for an offense involving fraud or dishonesty; 13 CFR 123.101(i) for physical and economic injury and 123.502(c) for military reservist economic injury disaster loans to remove restrictions regarding principal owners of damaged property who are on probation or parole following conviction for a serious criminal offense. Further, regarding Immediate Disaster Assistance Program (IDAP) loans in Subpart G of 13 CFR 123.702(c)(1) and (2), to remove restrictions for businesses with an

Associate who is presently under indictment but not convicted, on parole or probation; that has ever been charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted). Accordingly, SBA has determined that reducing barriers to these programs for otherwise qualified applicants where one or more of their associates has the criminal justice system involvement described above is necessary to ensure equity and expand economic opportunities. The ILP Intermediary Program currently considers as ineligible Associates of an applicant that are incarcerated, on parole or probation, or that have been indicted but not convicted for a felony or a crime of moral turpitude. Historically, for the Surety Bond Guarantee Program, SBA considers an applicant ineligible if any of the principals are under indictment but not convicted, previously convicted of a felony or have received civil judgment regarding business transactions. Currently for the 7(a) and 504 business loan programs, SBA considers an applicant ineligible if the business has an Associate who is incarcerated, on probation, on parole, or is under indictment for a felony or any crime involving or relating to financial misconduct or a false statement, and for Microloans, in addition to incarcerated, an Associate who is on probation or parole for an offense involving fraud or dishonesty. For the Disaster loan program in 13 CFR 123.101(i) and 13 CFR 123.502(c), currently SBA considers ineligible any principal owners of the damaged property that are currently incarcerated, or on probation or parole following conviction for a serious criminal offenses, with additional specific restrictions for IDAP loans, that include presently under indictment, on parole or probation; charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted).

SBA understands the original intent of these restrictions was to protect the performance of SBA's capital programs against a presumed higher likelihood of default. Data and research, however, refute what may have animated SBA's initial rationale. Importantly, SBA reviewed the relevant research and found no evidence of a negative impact on repayment for qualified individuals with criminal history records in any American business loan program. This lack of data demonstrates that continuing to rely on this restriction for that purpose would contradict the available evidence and although the restrictions may have been originally put in place with the goal of protecting program performance, the lack of data suggests continuing to rely on this restriction would reflect an outdated, inaccurate structural bias against individuals with criminal history records. Specifically, research demonstrates that employment increases success during reentry and decreases the risk of recidivism, with entrepreneurship providing an important and distinct avenue for economic stability given persistent stigma from employers who may decline to hire people with criminal history records. Notably, SBA found several studies showing the difficulty of obtaining employment for formerly incarcerated people (see for example, *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men;*[1] from the Department of Justice's National Institute of Justice Grant) and a positive link between employment and successful reentry, including avoiding recidivism (see for example, *Local Labor Markets and Criminal Recidivism*[2] in the Journal of Public Economics). Moreover, because justice-impacted individuals may face barriers in obtaining employment, entrepreneurship can be an attractive option, and SBA found several studies showing the potential for entrepreneurship among Americans with criminal histories (see for example *From Prison to Entrepreneurship*[3] in the American Academy of Political and Social Science). Given the lack of data suggesting program performance issues and the breadth of research indicating the benefits, SBA is proposing to remove unnecessary restrictions that limit access to capital for justice-impacted individuals. Furthermore, by providing an employment opportunity for formerly incarcerated individuals through entrepreneurship and/or growing a small business, SBA seeks to strengthen economic opportunity and growth as well as support public safety by reducing recidivism.

SBA believes that modernizing the character requirements regarding consideration of the criminal history records of SBA loan applicants and Associates of business loan applicants is timely and appropriate to reflect changes in the public and private sector that have reduced unnecessary barriers to access to capital and successful reentry. Doing so also promotes equitable consideration for applicants who are ineligible for federal assistance in SBA's programs due to pending indictments that have not led to convictions; prior convictions that have been adjudicated; and terms of incarceration that have been served. These changes create the opportunity for formerly incarcerated individuals to participate in SBA's loan and surety bond programs and engage in entrepreneurial endeavors that research shows statistically decrease recidivism based on employment and continued engagement within their communities, thereby strengthening public safety.[4] These proposed changes will enable SBA programs to provide capital in the form of Surety Bonds, 7(a), 504, Microloan, ILP, and Disaster loans to more qualified small businesses and disaster survivors, which will strengthen our economy. SBA does not propose to remove or change 13 CFR 120.110(q) regarding ineligibility due to prior default and loss to the Federal Government. Finally, SBA will continue the pandemic implemented practices to access certain public data to perform fraud checks prior to approval of any 7(a), 504 or Disaster loans.

The Agency requests comments on all aspects of the revisions in this proposed rule and on any related issues affecting the 7(a) Loan, 504 Loan, Microloan, ILP, Surety Bond Guarantee, and Disaster Loan Programs.

II. Section-by-Section Analysis

Section 109.400(b)(15) Eligible Small Business Concerns

Current section 109.400(b)(15) for the ILP Program states that ineligible businesses are those with an Associate

[1] *Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men. Investigating Prisoner Reentry* National Institute of Justice *Grant, Final Report., October 2009.*

[2] *Local Labor Markets and Criminal Recidivism,* ScienceDirect, Journal of Public Economics, Volume 147, March 2017, Pages 16–29.

[3] *From Prison to Entrepreneurship: Can Entrepreneurship be a Reentry Strategy for Justice-Impacted Individuals? https://doi.org/10.1177/00027162221115378,* Sage Journals, Volume 701, Issue 1, September 14, 2022.

[4] Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks | RAND Bushway, Shawn D., Brian G. Vegetabile, Nidhi Kalra, Lee Remi, and Greg Baumann, Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks. Santa Monica, CA: RAND Corporation, 2022.

who is currently incarcerated, on probation, on parole, or has been indicted but not convicted of a felony or crime of moral turpitude. SBA proposes to revise this regulation to remove those barriers while maintaining the prohibition against only those businesses with an Associate who is currently incarcerated at the time of application or any time thereafter, and between the time of application and disbursement of loan proceeds. This revision is therefore narrowly tailored to reduce barriers to access for qualified formerly incarcerated small business owners who may be eligible to receive a loan through the ILP Pilot from an existing Intermediary with remaining funds to lend.

Section 115.13(a)(2)(i) Eligibility of Principal

Current section 115.13(a)(2)(i) for the Surety Bond program states that ineligible businesses are those with a Principal who is under indictment but is not convicted, or has been previously convicted of a felony, or a final civil judgment has been entered stating that such Person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships. SBA proposes to remove those barriers while maintaining the prohibition against only those businesses with a Principal who is currently incarcerated. This revision is therefore narrowly tailored to reduce barriers to access for qualified justice-impacted small business owners to compete for Federal and other contract opportunities by obtaining guarantees for surety bid and final payment and/or performance bonds.

Section 120.110(n) What businesses are ineligible for SBA business loans?

Current section 120.110(n) for the 7(a), 504 and Microloan programs states that ineligible businesses are those with an Associate who is currently incarcerated, on probation, on parole, or is under indictment but not convicted for a felony or any crime involving or relating to financial misconduct or a false statement. SBA proposes to revise this regulation to remove some of those barriers while maintaining the prohibition against businesses with an Associate who is currently incarcerated. This revision is therefore narrowly tailored to reduce barriers to access for qualified justice-impacted small business owners. Section 636(a)(1)(B) of the Small Business Act states that SBA may verify an applicant's criminal history background, but does not require such verification, nor does it prohibit loans for people formerly incarcerated. Lenders, CDCs, and Microloan Intermediaries make risk-based lending decisions. Some lenders include conducting criminal history background checks and others do not. SBA's proposed revision does not impact a lender's ability to continue to do so, in accordance with their own policies, provided they do so in a manner that complies with the Equal Credit Opportunity Act and other relevant laws.

Section 120.707(a) What conditions apply to loans by Intermediaries to Microloan borrowers?

SBA proposes to revise section 120.707(a) to remove some of those barriers while maintaining the prohibition against where there is an Associate on parole or probation. For public safety reasons, however, SBA will retain the prohibition against making a loan to a childcare business, where an Associate is on probation or parole for an offense against children. This change will closely align with the proposed requirements for all business loan programs regarding the determination that an applicant with a Principal or Associate that is currently incarcerated is ineligible for assistance and support the flexibility and access to capital for qualified justice-impacted business owners.

Section 123.101(i) When am I not eligible for a home disaster loan?

Current section 123.101(i), for the Disaster loan program states that SBA considers ineligible any principal owners of the damaged property that are presently incarcerated, or on probation or parole following conviction for a serious criminal offense. SBA proposes to revise section 123.101(i) to state that the applicant is ineligible to receive a disaster loan only when any principal owner of a home that sustained damage is currently incarcerated. The eligibility requirements in 123.101 are cross referenced in 123.201 and 123.301; therefore, this proposed change will also apply to business property loans as well as economic injury loans. Notwithstanding SBA's proposed change, in accordance with the requirements of Public Law 90–488 (August 1, 1968) and as reflected in 123.101(a), SBA will maintain its existing prohibition against any person who has been convicted of committing a felony during and in connection with a riot or civil disorder for a period of one year after the date of their conviction. This change will align the requirements proposed for all SBA loan programs regarding persons currently incarcerated applicants currently serving a term of incarceration and support the flexibility and access to capital for qualified justice-impacted disaster survivors.

Section 123.502(c) Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

Current section 123.502(c), for the Disaster loan program states that SBA considers ineligible any principal owners of the damaged property that are presently incarcerated, or on probation or parole following conviction for a serious criminal offense. SBA proposes to revise section 123.502(c) to state that for Military Reservist Economic Injury Disaster loans (MREIDL), the applicant is ineligible to receive a disaster loan only when an Associate of a business that sustained damage is currently incarcerated. Notwithstanding SBA's proposed changes for disaster loans, in accordance with the requirements of Public Law 90–488 (August 1, 1968) and as reflected in 123.502(a), SBA will continue to consider as ineligible to receive any benefit under any law of the United States providing relief for disaster victims, any person who has been convicted of committing a felony during and in connection with a riot or civil disorder for a period of one year after the date of their conviction. This change will align the requirements proposed for all SBA loan programs regarding individuals currently incarcerated and support the flexibility and access to capital for qualified justice-impacted small businesses.

Section 123.702(c)(1) and (2) What are the eligibility requirements for any IDAP Loan?

Current section 123.702(c)(1) and (2), for IDAP loans state that SBA considers ineligible any applicant business that has an Associate that who is presently under indictment but not convicted, on parole or probation; charged with, arrested for, convicted, placed on pretrial diversion, and/or placed on any form of probation (including adjudication withheld pending probation) for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or not prosecuted). SBA proposes to revise section 123.702(c)(1) and (2) to state that the applicant is ineligible to receive an IDAP loan only when any principal owner of a home or business that sustained damage is currently incarcerated. Notwithstanding SBA's proposed change, in accordance with

the requirements of Public Law 90–488 (August 1, 1968) and as reflected in 123.101(a), SBA will continue to consider as ineligible to receive any benefit under any law of the United States providing relief for disaster victims, any person who has been convicted of committing a felony during and in connection with a riot or civil disorder for a period of one year after the date of their conviction.

In addition to applicants in all programs certifying to having no owners or Associates that are currently incarcerated, SBA proposes to access certain external and widely acceptable and reliable databases to verify eligibility regarding incarceration and criminal history status. While increasing loan volume, SBA believes that these changes do not compromise the credit quality and performance of the loan portfolios. In fact, the Microloan and SBG programs have permitted loans to businesses with individuals on parole or probation at no negative impact to overall program performance.

As published in June 2021, The RAND Research Brief [5] estimated that over 200,000 small businesses were affected or disqualified from participating in the Paycheck Protection Program due to SBA's rules regarding current indictments and incarceration, and prior criminal convictions and criminal justice system involvement current incarcerations. Predictably, the survival rate of legitimate small businesses that did not receive assistance during the pandemic is lower than those that did receive support. Due to significant barriers to employment for individuals with criminal history records, self-employment and entrepreneurship are often vital avenues to successful reentry and employment. In fact, 28 percent of individuals with criminal history records are self-employed.[6] Accordingly, SBA's general and targeted loan programs must be a resource that provide options that support economic success and growth for individuals and communities, from basic self-employment to becoming employers within communities, and that support successful reentry outcomes, thereby strengthening public safety. Research is clear that reducing barriers to employment reduces recidivism and supports successful reentry, leading to better outcomes for individuals and communities [7]—all of which underscore the necessity for SBA to revisit and update these regulations to remove barriers to small-business employment and business ownership.

Under the proposed rule, for each program, SBA, Lenders, CDCs, Microloan intermediaries, Sureties, and ILP Intermediaries, will consider the applicant business ineligible based on any criminal history record only when there is an Associate that who is currently incarcerated at the time of application or between the time of application and disbursement of loan proceeds or bond execution.

SBA's proposed rule also streamlines SBA's lending criteria by reducing the number of factors that are required to be applied in determining eligibility based on criminal history records of small business owners. Lenders, CDCs, and Microloan Intermediaries make risk-based lending decisions. Some lenders include conducting criminal history background checks and others do not. SBA's proposed revision does not impact a lender's ability to continue to do so, in accordance with their own policies, provided that they do so in a manner that complies with the Equal Credit Opportunity Act and other relevant laws.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, as amended by Executive Order 14094. SBA has drafted a Regulatory Impact Analysis for the public's information in the next section. Each section begins with a core question.

A. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

In accordance with statutory mandates of 15 U.S.C. 631 above, the Agency believes it needs to reduce regulatory restrictions for applicants with Associates or Principals based on criminal histories for the SBA Disaster, 7(a), 504, Microloan, ILP and SBG programs by reducing the requirement for criminal history records consideration to only applicants with a Principal or Associate currently incarcerated in the manner proposed above or employment as an Associate at a small business. Many formerly incarcerated persons experience significant barriers in accessing employment and capital and credit often necessary to start a business. SBA's proposed revisions will remove barriers to access capital for qualified applicants and employment. SBA will reduce the administrative burden on applicants as well as the need for fingerprints by providing a single succinct directive that SBA determines any applicant with a Principal or Associate that is currently incarcerated to be ineligible with no further requirements for disclosure of prior criminal records.

B. Benefits and Costs of the Rule

What are the potential benefits and costs of this regulatory action?

SBA does not anticipate significant additional costs or impact on the subsidy to operate the 7(a), 504, Microloan, ILP, SBG and Disaster Loan Programs under these proposed regulations because all loans submitted must always meet Loan Program Requirements. For the SBG program, this change will benefit small contractors with Principals on parole, probation or convicted of crimes who will now be able to apply for small contracting opportunities.

SBA does not receive information from lenders on how many applicants they decline for 7(a), 504, and Microloans. SBA has received substantial feedback and research from stakeholders that its current rules have presented broad barriers to otherwise qualified individuals with criminal history records that seek financing to start, run, or expand small businesses. This aligns with the statutory mandates in 15 U.S.C. 631 and supports the inference that reducing or removing barriers will result in additional applications from those businesses with justice-impacted owners who may have been deterred from applying due to the current prohibitions related to criminal history records. In the 7(a) and 504 programs, for formerly incarcerated individuals and people not on parole or probation, out of more than 50,000 thousand loans made annually, SBA lenders have submitted to SBA for review approximately 586 Character determination requests containing information on criminal history records involving felonies. SBA declines on average only 17–23 of the requests per year due to the nature of the offense or incomplete judicial records. SBA's Disaster Loan Program has declined 93 individuals for criminal history record

[5] *The Prevalence of Criminal Records Among Small Business Owners | RAND* How Many Business Owners, Businesses, and Employees Are Affected by PPP Restrictions?

[6] *https://onlinelibrary.wiley.com/doi/10.1002/pam.22438* Criminal Justice Involvement, Self-employment, and Barriers in Recent Public Policy. *Journal of Policy Analysis and Management, 42*(1),11–4

[7] Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks | RAND

background checks between 2018 and 2022, with an additional 1,026 files withdrawn by applicants prior to review during the same period. Microloan Intermediaries do not submit loans to SBA for approval, so SBA does not have data for criminal history records of Microloan applicants. Accordingly, SBA's proposed changes would result in the same nominal concerns. Finally, Lenders, CDCs, and Microloan Intermediaries make risk-based lending decisions. Some lenders include conducting criminal history background checks and others do not. SBA's proposed revision does not impact a lender's ability to continue to do so, in accordance with their own policies, provided that they do so in a manner that complies with the Equal Credit Opportunity Act and other relevant laws.

C. Alternatives

What alternatives have been considered?

SBA considered the impact of maintaining the current rules that deem as ineligible businesses with Principals or Associates currently incarcerated, on parole or probation or convicted of certain financial and other crimes. This would result in continuing barriers for small businesses owned by individuals with criminal history records. Instead, SBA's proposal to remove all except currently incarcerated Principals or Associates as ineligible mitigates the risk to SBA of making guarantees and loans to businesses whose Principals or Associates lack the ability to manage and execute day-to-day business operations. And for disaster survivors, SBA's proposed changes will increase equal access and support for recovery.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule would require that the following forms be revised: SBA Form 1919, ''Borrower Information Form,'' SBA Form 1920, ''Lender's Application for Loan Guaranty for all 7(a) Loan Programs,'' SBA Form 1244, ''Application for Section 504 Loans,'' SBA Form 5—Disaster Business Loan Application, and SBA Form 5C—Disaster Home/Sole Proprietor Loan Application and SBA Form, SBA Form 994 ''Application for Surety Bond Guarantee Assistance''.

SBA Forms 1919 and 1920 are approved under OMB Control number 3245–0348. SBA Form 1244 is approved under OMB Control number 3245–0071. SBA Form 5 is approved under OMB Control number 3245–0017 and SBA Form 5C is approved under OMB Control number 3245–0018. SBA Form 994 is approved under OMB Control number 3245–0007.

SBA will revise SBA Form 1919, SBA Form 1920, and SBA Form 1244 to conform to the eligibility change at 13 CFR 120.110(n). When small businesses apply for 7(a) or 504 loans, the estimated hour burden for applicants and lenders will decrease because the criminal history analysis and collection of data will no longer be required. SBA will revise SBA Form 5 and 5C to conform to the eligibility change at 13 CFR 123.101(i). When disaster survivors apply for disaster loans, the estimated hour burden for applicants will decrease because the criminal history record analysis and collection of data will be reduced.

SBA will revise SBA Form 994 to conform to the eligibility change at 13 CFR 115.13(a)(2)(i). When small businesses apply for surety bond guarantees, the estimated hour burden for applicants will decrease because the criminal history record analysis and collection of data will no longer be required.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment an initial regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Although the rulemaking may potentially impact a small percentage of loans reviewed by 7(a) Lenders, CDCs, Microloan Intermediaries, ILP Intermediaries, the 44 Sureties that participate in the SBG Program, and SBA regarding the disaster loans, SBA does not believe the impact will be significant because this proposal reduces regulations and procedures. However, there may be impacts due to increased loans for businesses with Principals or Associates that have a criminal history record but are not currently incarcerated.

SBA reviews approximately 586 Character determination requests annually and declines 3–4 percent, or 17–23 requests, due to the nature of the offense or incomplete judicial records. The proposed revisions to § 120.110(n) will eliminate the need for 100 percent of these character determination reviews. SBA Form 1919, ''SBA 7a Borrower Information Form,'' is the application form for the 7(a) Loan Program. SBA Form 1244, ''Application for Section 504 Loans,'' is the application form for the 504 Loan Program. Each application includes 3 questions that Associates of the applicant must answer regarding their criminal history records. Under the proposed revisions, SBA will eliminate the three current questions and replace them with one new question regarding incarceration. SBA estimates that all applicants for the 7(a) Loan Program and 504 Loan Program will save 5 minutes completing the applications due to these revisions. Intermediaries for the Microloan Program use their own applications for Microloan borrowers, but it is reasonable to assume similar time savings. The 7(a) Loan Program, 504 Loan Program, and Microloan Program make approximately 68,677 loans per year. Saving 5 minutes for each application will result in total time savings of 5,723 hours annually.

List of Subjects

13 CFR Part 109

Community development, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

13 CFR Part 120

Community development, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 109, 115, 120 and 123 as follows:

PART 109—INTERMEDIARY LENDING PILOT PROGRAM

■ 1. The authority citation for 13 CFR part 115 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), and 636(l).

■ 2. Amend § 109.400 by revising paragraph (b)(15) to read as follows:

§ 109.400 Eligible Small Business Concerns

* * * * *

(b) * * *

(15) Businesses with an Associate who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

PART 115—SURETY BOND GUARANTEES

■ 3. The authority citation for 13 CFR part 115 continues to read as follows:

Authority: 5 U.S.C. app.3: 15 U.S.C. 636i, 687b, 687c, 694a, and 694b, note.

■ 4. Amend § 115.13 by revising paragraph (a)(2)(i) to read as follows:

§ 115.13 Eligibility of Principal.

* * * * *

(a) * * *

(2) * * *

(i) The Person is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty; or

* * * * *

PART 120—BUSINESS LOANS

■ 5. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, and 697, 697a and e, and note; Pub. L. 116–260, 134 Stat. 1182.

■ 6. Amend § 120.110 by revising paragraph (n) to read as follows:

§ 120.110 What businesses are ineligible for SBA business loans?

* * * * *

(n) Businesses with an Associate who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty; or

* * * * *

■ 7. Amend § 120.707 by revising paragraph (a) to read as follows:

§ 120.707 What conditions apply to loans by Intermediaries to Microloan borrowers?

(a) Except as otherwise provided in this paragraph, an Intermediary may only make Microloans to small businesses eligible to receive financial assistance under this part. A borrower may also use Microloan proceeds to establish a nonprofit childcare business. An Intermediary may not make Microloans to businesses with an Associate who is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or to childcare businesses with an Associate who is currently on probation or parole for an offense against children. Proceeds from Microloans may be used only for working capital and acquisition of materials, supplies, furniture, fixtures, and equipment. SBA does not review Microloans for creditworthiness.

* * * * *

PART 123—DISASTER LOAN PROGRAM

■ 8. The authority citation for 13 CFR part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, and 9009.

■ 9. Amend § 123.101 by revising paragraph (i) to read as follows:

§ 123.101 When am I not eligible for a home disaster loan?

* * * * *

(i) You or other principal owners of the damaged property are currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

■ 10. Amend § 123.502 by revising paragraph (c) to read as follows:

§ 123.502 Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

* * * * *

(c) Any of your business' principal owners is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

■ 11. Amend 123.702 by:

■ a. Revising paragraph (c)(1);

■ b. Removing paragraph (c)(2); and

■ c. Redesignating paragraphs (c)(3) through (5) as paragraphs (c)(2) through (4).

The revision read as follows:

§ 123.702 What are the eligibility requirements for an IDAP loan?

* * * * *

(c) * * *

(1) is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty;

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–19183 Filed 9–14–23; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1880; Project Identifier MCAI–2023–00298–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model RB211–Trent 800 engines. This proposed AD was prompted by reports of cracks on certain intermediate-pressure compressor (IPC) rotor shaft balance lands. This proposed AD would require initial and repetitive on-wing or in-shop borescope inspections (BSIs) of certain IPC rotor shaft balance lands for cracks, dents, and nicks, and replacement of the IPC rotor shaft if necessary, and would prohibit the installation of a certain IPC rotor shaft on any engine, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by October 30, 2023 .

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.

- *Fax*: (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1880; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA service information that is identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1880.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1880; Project Identifier MCAI–2023–00298–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued European Union Aviation Safety Agency AD 2023–0040, dated February 16, 2023 (EASA AD 2023–0040) (also referred to after this as the MCAI), to address an unsafe condition for all RRD Model RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 (RB211–Trent 800) engines. The MCAI states that cracking on the IPC rotor shaft balance land has been historically observed on RRD Model RB211–Trent 800 engines. To address this unsafe condition, the manufacturer developed a modification, which introduced a revised balancing method that removed the original balancing weights from the IPC rotor shaft, and published service information to provide instructions for in-service modification. In addition, the manufacturer published service information to provide instructions for in-shop eddy current (EC) inspection of the IPC rotor shaft balance land. Consequently, EASA issued AD 2014–0152, dated June 20, 2014; corrected June 25, 2014; revised March 2, 2018 (EASA AD 2014–0152R1).

Since EASA issued EASA AD 2014–0152R1, the manufacturer determined that certain RB211–Trent 800 engines were not inspected during engine refurbishment. The manufacturer then identified the IPC rotor shaft balance lands that were not inspected and published service information that describes procedures to perform a BSI of the IPC rotor shaft balance land until the in-shop EC inspection is accomplished. To address this, EASA issued the MCAI. This condition, if not addressed, could lead to IPC rotor shaft failure and consequent uncontained high-energy debris, resulting in damage to the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1880.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0040, which specifies procedures for performing initial and repetitive on-wing or in-shop BSIs of the IPC rotor shaft balance land for cracks, dents, and nicks, and replacing the IPC rotor shaft if necessary. The MCAI also specifies prohibiting the installation of a certain IPC rotor shaft on any engine and that accomplishing an in-shop EC inspection of the IPC rotor shaft balance land or replacing the IPC rotor shaft constitutes as terminating action for the repetitive BSIs.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

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

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2023–0040 in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0040 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions within the compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0040. Service information required by the EASA AD for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1880 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 194 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI of IPC rotor shaft balance land	4.5 work-hours × $85 per hour = $382.50	$0	$382.50	$74,205

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace IPC rotor shaft	50 work-hours × $85 per hour = $4,250	$2,123,908	$2,128,158

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG: Docket No. FAA–2023–1880; Project Identifier MCAI–2023–00298–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Model RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks on the intermediate-pressure compressor (IPC) rotor shaft balance land. The FAA is issuing this AD to detect cracks on the IPC rotor shaft balance land. The unsafe condition, if not addressed, could lead to IPC rotor shaft failure and consequent

uncontained high-energy debris, resulting in damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0040, dated February 16, 2023 (EASA AD 2023–0040).

(h) Exceptions to EASA AD 2023–0040

(1) Where EASA AD 2023–0040 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the Remarks paragraph of EASA AD 2023–0040.

(3) Where the service information referenced in EASA AD 2023–0040 specifies to use certain tooling, equivalent tooling may be used.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0040 specifies to notify the manufacturer or supply pictures to the manufacturer of any cracks, dents, or nicks, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0040, dated February 16, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0040, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1880.

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

Issued on September 8, 2023.

Ross Landes,

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

[FR Doc. 2023–19865 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1757; Airspace Docket No. 23–ANM–9]

RIN 2120–AA66

Modification of Class E Airspace; Spanish Fork Municipal Airport/Woodhouse Field, Spanish Fork, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from 700 feet above the surface at Spanish Fork Municipal Airport/Woodhouse Field, Spanish Fork, UT.

DATES: Comments must be received on or before October 30, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA 2023–1757 and Airspace Docket No. 23–ANM–9 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify Class E airspace to support instrument flight rules (IFR) operations at Spanish Fork Municipal Airport/Woodhouse Field, Spanish Fork, UT.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the

proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Class E airspace extending upward from 700 feet above the surface at Spanish Fork Municipal Airport/Woodhouse Field, Spanish Fork, UT.

The existing Class E airspace is comprised of 6.5-mile radius around the airport. This area should be expanded to better contain departing IFR operations until they reach 1,200 feet above the surface on the SPANISH FORK ONE DEPARTURE (OBSTACLE) procedure. A 6.9-mile radius around the airport would fully contain this procedure. Finally, a 2.1-mile extension from the airport's 326° bearing extending 2 mile either side should be added. The extension will better contain IFR arrival operations below 1,500 feet above the surface on the Area Navigation (RNAV) (Global Positioning System [GPS]) Y Runway (RWY) 12 and RNAV (GPS) Z RWY 12 approaches.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM UT E5 Spanish Fork, UT [Amended]

Spanish Fork Airport-Woodhouse Field, UT
(Lat. 40°08′42″ N, long. 111°40′04″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the airport, and within 2 miles each side of the 326° bearing extending from the 6.9-mile radius to 9 miles northwest of the airport.

* * * * *

Issued in Des Moines, Washington, on September 6, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–19594 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2023–OELA–0132]

Proposed Priorities, Requirements, and Definitions—National Professional Development Program

AGENCY: Office of English Language Acquisition, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and definitions for use in

the National Professional Development (NPD) program, Assistance Listing Number 84.365Z. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2023 and later years. We intend for these priorities, requirements, and definitions to increase the number of bilingual and multilingual teachers supporting English language learners.

DATES: We must receive your comments on or before October 16, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Francisco Javier López, U.S. Department of Education, 400 Maryland Avenue SW, Room H3215, PCP, Washington, DC 20202. Telephone: (202) 558–4880. Email: *NPPNPD@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definitions. To ensure that your comments have maximum effect in developing the final priorities, requirements, and definitions, we urge you to identify clearly the specific proposed priorities, requirements, and definitions that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities, requirements, and definitions by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The NPD program, authorized by sections 3111(c)(1)(C) and 3131 of the Elementary and Secondary Education Act of 1965(ESEA), provides grants to institutions of higher education (IHEs) or public or private entities with relevant experience and capacity, in consortia with State educational agencies (SEAs) or local educational agencies (LEAs), to implement pre-service and in-service professional development activities intended to improve instruction for English Learners (ELs) and assist education personnel working with ELs to meet high professional standards.

Program Authority: 20 U.S.C. 6861.

Proposed Priorities

The Department proposes the following three priorities for this program. We may use one or more of these priorities in any year in which this program is in effect.

Background

''Raise the Bar (RTB): Lead the World'' is the Department's call to action to transform prekindergarten through postsecondary learning and unite around what truly works by promoting academic excellence, boldly improving learning conditions, and preparing our Nation's students for global competitiveness.[1] A robust and sustainable educator workforce available to educate and support all children and youth is essential to this call to action. The priorities proposed in this document would advance many of these goals. Specifically, we are proposing priorities designed to help eliminate the educator shortage, increase services for our students who are English learners, and expand pathways to multilingualism for all students.

A growing body of evidence suggests that diverse classroom settings, such as in bilingual and multilingual education, may be positively associated with students' ability to empathize and relate to others, have long-term career benefits, and result in a higher degree of literacy.[2] Learning another language from a young age is an asset that prepares all students for an increasingly globalized economy. Globally, adults who are bilingual and biliterate have more job opportunities than monolingual adults.[3] Fostering a culture of language-learning for all students also communicates to linguistically marginalized students that their heritage languages and home identities are valuable and welcomed in school.[4]

While there is a rich and diverse population of both ELs and native English speakers who would benefit from bilingual education, there is a shortage of bilingual and multilingual teachers prepared to teach a growing population of ELs and to make multilingualism a reality for all. According to 2019–20 data reported by SEAs for the Title III State Formula Grant Program, the number of K–12 students that were identified as ELs increased 2.6 percent from the previous school year. Yet, the number of certified EL instructors decreased by almost 43,000 educators or 10.4 percent from the previous school year.[5] Additionally, in a joint publication by The Century Foundation and the Children's Equity

[1] *https://www.ed.gov/raisethebar/*.

[2] Commission on Language Learning. America's Language (2017). Investing in Language Education for the 21st Century. American Academy of Arts and Sciences: Cambridge, Massachusetts.

[3] Zelasko, N., & Antunez, B. (2000). If your child learns in two languages. National Clearinghouse for Bilingual Education. Retrieved from *http://www.ncela.gwu.edu/files/uploads/9/IfYourChildLearnsInTwoLangs_English.pdf*.

[4] *Analyzing the Curricularization of Language in Two-Way Immersion Education: Restating Two Cautionary Notes* (Valdés, 2018).

[5] *https://ncela.ed.gov/sites/default/files/2023-05/OELABiennialReportSYs2018-20b-508.pdf*.

Project, the researchers noted, ''just one in eight American teachers speaks a non-English language at home . . . [and of those] teachers who are linguistically diverse, many are not trained or credentialed to provide academic instruction in non-English languages.'' [6]

The NPD program, as a pre-service and in-service professional development program, is uniquely positioned to support the Department's RTB goals by helping to ensure that ELs have access to well-prepared educators and by growing our numbers of bilingual and multilingual educators in order to expand the availability of bilingual programs.

The priorities proposed in this document focus on pre-service programs and in-service professional development designed to expand the numbers of bilingual or multilingual teachers and other staff, including through grow-your-own (GYO) efforts. Initial research [7] suggests that GYO efforts may be particularly effective in recruiting educators who reflect the diversity of our students, in this case, ELs who are a growing resource that can be encouraged and recruited to pursue careers as bilingual and multilingual teachers. Many GYO programs also extend support to paraprofessionals, high-quality substitute teachers, and others in a community who are interested in transitioning into roles as educators by supporting their training and path to certification.

Additionally, we continue to emphasize and elevate supports for students from low-income backgrounds by proposing a priority and a corresponding definition that focuses on enrolling specific percentages of teacher candidates who are from low-income backgrounds. Thirty-seven percent of ELs are from disadvantaged family backgrounds who are living in poverty, and schools that have higher concentrations of ELs tend to be high-poverty schools.[8] Students, particularly emerging bilingual and multilingual students, from low-income backgrounds are a critical part of addressing the need to provide culturally and linguistically relevant teaching in high-need schools and to give all students the opportunity to be taught by diverse educators. We are proposing a definition using Pell eligibility as a proxy for determining whether students are from low-income backgrounds given that Pell eligibility takes into account variables such as family income and family size. Further, we believe the data needed to demonstrate Pell eligibility is easily accessible to IHEs and other potential applicants that partner with IHEs who can obtain student aid information.

As the EL population continues to grow, and as our global economy becomes more interconnected, it is increasingly important to focus efforts on addressing the shortage of teachers and other staff licensed and certified to work with ELs and to provide opportunities for all students to benefit from bilingual or multilingual instruction.

Proposed Priority 1—Increase the Number of Bilingual or Multilingual Teachers Through Pre-Service Programs.

Projects that propose to increase the number of licensed or certified bilingual or multilingual teachers working in language instruction educational programs or serving ELs, and improve their qualifications and skills, through evidence-based pre-service programs. Applicants must describe their plan for recruiting, supporting, and retaining bilingual or multilingual teacher candidates, which must include grow-your-own (GYO) efforts that are designed to address shortages of bilingual or multilingual teachers and increase the diversity of qualified individuals entering the educator workforce. Applicants must include in their proposed plan one or more of the following GYO strategies:

- Supporting bilingual or multilingual paraprofessionals actively working in P–12 schools in becoming teachers.
- Creating pathway programs for middle and high school students who are pursuing seals of biliteracy to become teachers.
- Recruiting individuals who may have a teaching credential but have not been teaching in bilingual or multilingual education settings.
- Offering registered apprenticeship programs for teachers that establish, scale, and build on existing high-quality pathways into bilingual or multilingual education settings.
- Implementing other evidence-based GYO efforts for bilingual or multilingual individuals.

Proposed Priority 2—Service to Low-Income Students.

Projects that propose to recruit, train, and retain in the pre-service program classes of participants for which one or more of the following conditions are met:

(a) At least 30 percent of the participants are low-income students.

(b) At least 40 percent of the participants are low-income students.

(c) At least 50 percent of the participants are low-income students.

Proposed Priority 3—Improve In-Service Professional Development Programs Targeting Bilingual or Multilingual Educational Personnel Who Serve English Learners.

Projects that propose evidence-based in-service professional development programs designed to expand the number, and improve the qualifications and skills, of bilingual or multilingual educational personnel working in language instruction educational programs or serving ELs, including educational paraprofessionals and personnel who are not certified or licensed.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

[6] Williams, C.P., Meek, S., Marcus, M., Zabala, J. (2023). Ensuring Equitable Access to Dual-Language Immersion Programs: Supporting English Learners' Emerging Bilingualism. Retrieved from *https://tcf.org/content/report/ensuring-equitable-access-to-dual-language-immersion-programs-supporting-english-learners-emerging-bilingualism/*.

[7] Strategies for Designing, Implementing, and Evaluating Grow-Your-Own Teacher Programs for Educators (2017). REL Northwest. Retrieved from *https://ies.ed.gov/ncee/edlabs/regions/northwest/pdf/strategies-for-educators.pdf*.

[8] Quintero, D. & Hansen, M. (2021). As we tackle school segregation, don't forget about English Learner students. The Brookings Institution. Retrieved from *https://www.brookings.edu/blog/brown-center-chalkboard/2021/01/14/as-we-tackle-school-segregation-dont-forget-about-english-learner-students/*.

Proposed Requirements

The Department proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Proposed Application Requirements: An applicant must provide the indicators it proposes to use to determine if a participant meets the definition of ''bilingual or multilingual.'' Applicants may provide this information in response to the selection criteria, or otherwise as applicable in their applications.

Proposed Definitions

The Department proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Bilingual or multilingual means able to listen, speak, read, and write in two or more languages with at least a high level of proficiency in each language, as determined based on indicators of proficiency established by the grantee.

Low-income student means a student—

(a) Who is eligible to receive a Federal Pell Grant for the award year for which the determination is made; or

(b) Who would otherwise be eligible to receive a Federal Pell Grant for the award year for which the determination is made, except that the student fails to meet the requirements of section 484(a)(5) of the Higher Education Act, 20 U.S.C. 1091(a)(5), because the student is in the United States for a temporary purpose.

Pre-service means the period of training for a person who does not have a prior teaching certification or license and who is enrolled in a teacher education program at an institution of higher education.

Final Priorities, Requirements, and Definitions

We will announce the final priorities, requirements, and definitions in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering responses to the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action 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 Office of Information and Regulatory Affairs (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 impacts 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 Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed priorities, requirements, and definitions easier to

understand, including answers to questions such as the following:

- Are the requirements in the proposed priorities, requirements, and definitions clearly stated?
- Do the proposed priorities, requirements, and definitions contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed priorities, requirements, and definitions (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed priorities, requirements, and definitions be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed priorities, requirements, and definitions in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priorities, requirements, and definitions easier to understand? If so, how?
- What else could we do to make the proposed priorities, requirements, and definitions easier to understand?

To send any comments that concern how the Department could make these proposed priorities, requirements, and definitions easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed priorities, requirements, and definitions would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are IHEs, or public or private entities with relevant experience and capacity, in consortia with LEAs or SEAs applying for and receiving funds under this program. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions would be limited to paperwork burden related to preparing an application and that the benefits would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, and definitions would impose no burden on small entities in general. Eligible applicants would determine whether to apply for funds and have the opportunity to weigh the requirements for preparing applications, and any associated costs, against the likelihood of receiving funding and the requirements for implementing projects under the program. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of that application to seek funding from other sources to address a shortage in bilingual or multilingual teachers working in a language instruction education program or serving ELs.

Paperwork Reduction Act of 1995

These proposed priorities, requirements, and definitions do not contain any information collection requirements.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document 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 Adobe 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.

Montserrat Garibay,

Assistant Deputy Secretary and Director for the Office of English Language Acquisition.

[FR Doc. 2023–20011 Filed 9–14–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

[Docket No. FWS–HQ–NWRS–2023–0024; FXRS12610900000–FF09R25000–234]

National Wildlife Refuge System Planning Policies (602 FW 1–4) for the U.S. Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed policy updates; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are making available for public comment our proposed updated planning policies, 602 FW 1–4, for the National Wildlife Refuge System (Refuge System). The purpose of these policy updates is to modernize the Refuge System's refuge management by incorporating landscape conservation plans and consideration of climate change and other anthropogenic forces in refuge management.

DATES: The Service will accept comments received or postmarked on or before October 16, 2023. Please note that if you are using *Regulations.gov* (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online at *https://www.regulations.gov.* In the Search box, enter the docket number, which is FWS–HQ–NWRS–2023–0024.

Submitting Comments: You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* In the Search box, enter the docket number, which is FWS–HQ–NWRS–2023–0024. You may enter a comment by clicking on the ''Comment'' button. Please ensure that

you have found the correct docket before submitting your comment.

• *U.S. mail or hand delivery*: Public Comments Processing, Attn: Docket No. FWS–HQ–NWRS–2023–0024; Policy and Regulations Branch; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information, below, for more information).

FOR FURTHER INFORMATION CONTACT: Julie Henning, Chief, Branch of Conservation Planning and Policy, National Wildlife Refuge System, via email at *julie_henning@fws.gov;* by mail at U.S. Fish and Wildlife Service, c/o Julie Henning, 5275 Leesburg Pike, Falls Church, VA 22041–3803; or by telephone at (703) 358–1945. 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:

Introduction

We are providing four proposed updated National Wildlife Refuge System (Refuge System) planning policies for public comment. The Refuge System's authority for these policies comes from the Refuge System Administration Act of 1966, as amended by the Refuge System Improvement Act of 1997 (Administration Act) (16 U.S.C. 668dd–668ee). When these proposed policies become final, we will incorporate them in part 602 of the Service Manual, and they will replace the existing policies at 602 FW 1, 3, and 4. Service Manual chapter 602 FW 2 will replace 341 FW 1 and 2, both published in 1996. The purpose of the policy updates is to modernize the Refuge System's refuge management by incorporating landscape conservation planning and design and consideration of climate change and other anthropogenic forces in refuge management.

Draft Policies

Refuge planning sets the broad vision for refuge management and determines goals, objectives, strategies, and actions to ensure refuges are managed consistently with a refuge's purposes; the Refuge System's mission and goals; the Administration Act, as amended; the Alaska National Interest Lands Conservation Act (ANILCA, for Alaska refuges); and all other applicable laws and regulations. The four planning policies the Service is updating are: Refuge Planning Overview (602 FW 1), Land Protection Planning (602 FW 2), Comprehensive Conservation Planning (602 FW3), and Step-down Planning (602 FW 4).

• 602 FW 1, Refuge Planning Overview, describes the Service's overall policy and goals for refuge planning, such as landscape context and habitat connectivity, as well as how the Refuge System incorporates climate adaptation and resiliency into refuge planning. The policy also describes how the Refuge System coordinates with Federal, State, and local agencies; Tribes; Alaska Native Corporations (ANCs); Alaska Native Organizations (ANOs); the Native Hawaiian Community; territories; and other partners and stakeholders in refuge planning.

• 602 FW 2, Land Protection Planning, describes the Service's overall policy and goals for land protection planning, and establishes who is responsible for different aspects of land protection planning. The policy provides an overview of the Service's land protection planning process, including coordination with partners, land acquisition, and minor and major refuge boundary modifications.

• 602 FW 3, Comprehensive Conservation Planning, describes the Service's overall policy and goals for comprehensive conservation planning, and establishes who is responsible for different aspects of the process. The policy provides an overview of the requirements for developing comprehensive conservation plans (CCPs), including CCPs for new refuges, their scope, their required content, and coordination with partners. Finally, it provides guidance for reviewing and updating CCPs.

• 602 FW 4, Step-down Planning, describes the Service's overall policy and goals for step-down planning, and establishes who is responsible for different aspects of step-down planning. The policy provides an overview of the requirements for developing step-down plans, including how they are integrated with CCPs, consideration of the National Environmental Policy Act, and coordination with partners. Finally, it provides guidance for reviewing and updating step-down plans.

Background and Development of These Draft Policies

Many of the planning and natural resource regulations and policies guiding the Refuge System were developed following passage of the Improvement Act more than 20 years ago. Much has changed since then, and there is a need to consider climate change and other anthropogenic forces more explicitly and effectively in Refuge System management. The Service must also incorporate landscape planning and design into its planning policies. These are just a few of the drivers that led to convening five chartered national Service teams to update existing or develop new natural resource regulations, policies, and handbooks for the Refuge System. The Service's Conservation Planning team is comprised of Service planning subject-matter experts from across the agency's Regions.

These draft policy updates were distributed for internal Service review throughout all Regions and programs within the agency in August of 2022. We provided an opportunity for State engagement through the Association of Fish and Wildlife Agencies in February 2023. Additionally, we hosted national webinars and provided opportunity for engagement by Tribal leaders, ANCs, ANOs, and the Native Hawaiian Community in February and March 2023. We will incorporate feedback received from these partners and stakeholders into the planning policies after the public comment period is complete.

Open Comment Period

While this publication opens the 30-day public review period, we also invite and encourage Tribes, ANCs, ANOs, and the Native Hawaiian Community to continue to review and submit comments within this review period. Comments from local, State, and Federal agencies and other partners and stakeholders are also welcome.

Request for Information

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act, as amended; 16 U.S.C. 668dd–668ee).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–19994 Filed 9–14–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 178
Friday, September 15, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 16, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Accreditation of Laboratories, Transactions, and Exemptions.

OMB Control Number: 0583–0082.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, and properly labeled and packaged. The Federal Meat Inspection Act (21 U.S.C. 642), the Poultry Products Inspection Act (21 U.S.C. 460(b)) requires certain parties to keep records that fully and correctly disclose all transactions involved in their businesses related to relevant animal carcasses and part. FSIS requires FSIS accredited non-Federal analytical laboratories to maintain certain information collection records. FSIS collects this information using several FSIS forms (10,000–7, 10,120–1a, 10,120–1b, 10,120–1c, and 10,120–1d).

Need and Use of the Information: FSIS will collect information to ensure that all meat and poultry establishments produce safe and wholesome product, and that non-federal laboratories operate in accordance with FSIS regulations. In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from Agency inspection do not commingle inspected and non-inspected meat and poultry products, and to ensure that retail operations determined to have violated the requirements associated with the retail exemptions keep sales purchase and sales records to ensure future compliance. If the information was not collected or collected less frequently it would reduce the effectiveness of the meat and poultry inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 26,120.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 113,458.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–20020 Filed 9–14–23; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2023]

Foreign-Trade Zone (FTZ) 72; Authorization of Production Activity; Dorel Juvenile Group Inc.; (Child Strollers, Walkers, and Car Seats); Columbus, Indiana

On May 15, 2023, Dorel Juvenile Group Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 72W, in Columbus, Indiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 34484, May 30, 2023). On September 12, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 12, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–20036 Filed 9–14–23; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Katie Ellen O'Brien, 1026 East Spence Avenue, Unit 103, Tempe, AZ 85281; Amended Order Denying Export Privileges

On January 17, 2019, in the U.S. District Court for the District of Arizona, Katie Ellen O'Brien (''O'Brien'') was convicted of violating 18 U.S.C. 554(a) and 18 U.S.C. 1001(a)(2). Specifically, O'Brien was convicted of making false statements or misrepresentations to the U.S. Government during the course of an investigation and smuggling and

attempting to smuggle firearms from the United States to Mexico. As a result of her conviction, the Court sentenced O'Brien to 60 months confinement with credit for time served, three years supervised release, and a $600 special assessment.

On April 12, 2023, I issued an order denying O'Brien's export privileges, pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] for a period of 10 years from the date of her conviction. In addition, the Order also incorporated the Office of Exporter Services decision to revoke any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which O'Brien had an interest at the time of her conviction. [2]

Prior to issuance of the April 12, 2023 Order, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for O'Brien to make a written submission to BIS. 15 CFR 766.25.[3] BIS did not receive a written submission from O'Brien.

Following issuance of the April 12, 2023 Order, BIS received notification that the last known address listed on the Order was incorrect. Specifically, BIS has since learned that another individual named Katie O'Brien, who is not the intended subject of the Denial Order, resides at the address listed on the April 12, 2023 Order. BIS has subsequently obtained updated information that indicates that the last known address for the individual who is the intended subject of the Denial Order is 1026 East Spence Avenue, Unit 103, Tempe, AZ 85281. Therefore, BIS is amending the April 12, 2023 Order to reflect the last known address of the individual convicted of the listed offenses for purposes of the denial of this individual's export privileges.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until January 17, 2029, Katie Ellen O'Brien, with a last known address of 1026 East Spence Avenue, Unit 103, Tempe, AZ 85281, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), 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 Regulations, 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 Regulations, or engaging in any other activity subject to the Regulations; 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 Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the 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 the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations 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 Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations 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, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to O'Brien 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 in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, O'Brien may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to O'Brien and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 17, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–20049 Filed 9–14–23; 8:45 am]

BILLING CODE P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

[3] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD362]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Executive Committee.

DATES: The meetings will be held Tuesday, October 3 through Friday, October 5, 2023. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be an in-person meeting with a virtual option. Council members, other meeting participants, and members of the public will have the option to participate in person at the Yotel New York or virtually via Webex webinar. Webinar connection instructions and briefing materials will be available at: *https://www.mafmc.org/briefing/october-2023.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State St.,

Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org*.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org,* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, although agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

Tuesday, October 3rd

Executive Committee—Open Session

Review progress on 2023 Implementation Plan
Review and approve draft 2024 deliverables

Council Convenes

Monkfish and Dogfish Joint Framework To Reduce the Bycatch of Atlantic Sturgeon

Review joint Dogfish and Monkfish Committee recommendations
Review and approve range of Dogfish and Monkfish alternatives

Illex Hold Framework #2: Final Action

Review recommendations from the Committee and Advisory Panel
Select preferred alternatives and take final action

Wednesday, October 4th

Northeast Fishery Science Center (NEFSC) Federal Surveys: Survey Performance, Issues, and Planning for the Future—Dr. Kathryn Ford and Peter Chase, NEFSC

Overview of NOAA Ship Henry B. Bigelow bottom trawl survey, R/V Hugh R. Sharp Scallops Survey, and other NEFSC surveys
Past survey performance, 2023 survey issues, contingency plans, and future scheduling

Policy/Process for Reviewing Exempted Fishing Permit Applications for Unmanaged Forage Amendment Ecosystem Component Species

Review draft policy/process document
Review recommendations from EOP Committee and Advisory Panel
Approve policy/process

Offshore Wind Energy Development

Updates from the Bureau of Ocean Energy Management
Updates from the New York State Energy Research and Development Authority (NYSERDA)—Offshore Wind Master Plan 2.0 (Deepwater)

——— *Lunch* ———

Ecosystem Approach to Fisheries Management (EAFM) Risk Assessment Review

Review recommendations from EOP Committee and Advisory Panel
Approve modifications to EAFM risk assessment

Private Recreational Tilefish Permitting and Reporting

Receive update from GARFO on recreational tilefish permitting and reporting
Discuss communication and outreach efforts

Habitat Activities Update—Karen Greene, Greater Atlantic Regional Fisheries Office Habitat and Ecosystem Services Division

Presentation on activities of interest (aquaculture, wind, and other projects) in the region

NEFSC Observer Program Update—Katherine McArdle, NEFSC

Review recent program performance and modifications
Review recent changes in tasked seadays resulting from the first Standardized Bycatch Reduction Methodology (SBRM) discard analysis conducted since COVID–19 disruptions
Review planned outreach

NEFSC Cooperative Research Update—Dr. Anna Mercer, NEFSC

Review the Cooperative Research Branch's portfolio, focusing on new research and outreach initiatives

Assessment and Peer Review Overviews—Spiny Dogfish and Atlantic Mackerel

Review recent developments that will inform Council actions in December 2023

NEFSC Presentation on Maternal Effects (i.e. the potential importance of larger females for resilient fisheries)—Mark Wuenschel and Richard McBride, NEFSC

Review relevant NEFSC research activities
Consider potential implications for assessment and management

Thursday, October 5th

Business Session

Committee Reports (SSC, Monkfish); Executive Director's Report; Organization Reports; and Liaison Reports

Other Business and General Public Comment

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: September 12, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–20032 Filed 9–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD282]

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR) Public Meeting

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

ACTION: Notice of the SEDAR steering committee meeting.

SUMMARY: The SEDAR Steering Committee will meet to discuss the SEDAR stock assessment process and assessment schedule. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet Tuesday, October 3, 2023, from 9 a.m. until 5 p.m., Eastern, via webinar. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the SEDAR process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to

members of the public. Those interested in participating should contact Julie Neer (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Program Manager, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The SEDAR Steering Committee provides guidance and oversight of the SEDAR stock assessment program and manages assessment scheduling. The items of discussion for this meeting are as follows: SEDAR projects update; SEDAR projects schedule; SEDAR process review and discussions; and other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 12, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–20030 Filed 9–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD364]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees. The meetings will be held via hybrid conference.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet October 2, 2023, through October 10, 2023.

DATES: The Council's Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the Aleutian room on Monday, October 2, 2023, and continue through Wednesday, October 4, 2023. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Dilingham/Katmai room on Tuesday, October 3, 2023, and continue through Saturday, October 7, 2023. The Council will begin at 8 a.m. in the Aleutian room on Thursday, October 5, 2023, and continue through Tuesday, October 10, 2023. The Enforcement Trawl Performance Workshop will meet Monday, October 2, 2023, from 1 p.m. to 5 p.m. at the North Pacific Fishery Management Council's Conference Room; 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252. All times listed are Alaska time.

ADDRESSES: The meetings will be a hybrid conference. The in-person component of the meeting will be held at the Hilton Hotel, 500 W 3rd Ave., Anchorage, AK 99501, or join the meeting online through the links at *https://www.npfmc.org/current-or-next-council-meeting/*.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via web conference are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; email: *diana.evans@noaa.gov*; telephone: (907) 271–2809. For technical support, please contact our Council administrative staff, email: *npfmc.admin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, October 2, 2023, Through Wednesday, October 4, 2023

The SSC agenda will include the following issues:

(1) Administrative Issues including Inflation Reduction Act (IRA) funding proposal.

(2) BSAI Crab Specifications—review Stock Assessment and Fishery Evaluation (SAFE) report; adopt Acceptable Biological Catch (ABC)/Over Fishing Limits (OFLs) for Bristol Bay red king crab (BBRKC), Tanner crab, snow crab, Pribilof Island blue king crab (PIBKC); Ecosystem Status Report; BSAI Crab Plan Team Report.

(3) BSAI/Gulf of Alaska (GOA) Groundfish—Proposed specifications; Plan Team reports.

(4) Chum Salmon bycatch—preliminary review.

(5) BSAI Crab Program Review—review workplan.

(6) Individual Fishing Quota (IFQ) Program Review—review workplan.

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3004* prior to the meeting, along with meeting materials.

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information, as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer-review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

Monday, October 2, 2023

Trawl Gear Performance Standard Workshop agenda:

The NPFMC will host a workshop to engage with stakeholders and fishery participants on ways to revise the trawl gear performance standard so that it is clear, enforceable, and meets Council objectives. The trawl performance standard regulation prohibits the presence of 20 or more crab above a threshold size limit, at any time, while directed fishing for pollock using pelagic trawl gear. Variations of the performance standard apply in both the BSAI and GOA. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/1885* prior to the meeting, along with meeting materials.

Tuesday, October 3, 2023, Through Saturday, October 7, 2023

The Advisory Panel agenda will include the following issues:

(1) Administrative Issues.
(2) Observer 2024 Annual Deployment Plan; PCFMAC report.
(3) Crab Facility Use Caps—Initial Review.
(4) BSAI Crab Specifications—review SAFE report; adopt ABC/OFLs for BBRKC, Tanner crab, snow crab, PIBKC; BSAI Crab Plan Team Report.
(5) BSAI/GOA Groundfish—Proposed specifications; Plan Team reports; GOA Demersal Shelf Rockfish (DSR)/other rockfish spatial management.
(6) Chum Salmon bycatch—preliminary review.
(7) Area 4 Vessel Use Caps—Initial Review (tentative).
(8) Bering Sea Local Knowledge/Traditional Knowledge/Subsistence Information Protocol and Onramps—final action to approve protocol and onramps.
(9) BSAI Crab Program Review—review workplan.
(10) IFQ Program Review—review workplan.
(11) Staff Tasking.

Thursday, October 5, 2023, Through Tuesday, October 10, 2023

The Council agenda will include the following issues. The Council may take appropriate action on any of the issues identified.

(1) B Reports (Executive Director including IRA funding proposal, NMFS Management including Salmon FMP Secretarial amendment and update on National Environmental Policy Act (NEPA) changes, NOAA General Counsel (GC), Alaska Fishery Science Center (AFSC), Alaska Department of Fish and Game (ADF&G), United States Coast Guard (USCG), United States Fish and Wildlife Service (USFWS), North Pacific Fisheries Commission, North Pacific Research Board, Advisory Panel, SSC report).
(2) BSAI Crab Specifications—review SAFE report; adopt ABC/OFLs for BBRKC, Tanner crab, snow crab, PIBKC; BSAI Crab Plan Team Report.
(3) Observer 2024 Annual Deployment Plan; PCFMAC report.
(4) BSAI/GOA Groundfish—Proposed specifications; Plan Team reports; GOA Demersal Shelf Rockfish (DSR)/other rockfish spatial management.
(5) Chum Salmon bycatch—preliminary review.
(6) Area 4 Vessel Use Caps—Initial Review (tentative).
(7) Crab Facility Use Caps—Initial Review.
(8) Bering Sea Local Knowledge/Traditional Knowledge/Subsistence Information Protocol and Onramps—final action to approve protocol and onramps.
(9) BSAI Crab Program Review—review workplan.
(10) IFQ Program Review—review workplan.
(11) Staff Tasking.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://www.npfmc.org/upcoming-council-meetings*. For technical support, please contact our administrative staff, email: *npfmc.admin@noaa.gov*.

If you are attending the meeting in-person, please refer to the COVID avoidance protocols on our website, *https://www.npfmc.org/current-or-next-council-meeting/*.

Public Comment

Public comment letters will be accepted and should be submitted electronically through the links at *https://www.npfmc.org/current-or-next-council-meeting/*. The Council strongly encourages written public comment for this meeting, to avoid any potential for technical difficulties to compromise oral testimony. The written comment period is open from September 8, 2023, to September 29, 2023, and closes at 12 p.m. Alaska time on Friday, September 29, 2023.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

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

Dated: September 12, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–20033 Filed 9–14–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD311]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Outreach and Communications Advisory Panel (AP). The meeting will be held in Charleston, SC. See **SUPPLEMENTARY INFORMATION** for agenda.

DATES: The Outreach and Communications AP meeting will be held October 4, 2023, from 9 a.m. until 5 p.m. and October 5, 2023, from 9 a.m. until 3 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone: (843) 571–1000. The meeting is open to the public and will also be available via webinar. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: *https://safmc.net/advisory-panel-meetings/*.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Agenda items for the Outreach and Communications AP meeting include: updates from AP members on recent outreach and communication efforts and needs; update of the Council's Best Fishing Practices Program and new projects; an update on the Council's Citizen Science Program and projects; a review of the Council's draft Habitat Blueprint relative to outreach and communication needs; overview of plans by the Council to conduct port meetings for the mackerel fishery in 2024; and a review and discussion of the education and outreach component for Amendment 46 to the Snapper Grouper Fishery Management Plan addressing private recreational permitting for the fishery. AP members will also receive an update on the Council's website and social media, and review the Council's E-Newsletter. The AP will address other business as needed and provide recommendations for Council consideration.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be

directed to the Council office (see **ADDRESSES**) 10 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 12, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–20031 Filed 9–14–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* October 15, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s): 5180–01–563–7475—Tool Kit, Artillery and Turret (ATTK)
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Defense Logistics Agency, DLA Aviation
Distribution: C-List
Mandatory for: 100% of the requirement of the Department of Defense

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–618–8427—Cover, Record Book, Digital Camouflage, 6″ x 9″
7510–01–053–5591—Portfolio, Writing, Economy, Black, 9″ x 6⅛″
7510–00–145–0296—Portfolio, Writing, Economy, Black, 12⅛″ x 9½″
7510–01–557–4969—Portfolio, Note Pad Holder, Custom Logo, 6″ x 9″
7510–01–557–4970—Portfolio, Pocket, with Pad, Camouflage, 4″ x 6″
7510–01–557–4979—Portfolio, Note Pad Holder, Army Logo, Camouflage, 6″ x 9″
7510–01–557–4977—Pad Holder Portfolio, Standard, Digital Camouflage, Letter Size
7510–01–557–4978—Portfolio, Note Pad Holder, Camouflage, 6″ x 9″
7510–01–600–8651—Portfolio, Pocket, with Pad, Camouflage, 6″ x 9″
7510–01–557–4980—Portfolio, Pad Holder, Deluxe, Brass Clip and Corners, Camouflage, 6″ x 9″
7510–01–557–4981—Pad Holder Portfolio, Deluxe, Brass Clip and Corners, Digital Camouflage, Letter Size
7510–01–483–8891—Portfolio, Note Pad Holder, Burgundy, 6″ x 9″
7510–01–483–8895—Pad Holder Portfolio, Standard, Burgundy, Letter Size
7510–01–483–8897—Portfolio, Pad Holder, Deluxe, Brass Clip and Corners, Burgundy, 6″ x 9″
7510–01–483–8899—Portfolio, Pad Holder, Deluxe, Brass Clip and Corners, Black, 6″ x 9″
7510–01–483–8890—Portfolio, Note Pad Holder, Black, 6″ x 9″
7510–01–483–8892—Pad Holder Portfolio, Deluxe, Brass Clip and Corners, Burgundy, Letter Size
7510–01–483–8894—Pad Holder Portfolio, Deluxe, Brass Clip and Corners, Black, Letter Size
7510–01–484–0004—Pad Holder Portfolio, Standard, Black, Letter Size
Designated Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

Service(s)

Service Type: Sourcing, Warehousing, Assembly, and Kitting
Mandatory for: USPFO Connecticut, National Guard Bureau, National Guard Armory, 360 Broad Street, Hartford, CT
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE ARMY, W7MZ USPFO ACTIVITY CT ARNG
Service Type: Furniture Design, Configuration and Installation
Mandatory for: USPFO Connecticut, National Guard Bureau, National Guard Armory, 360 Broad Street, Hartford, CT
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE ARMY, W7MZ USPFO ACTIVITY CT ARNG

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–20008 Filed 9–14–23; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds product(s) and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* October 15, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 8/11/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7930–00–NIB–2226—Dispenser, Handheld, 1:40 Dilutions, Blue/White
7930–00–NIB–2227—Dispenser, Handheld, 1:128 and 1:256 Dilutions, Red/White
7930–00–NIB–2228—Degreaser, Heavy-Duty, All-Purpose, 2 Liter Bottle, Yellow
7930–00–NIB–2236—Cleaner, Bathroom, 2 Liter Bottle, Teal
7930–00–NIB–2237—Cleaner, Neutral, Floor, 2 Liter Bottle, Red
7930–00–NIB–2238—Cleaner, Glass, Mirror, 2 Liter Bottle, Blue
7930–00–NIB–2239—Cleaner, Multipurpose, 2 Liter Bottle, Clear
Designated Source of Supply: Lighthouse for the Blind and Visually Impaired, San Francisco, CA
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Mandatory For: Total Government Requirement
Distribution: A-List

Service(s)

Service Type: Janitorial
Mandatory for: UNICOR, Federal Prison Industries, Inc., Central Office, Washington, DC
Designated Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY
Contracting Activity: FEDERAL PRISON INDUSTRIES/UNICOR, CO BUSINESS OFFICE

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–20006 Filed 9–14–23; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. EDT, Friday, September 22, 2023.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: September 13, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–20103 Filed 9–13–23; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's website at *https://www.iwr.usace.army.mil/Missions/Navigation/Inland-Waterways-Users-Board/.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will conduct a meeting from 9:00 a.m. to 2:00 p.m. EDT on October 19, 2023.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the Hilton Springfield Hotel, 6550 Loisdale Road, Springfield, Virginia 22150, 703–971–8900. The online virtual portion of the Inland Waterways Users Board meeting can be accessed at *https://usace1.webex.com/meet/ndc.nav,* Public Call-in: USA Toll-Free 844–800–2712, USA Caller Paid/International Toll: 1–669–234–1177 Access Code: 199 117 3596, Security Code 1234.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GN, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.* Alternatively, contact Mr. Steven D. Riley, an Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–NDC, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–659–3097; and by email at *Steven.D.Riley@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This committee meeting is being held under the provisions of Chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), section 552b of title 5, U.S.C. (commonly known as the ''Government in the Sunshine Act''), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects, and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include the status of the Inland Waterways Trust Fund (IWTF); Fiscal Year (FY) 2024 Budget funding for Navigation; Low Water Actions for 2023; status of the Illinois Waterway Consolidated Closure for 2023; updates of inland waterways projects for the Mississippi River-Illinois Waterway Navigation and Ecosystem Sustainability Program (NESP), McClellan-Kerr Arkansas River Navigation System (MKARNS) Three Rivers, Arkansas, and the Gulf Intracoastal Waterway (GIWW) Brazos River Floodgates and Colorado River Locks; status of the ongoing construction activities for the Monongahela River Locks and Dams 2, 3, and 4 Replacements, the Upper Ohio River Montgomery Lock, Chickamauga

Lock and Kentucky Lock Addition projects.

Availability of Materials for the Meeting. A copy of the agenda or any updates to the agenda for the October 19, 2023, meeting will be available. The final version will be available at the meeting. All materials will be posted to the website for the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to participate in the meeting will begin at 8:30 a.m. on the day of the meeting. Participation is on a first-to-arrive basis. Any interested person may participate in the meeting, file written comments or statements with the committee, or make verbal comments during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: Individuals requiring any special accommodations related to the public meeting or seeking additional information about the procedures, should contact Mr. Mark Pointon, the committee DFO, or Mr. Steven Riley, an ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Pointon, the committee DFO, or Mr. Riley, a committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the public meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works, U.S. Army Corp of Engineers.

[FR Doc. 2023–19937 Filed 9–14–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0122]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Educational Opportunity Centers Program (EOC) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), 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 October 16, 2023.

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 collection activities, please contact Marie Julienne, (202) 987–1054.

SUPPLEMENTARY INFORMATION: 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: Educational Opportunity Centers Program (EOC) Annual Performance Report.

OMB Control Number: 1840–0830.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 183.

Total Estimated Number of Annual Burden Hours: 1,464.

Abstract: The Department of Education (ED) collects Annual Performance Reports (APRs) from Educational Opportunity Centers (EOC) grantees under the authority of Title IV, Part A, Subpart 2, Division 1, Sections 402A and 402B of the Higher Education Act of 1965, as amended, the program

regulations in 34 CFR 644, and the Education Department General Administrative Regulations (EDGAR), in 34 CFR 74.51, 75.720, and 75.732. The information that grantees submit in their APRs allows ED to annually assess each grantee's progress in meeting their project's approved goals and objectives. The APR data that grantees submit are compared with the projects' approved objectives to determine the projects' accomplishments, to make decisions regarding whether funding should be continued, and to award ''prior experience'' points. The regulations for this program provide for awarding up to 15 points for prior experience (34 CR 644.22). During a competition for new grant awards, the prior experience points are added to the average of the peer reviewers' scores to arrive at a total score for each application. Funding recommendations and decisions are primarily based on the rank order of applications on the slate; therefore, assessment of prior experience points, based on data in the annual performance report, is a crucial part of the overall application process.

Further, this performance report form is the main source of data for the Department's response to the requirements of the Government Performance and Results Act (GPRA) for this program. In addition, the Department uses the annual performance reports to produce program level data for annual reporting, budget submissions to OMB, Congressional hearings and inquiries, and responding to inquiries from higher education interest groups and the general public.

EOC APRs are prepared and submitted by EOC grant projects. For each EOC grant project, the grant project director of record completes, or supervises the completion of the data submission process. The grant project director supervises the administration of an EOC grant. An EOC grant provides counseling and information on college admissions to qualified adults who want to enter or continue a program of postsecondary education. The program also provides services to improve the financial and economic literacy of participants. An important objective of the program is to counsel participants on financial aid options, including basic financial planning skills, and to assist in the application process. The goal of the EOC program is to increase the number of adult participants who enroll in postsecondary education institutions.

The proposed revision to the APR entails replacement of Competitive Preference Priority (CPP) questions with new CPP questions of equal response time. In addition, the annual number of responses and total annual burden hours have been adjusted to reflect an increase in the size of the reporting universe.

Dated: September 11, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–19934 Filed 9–14–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0053]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2024–2025 Free Application for Federal Student Aid (FAFSA®)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 16, 2023.

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 collection activities, please contact FAFSA Product Team, *fsa_fafsa_team@ed.gov.or* Beth Grebeldinger at 202–570–8414.

SUPPLEMENTARY INFORMATION: 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: 2024–2025 Free Application for Federal Student Aid.

OMB Control Number: 1845–0001.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and households. *Total Estimated Number of Annual Responses:* 34,328,439.

Total Estimated Number of Annual Burden Hours: 22,417,460.

Abstract: Section 483, of the Higher Education Act of 1965, as amended (HEA), mandates that the Secretary of Education ''. . . shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance . . .''.

The determination of need and eligibility are for the following title IV, HEA, federal student financial assistance programs: the Federal Pell Grant Program; the Campus-Based programs (Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS)),; the William D. Ford Federal Direct Loan (Direct Loan) Program; the Teacher Education Assistance for College and Higher Education (TEACH) Grant; the Children of Fallen Heroes Scholarship; and the Iraq and Afghanistan Service Grant.

Federal Student Aid (FSA), an office of the U.S. Department of Education, subsequently developed an application process to collect and process the data necessary to determine a student's eligibility to receive Title IV, HEA program assistance. The application process involves an applicant's submission of the *Free Application for Federal Student Aid* (FAFSA®). After submission and processing of the FAFSA form, an applicant receives a FAFSA Submission Report, which is a summary of the processed data they submitted on the FAFSA form. The applicant reviews the FAFSA Submission Summary, and, if necessary, will make corrections or updates to their

submitted FAFSA data. Institutions of higher education listed by the applicant on the FAFSA form also receive a summary of processed data submitted on the FAFSA form which is called the Institutional Student Information Record (ISIR).

ED and FSA seek OMB approval of all application components as a single ''collection of information.'' The aggregate burden will be accounted for under OMB Control Number 1845–0001. The specific application components, descriptions, and submission methods for each are listed in Table 1.

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS

Component	Description	Submission method
Initial Submission of FAFSA form		
fafsa.gov	Any applicant with a Federal Student Aid ID (FSA ID) can complete the electronic version of the FAFSA form.	Submitted by the applicant.
Printed FAFSA form	The printed version of the FAFSA PDF for applicants who are unable to access the internet or complete the form using *fafsa.gov*.	Mailed by the applicant.
Correcting and Reviewing Submitted FAFSA information		
fafsa.gov—Corrections	Any applicant with an FSA ID—regardless of how they originally applied—may make corrections to their own data. Note that no user will be able to make corrections to any federal tax information (FTI) that was obtained from the IRS.	Submitted by the applicant.
Electronic Other—Corrections.	With the applicant's permission, corrections can be made by an FAA using the Electronic Data Exchange (EDE).	The FAA may be using their mainframe computer or software to facilitate the EDE process.
Paper FAFSA Submission Summary.	The paper summary is mailed to paper applicants who did not provide an email address. Applicants can write corrections directly on the paper FAFSA Submission Summary and mail for processing. Note that users for whom federal tax information (FTI) was obtained from the IRS will not be able to make corrections to that data.	Mailed by the applicant.
FAFSA Partner Portal (FPP)—Corrections.	An institution can use FPP to correct the FAFSA form	Submitted by an FAA on behalf of an applicant.
Internal Department Corrections.	The Department will submit an applicant's record for system-generated corrections to the FAFSA Processing System. There is no burden to the applicants under this correction type as these are system-based corrections.	These corrections are system-generated.
Federal Student Aid Information Center (FSAIC) Corrections.	Any applicant, with their Data Release Number (DRN), can change the postsecondary institutions listed on their FAFSA form or change their address by calling FSAIC.	These changes are made directly in the FPS by an FSAIC representative.
FAFSA Submission Summary—electronic.	The electronic FAFSA Submission Summary is an online version of the FAFSA Submission Summary that is available on *fafsa.gov* to all applicants. Notification for the FAFSA Submission Summary is sent to students who applied electronically or by paper and provided a valid email address. These notifications are sent by email and include a secure hyperlink that takes the user to the *fafsa.gov* site.	Cannot be submitted for processing.

This information collection also documents an estimate of the annual public burden as it relates to the application process for federal student aid. The Applicant Burden Model (ABM) measures applicant burden through an assessment of the activities each applicant conducts in conjunction with other applicant characteristics and, in terms of burden, the average applicant's experience. Key determinants of the ABM include:

- The total number of applicants that will potentially apply for federal student aid;
- How the applicant chooses to complete and submit the FAFSA form (*e.g.,* by paper or electronically);
- How the applicant chooses to submit any corrections and/or updates (*e.g.,* the paper FAFSA Submission Summary or electronically);
- The type of FAFSA Submission Summary document the applicant receives (paper or electronic);
- The formula applied to determine the applicant's student aid index (SAI); and
- The average amount of time involved in preparing to complete the application.

The ABM is largely driven by the number of potential applicants for the application cycle. The total application projection for 2024–2025 is based on the projected total enrollment into postsecondary education for Fall 2024. The ABM is also based on the application options available to students and parents. ED accounts for each application component based on analytical tools, survey information and other ED data sources.

For 2024–2025, ED is reporting a net burden decrease of 427,252 hours.

Dated: September 12, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–20000 Filed 9–14–23; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Election Supporting Technology Evaluation Program Forms; Request for Comment

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice, request for public comment.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction

Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the information collection of one Election Supporting Technology Evaluation Program form. The information collected is to be used to improve the quality of election-supporting technology used in Federal elections, and to collect necessary key information on election-supporting technology manufacturers and their systems. Participation in this program is voluntary.

DATES: Comments must be received by 5 p.m. Eastern on Monday, November 13, 2023.

ADDRESSES: Comments on the proposed Testing and Certification forms should be submitted electronically via *https://www.regulations.gov* (docket IDs: EAC–2023–0002). Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: Election Supporting Technology Evaluation Program.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beatrice, Election Technology Specialist, Election Supporting Technology Evaluation Program, Washington, DC (202) 748–2298. Email: *estep@eac.gov.*

All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Application for ESTEP Participation, OMB Number Pending.

Purpose: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the EAC is publishing notice of the proposed collection of information set forth in this document.

The EAC Election Supporting Technology Evaluation Program evaluates the security and accessibility of election-supporting technologies, including electronic poll books, voter registration systems, electronic ballot delivery systems, and election night reporting databases. The program is to publish one form. This is to be used to collect key information concerning election-supporting technology manufacturers and their systems. The application for participation in the Election Supporting Technology Evaluation Program collects administrative information on new or modified election-supporting technology systems that are being submitted for testing by a registered manufacturer.

This information is collected to improve the quality of election-supporting technology used in federal elections.

Public Comments: We are soliciting public comments to permit the EAC to:

- Evaluate whether the proposed information collection is necessary and sufficient for the proper functions of the Election Supporting Technology Evaluation Program.
- Evaluate the accuracy of our estimate of burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your submitted comments, including your personal information, will be available for public review.

Respondents: Election Supporting Technology Manufacturers, State and Local Election Officials.

Annual Reporting Burden

OMB approval is requested for 3 years.

ANNUAL BURDEN ESTIMATES

Instrument	Estimated number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
Application for ESTEP Participation	10	10	2	20
Total		20		40

The estimated cost of the annualized cost of this burden is: $3,361.

Camden Kelliher,

Senior Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–19950 Filed 9–14–23; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP22–1033–006.

Applicants: Northern Natural Gas Company.

Description: Compliance filing: 2023 Compliance of Settlement to be effective 1/1/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5043.

Comment Date: 5 p.m. ET 9/25/23.

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 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.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: September 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19991 Filed 9–14–23; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–53–001; EL23–54–001; EL23–55–001; EL23–56–001; EL23–57–003; EL23–58–001; EL23–59–001; EL23–60–001; EL23–61–001; EL23–63–001; EL23–66–001; EL23–67–001; EL23–74–001; EL23–75–001; EL23–77–001.

Applicants: Parkway Generation Operating LLC and Parkway Generation Sewaren Urban Renewal Entity LLC v. *PJM Interconnection, L.L.C., CPV Maryland, LLC and Competitive Power Ventures Holdings, LP* v. *PJM Interconnection, L.L.C., East Kentucky Power Cooperative, Inc.* v. *PJM Interconnection, L.L.C., Invenergy Nelson LLC, Invenergy Nelson LLC* v. *PJM Interconnection, L.L.C., Calpine Corporation* v. *PJM Interconnection, L.L.C., Energy Harbor LLC* v. *PJM Interconnection, L.L.C., Old Dominion Electric Cooperative* v. *PJM Interconnection, L.L.C., Parkway Generation Keys Energy Center LLC* v. *PJM Interconnection, L.L.C., Lincoln Generating Facility, LLC* v. *PJM Interconnection, L.L.C., SunEnergy1, LLC* v. *PJM Interconnection, L.L.C., Lee County Generating Station, LLC* v. *PJM Interconnection, L.L.C., Talen Energy Marketing, LLC* v. *PJM Interconnection, L.L.C., Coalition of PJM Capacity Resources* v. *PJM Interconnection, L.L.C., Aurora Generation, LLC, et al.* v. *PJM Interconnection, L.L.C., Essential Power OPP, LLC, et al* v. *PJM Interconnection, L.L.C.*

Description: Joint Motion of PJM Interconnection, L.L.C. et al. for Waiver of Tariff Provisions, Expedited Consideration, and Shortened Comment Period.

Filed Date: 9/8/23.

Accession Number: 20230908–5186.

Comment Date: 5 p.m. ET 9/15/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: September 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19990 Filed 9–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–535–000]

WBI Energy Transmission, Inc.; Notice of Application and Establishing Intervention Deadline

Take notice that on August 28, 2023, WBI Energy Transmission, Inc. (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed an application under sections 7(b) and 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization for its South Spearfish Project (Project). The Project consists of: (1) relocating pressure regulation and overpressure equipment; (2) uprating the existing Deadwood-Central City Lateral; (3) constructing the new South Spearfish Station containing the South Spearfish Town Border Station and the Deadwood Lateral Transfer Station; (4) abandoning by sale to Montana-Dakota the 4-inch-diameter South Spearfish Lateral and certain station equipment at the existing South Spearfish Town Border Station; and (5) abandoning by removal remaining station equipment at the existing South Spearfish Town Border Station. WBI Energy's application will assist the Commission in meeting its obligation under Section 106 of the National Historic Preservation Act to review WBI Energy's cultural resources survey to identify archaeological, historical architectural, and other cultural resource sites within the proposed LS 15 Expansion Project's area of potential effects.[1] The South Spearfish Project is located in Lawrence County, South Dakota. WBI Energy estimates the total cost of the Project to be $1,420,000, all as more fully set forth in the application which is on file with the Commission and open for 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

[1] See WBI Energy's filing accession number 20230420–5050, Line Section 15 Expansion Project (04/20/2023).

Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed project should be directed to Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503; by phone at (701) 530–1563; or by email at: *lori.myerchin@wbienergy.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[2] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5 p.m. eastern time on October 2, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

[2] 18 CFR (Code of Federal Regulations) 157.9.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[3] and 385.211[4] of the Commission's regulations under the NGA, any person[5] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[6] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before October 2, 2023.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP23–535–000 in your submission.

(1) 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;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP23–535–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[7] 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[8] and the regulations under the NGA[9] by the intervention deadline for the project, which is October 2, 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*.

There are two ways to submit your motion to intervene. In both instances,

[3] 18 CFR 157.10(a)(4).

[4] 18 CFR 385.211.

[5] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[6] 18 CFR 385.2001.

[7] 18 CFR 385.102(d).

[8] 18 CFR 385.214.

[9] 18 CFR 157.10.

please reference the Project docket number CP23–535–000 in your submission.

(1) You may file your motion to intervene 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 ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf*.; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23–535–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (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 at: Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503; or by email at: *lori.myerchin@wbienergy.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. Service can be via email with a link to the document.

All timely, unopposed [10] motions to intervene are automatically granted by operation of Rule 214(c)(1).[11] 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.[12] 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.

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*.

Intervention Deadline: 5 p.m. eastern time on October 2, 2023.

Dated: September 11, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19993 Filed 9–14–23; 8:45 am]

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[10] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[11] 18 CFR 385.214(c)(1).

[12] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–278–000.
Applicants: Bernard Creek Solar LLC.
Description: Bernard Creek Solar LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 9/8/23.
Accession Number: 20230908–5164.
Comment Date: 5 p.m. ET 9/29/23.

Docket Numbers: EG23–279–000.
Applicants: Borden County Battery Energy Storage System LLC.
Description: Borden County Battery Energy Storage System LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 9/11/23.
Accession Number: 20230911–5107.
Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: EG23–280–000.
Applicants: Cald BESS LLC.
Description: Cald BESS LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 9/11/23.
Accession Number: 20230911–5109.
Comment Date: 5 p.m. ET 10/2/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1361–003.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Errata Compliance Filing in with August 3 Order in ER23–1361 to be effective 5/15/2023.
Filed Date: 9/11/23.
Accession Number: 20230911–5087.
Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2797–000.
Applicants: Duke Energy Florida, LLC.
Description: Tariff Amendment: DEF-Orlando CoGen—Notice of Cancellation RS No. 146 to be effective 12/31/2023.
Filed Date: 9/8/23.
Accession Number: 20230908–5154.
Comment Date: 5 p.m. ET 9/29/23.

Docket Numbers: ER23–2798–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 4303; Queue No. AC2–092 (amend) to be effective 11/11/2023.
Filed Date: 9/11/23.
Accession Number: 20230911–5011.
Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2799–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 7063; Queue No. AE2–236 to be effective 8/10/2023.
Filed Date: 9/11/23.
Accession Number: 20230911–5012.
Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2800–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6704; Queue No. AF1–093 (amend) to be effective 11/11/2023.
Filed Date: 9/11/23.
Accession Number: 20230911–5017.
Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2801–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5071; Queue No. AB1–132 to be effective 11/11/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5031.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2802–000.

Applicants: Oxbow Solar Farm 1, LLC.

Description: Baseline eTariff Filing: Petition for Blanket MBR Authorization with Waivers & Expedited Treatment to be effective 9/15/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5038.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2803–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6369; Queue No. AE2–029 to be effective 11/13/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5041.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2804–000.

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: ISO–NE/NEP; Filing of Service Agreement No. TSA–NEP–114 to be effective 10/1/2022.

Filed Date: 9/11/23.

Accession Number: 20230911–5042.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2805–000.

Applicants: Nevada Power Company.

Description: § 205(d) Rate Filing: Service Agreement No. 20–00034 NPC/SPPC Amended Non-Conforming SA #20–00034 to be effective 11/10/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5062.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2806–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6911; Queue No. AE2–316 to be effective 11/13/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5063.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2807–000.

Applicants: Pacific Gas & Electric Company.

Description: Notice of Termination of Service Agreement No. 48 under Pacific Gas and Electric Company's FERC Electric Tariff Volume No. 5.

Filed Date: 9/7/23.

Accession Number: 20230907–5161.

Comment Date: 5 p.m. ET 9/28/23.

Docket Numbers: ER23–2808–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Service Agreement No. 50 under Pacific Gas and Electric Company's FERC Electric Tariff Volume No. 5.

Filed Date: 9/7/23.

Accession Number: 20230907–5162.

Comment Date: 5 p.m. ET 9/28/23.

Docket Numbers: ER23–2809–000.

Applicants: The Dayton Power and Light Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: The Dayton Power and Light Company submits tariff filing per 35.13(a)(2)(iii: DP&L Depreciation Rate Revisions and Request for Waiver to be effective 1/1/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5088.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2810–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–09–11_SA 3388 ATXI-Ameren IL-Knox County Wind Farm 2nd Rev GIA (J844) to be effective 9/12/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5090.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2811–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 911 to be effective 8/10/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5093.

Comment Date: 5 p.m. ET 10/2/23.

Docket Numbers: ER23–2812–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 7065; Queue No. AE2–033 to be effective 8/11/2023.

Filed Date: 9/11/23.

Accession Number: 20230911–5097.

Comment Date: 5 p.m. ET 10/2/23.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: September 11, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–19995 Filed 9–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–015]

North American Electric Reliability Corporation; Notice of Staff Review of Enforcement Programs

Commission staff coordinated with the staff of the North American Electric Reliability Corporation (NERC) to conduct the annual oversight of the Find, Fix, Track and Report (FFT) program, as outlined in the March 15, 2012 Order,[1] and the Compliance Exception (CE) Program, as proposed by NERC's September 18, 2015 annual Compliance Filing and accepted by delegated letter order.[2]

Commission staff reviewed a sample of 34 of 223 FFTs and 31 of 946 CEs posted by NERC between October 2021 and September 2022.

Commission staff found that the FFT and CE programs are meeting expectations, with limited exceptions. All 65 FFTs and CEs have been adequately remediated and the root cause of each noncompliance was

[1] *North American Electric Reliability Corp.,* 138 FERC ¶ 61,193, at P 73 (2012) (discussing Commission plans to survey a random sample of FFTs submitted each year to gather information on how the FFT program is working).

[2] *North American Electric Reliability Corp.,* Docket No. RC11–6–004, at 1 (Nov. 13, 2015) (delegated letter order) (accepting NERC's proposal to combine the evaluation of CEs with the annual sampling of FFTs).

clearly identified. Commission staff also reviewed the supporting information for these FFTs or CEs and agreed with the final risk determinations for all 65 noncompliances, which clearly identified the factors affecting the risk prior to mitigation (such as potential and actual risk) and actual harm. Further, no FFTs or CEs sampled contained any material misrepresentations by the registered entities. Commission staff found that the Regional Entities appropriately identified 64 of the 65 noncompliances as appropriate to be processed as FFTs and CEs. Nevertheless, there was one identified instance where an FFT would have been more appropriately processed as a spreadsheet notice of penalty. Staff also noted in three instances that the posted description of the noncompliances were incomplete or had minor errors.

Dated: September 11, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–19992 Filed 9–14–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0061; FRL–10581–08–OCSPP]

Certain New Chemicals; Receipt and Status Information for August 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 8/1/2023 to 8/31/2023.

DATES: Comments identified by the specific case number provided in this document must be received on or before October 16, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0061, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 8/01/2023 to 8/31/2023. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2023 TO 08/31/2023

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0346A	5	07/25/2023	Chitec Technology Co., Ltd.	(S) Antioxidant compounded into various polymers to be used in extrusion processes to fabricate articles.	(S) 2,4,8,10-Tetraoxa-3,9-diphosphaspiro[5.5]undecane, 3,9-bis-[2-(1-methyl-1-phenylethyl)-4-(1,1,3,3-tetramethylbutyl)phenoxy]-.
P–20–0031A	6	08/16/2023	CBI	(G) Intermediate	(G) Perfluorinated substituted 1,3-oxathiolane dioxide.
P–20–0031A	7	08/21/2023	CBI	(G) Intermediate	(G) Perfluorinated substituted 1,3-oxathiolane dioxide.
P–20–0033A	4	08/16/2023	CBI	(G) Intermediate	(G) Perfluorinated vinyl haloalkane sulfonate salt.
P–20–0033A	5	08/21/2023	CBI	(G) Intermediate	(G) Perfluorinated vinyl haloalkane sulfonate salt.
P–20–0034A	4	08/16/2023	CBI	(G) Intermediate	(G) Perfluorinated vinyl haloalkane sulfonyl halide.
P–20–0034A	5	08/21/2023	CBI	(G) Intermediate	(G) Perfluorinated vinyl haloalkane sulfonyl halide.
P–21–0143A	3	08/04/2023	CBI	(G) Coating ingredient, adhesive ingredient.	(G) Aliphatic Diisocyanate, homopolymer, aliphatic alcohol blocked.
P–21–0151A	3	08/16/2023	CBI	(G) Polyurethane applications	(G) Epoxidized Vegetable oil, polymer with bisphenol A, aryl glycidyl ether, epichlorohydrin, polyethylene glycol and trimethylolpropane.
P–22–0040A	3	08/27/2023	CBI	(G) Component used in manufacture of high-performance batteries.	(S) Manganate(4-), hexakis(cyano-.kappa.C)-, manganese (2+) sodium, (OC–6–11)-.
P–22–0041A	3	08/27/2023	CBI	(G) A component used in the manufacture of batteries.	(S) Ferrate (-4), hexakis(cyano-.kappa.C)-, iron(3+) manganese(2+) sodium, (OC–6–11)-.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2023 TO 08/31/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–22–0053A	5	08/07/2023	CBI	(G) additive in agricultural formulations	(S) Ethanol, 2-amino-, compds. with polyethylene glycol hydrogen sulfate C10–16-alkyl ether.
P–22–0058A	4	08/24/2023	Solvay Fluorides, LLC	(G) Process chemical	(S) Methanesulfonamide,1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]-, sodium salt (1:1).
P–23–0099	4	08/30/2023	CBI	(G) PIR and PUR rigid insulation materials.	(G) Derivatives of fats and oils, plant based, polycyclic acids functionalized, aromatic acids, polyester with diols and triols.
P–23–0107A	6	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0107A	7	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0107A	8	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0108A	6	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0108A	7	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0108A	8	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0109A	5	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2023 TO 08/31/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–23–0109A	6	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0109A	7	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0110A	5	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0110A	6	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0110A	7	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0111A	6	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0111A	7	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2023 TO 08/31/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–23–0112A	6	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0112A	7	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0113A	6	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0113A	7	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0114A	5	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0114A	6	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0115A	5	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent (Precursor), Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2023 TO 08/31/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–23–0115A	6	08/08/2023	Cnano Technology USA, Inc.	(S) Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor, Lithium-Ion Battery Conductive Agent (Precursor).	(S) Multiwalled Carbon Nanotube.
P–23–0116A	5	08/02/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0116A	6	08/08/2023	Cnano Technology USA, Inc.	(S) Lithium-Ion Battery Conductive Agent, Liquid Products Containing MWCNT as a semi conductive enhancer, chemical carrier, reflectivity reducer and anticorrosion/antifouling stimulant, Solid Products Containing MWCNT as a structural reinforcement, conductive stabilizer, composite & tensile strength enhancer and heat conductor.	(S) Multiwalled Carbon Nanotube.
P–23–0129A	6	08/01/2023	Polymer Additives, Inc	(G) Intermediate	(G) Benzyl fatty acid esters.
P–23–0129A	7	08/03/2023	Polymer Additives, Inc	(G) Intermediate	(G) Benzyl fatty acid esters.
P–23–0130	4	08/25/2023	CBI	(G) Component in asphalt	(G) Fatty Acids reaction products with polyalkylpolyamines, salts.
P–23–0133A	4	08/25/2023	CBI	(G) Component in asphalt	(G) Fatty acids reaction products with alcoholamine reaction by-products, salts.
P–23–0137	3	08/21/2023	CBI	(G) Polymerization Catalyst	(G) Methanone, [bis-phenyl phosphinyl](2,4,6-trimethylphenyl)-.
P–23–0139	3	08/02/2023	Polymer Additives, Inc	(S) Santicizer(R) Platinum G–3000 will be used as a plasticizer for polymers such as PVC, polyurethane, and rubber. It helps reduce glass transition temperature of the polymer and make the polymer more flexible in the end applications.	(G) Benzyl fatty acid esters, epoxidized.
P–23–0139A	4	08/03/2023	Polymer Additives, Inc	(S) Santicizer(R) Platinum G–3000 will be used as a plasticizer for polymers such as PVC, polyurethane, and rubber. It helps reduce glass transition temperature of the polymer and make the polymer more flexible in the end applications.	(G) Benzyl fatty acid esters, epoxidized.
P–23–0142A	2	08/28/2023	CBI	(G) Destructive use	(G) Alkenal, 9-(acetyloxy)-, (E)-.
P–23–0146	2	08/10/2023	CBI	(G) Lubricant additive	(G) Urea, N,N‘‘-(methylenedi-4,1-phenylene)bis-, N′,N″-bis(mixed cycloalkyl and alkyl) derivs.
P–23–0150A	3	08/03/2023	CBI	(G) Industrial use for roll-on, brushing, and spray application.	(G) Branched Glycidyl Ester and Bisphenol Glycidyl Ether polymer adduct with Aralkyl Diamine.
P–23–0154	2	08/17/2023	RWDC Industries	(G) The primary application areas for PHA are for food packaging and other uses where its biodegradable properties provide nontraditional end-of-use options.	(G) Vegetable oils, Cupriavidus-fermented, polyhydroxyalkanoate copolymer.
P–23–0157	3	08/25/2023	CBI	(G) Component in Asphalt	(G) Alkyl-diamine, Fatty Acid Amides, salts.
P–23–0158	2	08/01/2023	Fujifilm Electronic Materials USA, Inc.	(G) Photoacid generator (PAG)	(G) triarylsulfonium, salt with alkylperfluoro sulfonylaminoalkylfluoro alkylpolyfluoroamide.
P–23–0159	2	08/02/2023	Fujifilm Electronic Materials USA, Inc.	(G) Photoacid Generator	(G) triarylsulfonium, salt with alkyl polycycle ester of alkylfluro sulfocarboxylate.
P–23–0160	1	07/31/2023	CBI	(G) Destructive use	(G) Alkenoyl chloride, 3-methyl-.
P–23–0162	3	08/23/2023	CBI	(S) Transportation fuels, Chemical Feedstock, Fuel additive.	(G) Alkane (glyceridic), hydrotreated and isomerized.
P–23–0164	1	08/11/2023	Shepherd Chemical	(S) Gelling catalyst for polyurethanes	(S) Bismuth, 1,1′,1″,1‴-(1,2-ethanediyldinitrilo)tetrakis[2-propanol] 2-(2-ethoxyethoxy)ethanol neodecanoate polypropylene glycol complexes.
P–23–0165	3	08/22/2023	CBI	(G) Production aide for the manufacturing of polymers.	(G) 2,3,3,3-tetrafluoro-2-[(polyfluoroalken-1-yl)oxy]-propanoic acid homopolymer.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2023 TO 08/31/2023—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–23–0166	1	08/16/2023	CBI	(G) Monomer for UV curable application.	(G) Polypropylene glycol allyloxymethyl acrylate.
P–23–0167	2	08/30/2023	Central Glass International, Inc.	(G) Battery production	(G) Bisalkyldiacid fluorophosphate salt.
P–23–0168	2	08/29/2023	Central Glass International, Inc.	(G) Battery production	(G) Sulfamoyl halide fluorophosphate salt.
P–23–0169	1	08/22/2023	Gelest	(G) Intermediate	(G) Alkane, bis(chlorosilane).
P–23–0170	1	08/22/2023	CBI	(G) Fuel additive	(G) Ethanaminium, 2-[3-(2,5-dioxo-1-heteromonocyclic) propoxy]-N,N,N-trimethyl-, monopolyisobutylene derivs., Me ethanedioate.
P–23–0172	1	08/28/2023	CBI	(G) Photolithography	(G) Sulfonium, tricarbocyclic-, alkylcarbomocyclic-polyfluoro-heteropolycyclic-alkyl sulfonate (1:1), polymer with alkylaryl and carbomonocyclic alkyl alkanoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-alkylalkanoate]-initiated.
P–23–0173	1	08/29/2023	CBI	(G) Component used in battery manufacturing.	(G) Cellulose, alkoxyalkyl ether, alkali metal salt.
P–23–0174	1	08/30/2023	CBI	(G) Component used in battery manufacturing.	(G) Mixed metal oxide.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 08/01/2023 TO 08/31/2023

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–21–0013	08/23/2023	08/12/2023	N	(G) Yeast that has been stably modified for the production of an agricultural product.
P–12–0326	08/10/2023	08/01/2023	N	(G) Dicyclohexylmethane-4,4′-diisocyanate, polymer with ethoxylated, propoxylated polyethers.
P–12–0384	08/10/2023	08/02/2023	N	(G) Secondary amine-terminated polyether triol.
P–20–0056	08/11/2023	07/12/2023	N	(G) Phosphated acrylic polymer.
P–20–0178	08/21/2023	08/02/2023	N	(G) Carbopolycyclic alkenyl, 2-carboxylic acid, 2-[[[(diarylalkyl)]carbonyl]oxy]ethyl ester.
P–21–0216	08/17/2023	07/21/2023	N	(G) Multi-walled carbon nanotubes.
P–22–0034	08/08/2023	07/31/2023	N	(G) Alkylphosphonic acid, disodium salt.
P–22–0069	08/02/2023	07/03/2023	N	(G) Fluorohetero acid, metal salt.
P–22–0151	08/29/2023	08/29/2023	N	(G) Glycolipids, sophorose-contg., starmerella bombicola c18-unsatd. glycerides and carbohydrates.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 08/01/2023 TO 08/31/2023

Case No.	Received date	Type of test information	Chemical substance
P–23–0170	08/25/2023	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105); Freshwater and Saltwater Fish Acute Toxicity Test (OECD Test Guideline 203); Estimation of the Adsorption Coefficient (Koc) on Soil and on Sewage Sludge using High Performance Liquid Chromatography (HPLC) (OECD Test Guideline 121); Partition Coefficient (n-octanol/water), Estimation by Liquid Chromatography (OECD Test Guideline 117); Solution/Extraction Behavior of Polymers in Water (OECD Test Guideline 120); Modified Activated Sludge, Respiration Inhibition Test (OCSPP Test Guideline 795.1700); Fish, Juvenile Growth Test (OECD Test Guideline 215); Fish Bioconcentration Factor (BCF) (OECD Test Guideline 305); Seed Germination/Root Elongation Test Report; Analytical Method Validation Report; Repeat Dose 28-day Oral Toxicity Study in Rodents (OECD Test Guideline 407); Prenatal Development Toxicity Study (OECD Test Guideline 414); 90-day Oral Toxicity in Rodents (OECD Test Guideline 408).	(G) Ethanaminium, 2-[3-(2,5-dioxo-1-heteromonocyclic) propoxy]-n,n,n-trimethyl-, monopolyisobutylene derivs., me ethanedioate.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 12, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–20047 Filed 9–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–11388–01–OCSPP]

Access to Confidential Business Information by Eastern Research Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Eastern Research Group (ERG) of Lexington, MA/Chantilly, VA to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than September 22, 2023.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Colby Lintner or Adam Schwoerer, Project Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8182; email address: *lintner.colby@epa.gov* or email address: *schwoerer.adam@epa.gov*; telephone number: (202) 564–4767.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. 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–OPPT–2003–0004 is available at *https://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets*.

II. What action is the agency taking?

Under EPA contract number 68HERD20A0002/68HERH23F0207, contractor ERG of 110 Hartwell Ave, Suite 1 Lexington, MA/14555 Avion Parkway, Suite 200 Chantilly, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in supporting in engineering assessments for the exposure evaluation and assessment of chemical substances and related regulatory actions.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68HERD20A0002/68HERH23F0207, ERG will require access to CBI submitted to EPA under all section(s) of TSCA to perform successfully the duties specified under the contract. ERG personnel will be given access to information submitted to EPA under all section(s) of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and ERG's site located at 14555 Avion Parkway, Suite 200, Chantilly, VA, in accordance with EPA's *TSCA CBI Protection Manual*.

Access to TSCA data, including CBI, will continue until May 20, 2024. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security

procedures before they are permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 11, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–20028 Filed 9–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–086]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed September 1, 2023 10 a.m. EST Through September 11, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230117, Draft, GSA, IL, Draft Environmental Impact Statement, The Buildings at 202, 214, and 220 South State Street, Chicago, Illinois, Comment Period Ends: 10/31/2023, Contact: Joseph Mulligan 312–886–9593.

EIS No. 20230118, Final, FHWA, IN, Mid-States Corridor Tier 1, Contact: Michelle Herrell 317–226–5630.

Pursuant to 23 U.S.C. 139(n)(2), FHWA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20230119, Final, BLM, NV, Gibellini Vanadium Mine Project, Review Period Ends: 10/16/2023, Contact: Scott Distel 775–635–4093.

EIS No. 20230120, Final, BOEM, NY, Empire Offshore Wind, Review Period Ends: 10/16/2023, Contact: Brandi Sangunett 703–787–1015.

EIS No. 20230121, Final, DOI, CO, Colorado Gray Wolf 10(j) Rulemaking, Review Period Ends: 10/16/2023, Contact: Liisa Niva 303–236–4779.

Dated: September 11, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–19985 Filed 9–14–23; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: EIB–2023–0012]

Receipt of Requests To Increase the Amount of the Long-Term General Guarantee on the Interest of Secured Notes Issued by the Private Export Funding Corporation (PEFCO)

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public that Export-Import Bank of the United States (''EXIM'') is expected to consider one or more requests to increase the amount of the long-term general guarantee on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO). Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to any final action during the fiscal year ending on September 30, 2024.

DATES: Comments must be received on or before October 10, 2023 to be assured of consideration before any final decision on one or more additional guarantees during the course of Fiscal Year 2024.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2023–0012 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any), and EIB–2023–0012 on any attached document.

Reference: AP003048AA

Brief Description of Nature and Purpose of the Facility: EXIM may consider one or more general guarantees on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO), in accordance with both the Guarantee and Credit Agreement, as Amended, and the Guarantee Agreement between EXIM and PEFCO. The purpose of the guarantees of interest on the Secured Notes is to facilitate private funding from the U.S. capital markets for EXIM-guaranteed export finance transactions.

Total Amount of Guarantees: The exact number is not determinable due to market-determined pricing and uncertainty as to the amount and timing of Secured Notes to be issued; however, it could potentially be in excess of $100 million for Secured Notes issued during the course of Fiscal Year 2024.

Reasons for the Facility and Methods of Operation: The general guarantee serves to guarantee interest on PEFCO's issuance of Secured Notes. The principal amount of the Secured Notes is secured by a collateral pool of U.S. government-risk debt and securities, including EXIM-guaranteed loans. The proceeds from the Secured Notes are used to fund additional EXIM-guaranteed loans and provide a liquid secondary market for EXIM-guaranteed loans.

Party Requesting Guarantee: Private Export Funding Corporation (PEFCO).

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *https://www.exim.gov/news/meeting-minutes.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–19952 Filed 9–14–23; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 171427]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Rescindment of a system of records notice.

SUMMARY: The FCC's Wireless Telecommunications Bureau (WTB) database stores applications for radiotelephone (wireless) operator's licenses or permits prior to the implementation of the FCC's universal licensing system in 2001 and related materials. These documents contain the personally identifiable information of individuals who voluntarily submit their contact information to the WTB.

DATES: The rescindment will become effective 30 days after publication.

ADDRESSES: Comments can be submitted to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For further information please contact Katherine C. Clark at 202–418–1773 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act provides that an agency may collect or maintain in its records

only information about individuals that is relevant and necessary to accomplish a purpose that is required by a statute or executive order. The FCC has determined that the FCC/WTB–5, Application Review List for Present or Former Licensees, Operators, or Unlicensed Persons Operating Radio Equipment, system of records no longer meets this standard, because WTB no longer maintains the system's manual lists, nor has it retained any paper files from this system. The lists are now contained in an electronic alert list in the FCC/WTB–1, Wireless Services Licensing Records, system of records. All of the paper records for this system have been destroyed in accordance with the retention and disposal provisions of the WTB–5 SORN. Therefore, the FCC proposes to rescind FCC/WTB–5, Application Review List for Present or Former Licensees, Operators, or Unlicensed Persons Operating Radio Equipment Improperly.

SYSTEM NAME AND NUMBER:

FCC/WTB–5, Application Review List for Present or Former Licensees, Operators, or Unlicensed Persons Operating Radio Equipment Improperly.

HISTORY:

71 FR 17271 (April 5, 2006).

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–19967 Filed 9–14–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of an Open Meeting of the FDIC Advisory Committee on Community Banking

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve. The meeting is open to the public. The public's means to observe this meeting of the Advisory Committee on Community Banking will be both in-person and via a Webcast live on the internet. In addition, the meeting will be recorded and subsequently made available on-demand approximately two weeks after the event. To view the live event, visit *http://fdic.windrosemedia.com.*

DATES: Thursday, October 5, 2023, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC building located at 550 17th Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Debra A. Decker, Committee Management Officer of the FDIC at (202) 898–8748.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of issues that are of interest to community banks. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. Observers requiring auxiliary aids (*e.g.,* sign language interpretation) for this meeting should email *DisabilityProgram@fdic.gov* to make necessary arrangements. This meeting of the Advisory Committee on Community Banking will also be Webcast live via the internet at *http://fdic.windrosemedia.com.* For optimal viewing, a high-speed internet connection is recommended. To view the recording, visit *http://fdic.windrosemedia.com/index.php?category=Community+Banking+Advisory+Committee.* Written statements may be filed with the Advisory Committee before or after the meeting.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 12, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–20054 Filed 9–14–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

DATE AND TIME: September 21, 2023; 1:00 p.m.

PLACE: The meeting will be held at the Surface Transportation Board at the address below and also streamed live at *https://www.youtube.com/channel/UCwKTAlGGHIA0xcN3bDt_Uqg.*

Surface Transportation Board, 395 E Street SW, Room #1042 (Hearing Room), Washington, DC 20423

STATUS: The meeting will be held on September 21, 2023, beginning at 1:00 p.m. in the Hearing Room of the Surface Transportation Board and will be open for public observation. If technical issues prevent the Commission from streaming live, the Commission will post a recording of the meeting as soon as possible on the Commission's web page at *www.fmc.gov.* Any person wishing to attend the meeting in-person should report to Surface Transportation Board with enough time to clear building security procedures.

MATTERS TO BE CONSIDERED:

1. Staff Briefing, Ocean Shipping Reform Act of 2022
2. Staff Briefing, Consumer Affairs and Dispute Resolution Services

CONTACT PERSON FOR MORE INFORMATION: Amy Strauss, Acting Secretary, (202) 523–5725.

Jason Guthrie,

Federal Register Alternate Liaison Officer, Federal Maritime Commission.

[FR Doc. 2023–20056 Filed 9–12–23; 4:15 pm]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 23–10]

Bed Bath & Beyond Inc., Complainant v. Yang Ming Marine Transport Corp., Respondent; Notice of Filing of Complaint and Assignment

Served: September 12, 2023.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Bed Bath & Beyond Inc. (the ''Complainant'') against Yang Ming Marine Transport Corp. (the ''Respondent''). Complainant states that the Commission has subject-matter jurisdiction over the complaint under the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.* (the ''Shipping Act'') and personal jurisdiction over the Respondent as an ocean common carrier who entered into a service contract with Complainant.

Complainant is a corporation existing under the laws of New York with a principal place of business in Union, New Jersey, and a shipper for the purposes of the allegations made in the complaint.

Complainant identifies Respondent as a company existing under the laws of Taiwan with a principal place of business in Keelung, Taiwan, and an ocean common carrier.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), 41104(a)(2), 41104(a)(10), and 41102(d), and 46 CFR 545.5 regarding a failure to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering property; a failure to provide service in the liner trade that is in accordance with a service contract; an unreasonable refusal to deal or negotiate; and retaliation against a shipper. Complainant alleges these violations arose from a failure to allocate space as agreed upon and instead, allocating space to shippers willing to pay higher freight prices; a condition on performance requiring the payment of extracontractual prices and surcharges, such as peak season surcharges throughout more than 90% of the service contract period, prior to full performance of its service commitments; an unreasonable assessment of demurrage and detention charges during periods of congestion and shortages of equipment at ports; and a refusal to deal unless an amendment reducing the minimum quantity commitments under the service contract was agreed to.

An answer to the complaint must be filed with the Commission within twenty-five (25) days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-10/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by September 12, 2024, and the final decision of the Commission shall be issued by March 27, 2025.

Jason Guthrie,

Federal Register Alternate Liaison Officer, Federal Maritime Commission.

[FR Doc. 2023–20035 Filed 9–14–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 23–05]

Rahal International Inc., Complainant v. Hapag-Lloyd AG, Hapag-Lloyd (America), LLC, and Hapag-Lloyd USA, LLC, Respondents and Third-Party Complainants v. Maher Terminals, LLC, GCT New York LP, and GCT Bayonne PL, Third-Party Respondents; Notice of Filing of Third-Party Complaint

Served: September 8, 2023.

Notice is given that a third-party complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Hapag-Lloyd AG, Hapag-Lloyd (America), LLC, and Hapag-Lloyd USA, LLC (collectively, the ''Third-Party Complainants'') against Maher Terminals, LLC, GCT New York LP, and GCT Bayonne PL (collectively, the ''Third-Party Respondents'') in Docket No. 23–05. Third-Party Complainants state that the Commission has subject-matter jurisdiction over the third-party complaint under the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.* (the ''Shipping Act''), 46 CFR 502.12, and 46 CFR 502.62(b)(4), and further state that the Commission has personal jurisdiction over the Third-Party Respondents due to an alleged violation of the Shipping Act and the third-party claims arising out of a common nucleus of operative facts as those against Hapag-Lloyd AG, Hapag-Lloyd (America), LLC, and Hapag-Lloyd USA, LLC.

Complainant Rahal International Inc. is an independent importer and broker of high-quality fruit juices, concentrates, and purees in the United States, and is organized and existing under the laws of the state of Delaware with a principal place of business in Oak Brook, Illinois.

Respondent and Third-Party Complainant Hapag-Lloyd AG is a global ocean carrier company based in Hamburg, Germany.

Respondent and Third-Party Complainant Hapag-Lloyd (America), LLC is a United States subsidiary and agent of Hapag-Lloyd AG with its office located in Atlanta, Georgia.

Respondent and Third-Party Complainant Hapag-Lloyd USA, LLC is a United States subsidiary and agent of Hapag-Lloyd AG with its office located in Atlanta, Georgia.

Third-Party Complainants identify Third-Party Respondent Maher Terminals, LLC as a marine terminal operator located in Elizabeth, New Jersey. Third-Party Complainants identify Third-Party Respondents GCT New York LP and GCT Bayonne LP as a marine terminal operator located in Staten Island, New York.

Third-Party Complainants allege that Third-Party Respondents violated 46 U.S.C. 41102(c) regarding a failure to establish, observe, and enforce just and reasonable regulations and practices related to or connected with receiving, handling, storing, or delivering property. Third-Party Complainants allege this violation arose from Third-Party Respondents' full control and operation of the containers and their assessment, billing, and collection of the charges at issue in Complainant Rahal International Inc.'s Verified Complaint (the ''Verified Complaint''), and seek, in the event that the Commission finds Third-Party Complainants liable under the Verified Complaint, an order requiring Third-Party Respondents to pay for all damages assessed as a result of the Verified Complaint, along with attorneys' fees.

An answer to the third-party complaint must be filed with the Commission within twenty-five (25) days after the date of service.

The full text of the third-party complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-05/.* This proceeding is assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by July 1, 2024, and the final decision of the Commission shall be issued by January 15, 2025.

Jason Guthrie,

Federal Register Alternate Liaison Officer, Federal Maritime Commission.

[FR Doc. 2023–20037 Filed 9–14–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of

the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 16, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *Savanna-Thomson Investment, Inc., Savanna, Illinois;* to merge with Maximum Bancshares, Inc., and thereby indirectly acquire Fidelity Bank, both of West Des Moines, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–20022 Filed 9–14–23; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for its Fuel Rating Rule (the Rule). The current clearance expires on September 30, 2023.

DATES: Comments must be filed by October 16, 2023.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. 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. The *reginfo.gov* web link is a United States Government website produced by the Office of Management and Budget (OMB) and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: Fuel Rating Rule (the Rule), 16 CFR part 306.

OMB Control Number: 3084–0068.

Type of Review: Extension of a currently approved collection.

Likely Respondents:

(a) *Recordkeeping:* Refiners, Producers, Importers, Distributors, and Retailers of the Covered Fuel Types.

(b) *Disclosure:* Retailers of the Covered Fuel Types.

Estimated Annual Burden Hours: 31,976 (derived from 13,043 recordkeeping hours added to 18,933 disclosure hours).

Estimated Annual Labor Costs: $481,374.[1]

Estimated Annual Capital or Other Non-labor Costs: $104,888.[2]

Abstract: The Fuel Rating Rule establishes standard procedures for determining, certifying, and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels, as required by the Petroleum Marketing Practices Act. 15 U.S.C. 2822(a)–(c). The Rule also requires refiners, producers, importers, distributors, and retailers to retain records showing how the ratings were determined, including delivery tickets or letters of certification.

Request for Comment

On May 2, 2023, the FTC sought public comment on the information collection requirements associated with the Rule. 88 FR 27514. No germane comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–19982 Filed 9–14–23; 8:45 am]

BILLING CODE 6750–01–P

[1] The hourly wage rates are updated from the 60-Day **Federal Register** notice and are based on mean hourly wages found at *http://www.bls.gov/iag/tgs/iag211.htm#earnings* for petroleum pump system operators, refinery operators, and gaugers and *http://www.bls.gov/iag/tgs/iag447.htm* for service station attendants. *See* Bureau of Labor Statistics, 2022 Occupational Employment Statistics for more details.

[2] This estimate is updated from the 60-Day **Federal Register** notice.

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2023–05; Docket No. 2023–0002; Sequence No. 26]

Draft Environmental Impact Statement for the Buildings at 202, 214, and 220 South State Street, Chicago, Illinois

AGENCY: Public Building Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability (NOA).

SUMMARY: GSA, in cooperation with the Federal Protective Service (FPS) and in accordance with the National Environmental Policy Act (NEPA), announces the availability, and opportunity for public review and comment, of the Draft Environmental Impact Statement (DEIS) for the buildings at 202, 214, and 220 South State Street, Chicago, Illinois. GSA is considering two action alternatives (Alternative A, Demolition or Alternative B, Viable Adaptive Reuse of the buildings) and a No Action Alternative.

DATES: GSA will hold a public hearing for the Draft EIS on Monday, October 2, 2023, from 3:00 p.m. to 5:00 p.m. Central Daylight Time (CDT) at the Morrison Conference Center, Metcalfe Federal Building located at 77 West

Jackson Boulevard, Chicago, IL. The public may attend the hearing in person or participate virtually in the hearing by registering at *https://GSA-South_State-Street-Public-Hearing.eventbrite.com*.

Council on Environmental Quality (CEQ) Regulations require a minimum 45-day review period. The review period starts on September 15, 2023, when the NOA of the draft EIS is published in the **Federal Register**. Comments are due to the GSA contact named below no later than Tuesday, October 31, 2023. GSA will address and incorporate public comments received as it prepares the Final EIS.

ADDRESSES: Comments may be presented orally or in writing during the meeting, by email, and by mail. All comments received will become public and part of the Administrative Record. Questions or comments concerning the Draft EIS should be directed to:

- *Email: statestreet@gsa.gov*.
- *Mail:* Joseph Mulligan, U.S. General Services Administration, 230 S. Dearborn St., Suite 3600, Chicago, IL 60604

Further information, including an electronic copy of the Draft EIS, may be found online on the following website: *https://www.gsa.gov/about-us/regions/region-5-great-lakes/buildings-and-facilities/illinois/chicago-202220-s-state-st-fps*.

FOR FURTHER INFORMATION CONTACT: Joseph Mulligan, GSA, 230 S. Dearborn St., Suite 3600, Chicago, IL 60604; cell: 312–886–8593; email: *statestreet@gsa.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Proposed Action is to address the future of the three vacant buildings at 202, 214 and 220 South State Street, east of the Dirksen Courthouse. The purpose of the Proposed Action is to address the security needs of the Dirksen Courthouse, respond to Congressional intent considering the authorization of funds made to GSA by Congress in the 2022 Consolidated Appropriations Act, and manage Federal assets.

Alternatives Under Consideration

Demolition (Alternative A): This alternative would demolish the buildings at 202, 214 and 220 South State Street, Chicago, Illinois. In the 2022 Consolidated Appropriations Act, Congress appropriated funding to GSA for the purpose of demolition of the buildings, protecting adjacent buildings, securing the site, and landscaping the vacant site following demolition.

Viable Adaptive Reuse (Alternative B): This alternative would involve contracting with one or more private developers to lease and use the three buildings at 202, 214, and 220 South State Street in accordance with the 15 viable adaptive reuse criteria, listed below, that were developed by GSA in collaboration with the U.S. District Court for Northern Illinois and Federal law enforcement agencies. These criteria were established to achieve GSA's and Federal law enforcement agencies' security objectives for the Dirksen Courthouse and would apply to any future uses of the buildings. No Federal funds would be available for rehabilitation, preservation, or restoration of buildings at 202, 214, and 220 South State Street, Chicago, Illinois; therefore, any rehabilitation or modification of the buildings to meet the criteria would not be performed at the Federal Government's expense. However, developers will have the opportunity to make improvements to the buildings in lieu of rent in accordance with section 111 of the National Historic Preservation Act. GSA will consider viable adaptive reuse alternatives if they meet or exceed the following viable adaptive reuse criteria. These restrictions would be applicable to all tenants and subtenants in perpetuity:

1. The Federal Government must retain ownership interests to achieve its security objectives, as determined by the government in its discretion.

2. Occupancy/Use: Properties shall not be used for short-term or long-term residential or lodging, places of worship, or medical treatment, services, or research. No use that requires access to outdoor areas is permitted.

3. Access to the roof is restricted to maintenance and repair activities. Personnel and materials that will be present in this area shall be subject to clearance and controls necessary to meet court security objectives.

4. Developer would have no access or use rights to Quincy Court.

5. Loading is prohibited in Quincy Court and otherwise restricted in a manner to achieve court security. Loading on State or Adams Streets would be subject to local ordinance requirements.

6. Occupants and users of the buildings shall have no sight lines into the Dirksen Courthouse, the Dirksen Courthouse ramp, or the Quincy Court properties owned by GSA.

7. No parking or vehicle access is permitted on or within the properties.

8. Developer is responsible for staffing, at their expense, security 24 hours with personnel approved by the Federal Protective Service or an entity to whom security services are delegated by Federal Protective Service.

9. Developer must obtain and maintain access control systems to prevent unauthorized access to any location within the structures. Each exterior entrance point must have an intrusion detection system and access control system installed, and Developer must provide Federal law enforcement access to each system.

10. Developer must install and maintain interior and exterior security cameras and provide Federal law enforcement officials with access and the ability to monitor the feeds in real time.

11. Developer must install exterior lighting necessary to achieve courthouse security objectives.

12. Perimeter Security: Developer must prevent unauthorized access to the properties that would result in an unapproved sight line.

13. Fire escapes, and any other structures that would allow access from the street, must be removed.

14. All construction documents and specifications for any renovation, rehabilitation, modification, or construction of any portion of the building (interior or exterior) will be subject to review and approval by Federal law enforcement agencies.

15. No project may start without the advance approval of GSA.

No Action Alternative

GSA would continue to monitor the buildings' condition and secure the buildings; the buildings would remain in place and vacant, in need of significant repairs. GSA would also continue its efforts to develop a long-term plan for the buildings, as it has since it acquired them. GSA would have limited Federal funds available to continue with the maintenance and the buildings would be at risk of further deterioration.

After the Notice of Intent to prepare this Draft EIS was issued, GSA undertook an emergency action to demolish 208–212 South State Street because the structure posed an immediate threat to human health and safety. The demolition of 208–212 South State Street, a non-historic property, was a separate action and GSA completed an emergency Environmental Assessment (EA) to comply with NEPA. 208–212 South State Street was thus removed from the analysis of this Proposed Action.

Summary of Potential Impacts

The Draft EIS identifies, describes, and analyzes the potential effects of the Action and No Action alternatives,

including direct, indirect, and cumulative effects. GSA identified the following resources for analysis of both beneficial and adverse potential impacts: cultural resources; aesthetic and visual resources; land use and zoning; community facilities; socioeconomics and environmental justice; greenhouse gas, climate change, and embodied carbon; hazardous materials and solid waste; air quality; noise; health and safety; and transportation and traffic. The Draft EIS considers measures that would avoid, minimize, or mitigate identified adverse impacts. GSA welcomes public input on these potential impacts.

National Historic Preservation Act

In addition to NEPA, consultation under section 106 of the NHPA is occurring concurrently with the NEPA process. Two of the three buildings being considered for demolition are the Century Building (202 South State Street) and the Consumers Building (220 South State Street), which are historic resources that contribute to the Loop Retail Historic District listed in the National Register of Historic Places (NRHP). In this proposed action, 214 South State Street is being treated as eligible for listing in the NRHP as a contributing resource to the Loop Retail Historic District.

Schedule for Decision-Making Process

The following is a list of estimated time frames to complete the NEPA process:

- Draft EIS Public Comment Period: September 15 to October 31, 2023
- Final EIS: February 2024
- Record of Decision: April 2024

William Renner,

Director, Facilities Management and Services Programs Division Great Lakes Region 5, U.S. General Services Administration.

[FR Doc. 2023–19518 Filed 9–14–23; 8:45 am]

BILLING CODE 6820–CF–P

GENERAL SERVICES ADMINISTRATION

[Notice–ID–2023–11; Docket No. 2023–0002; Sequence No. 32]

Privacy Act of 1974; Rescindment of a System of Records

AGENCY: Office of the Chief Privacy Officer, General Services Administration, (GSA).

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the General Services Administration (GSA) proposes to rescind the GSA/OAP–4 FedBizOps System of Records Notice (SORN). The rescinded system of records described in this notice no longer maintains any Personally Identifiable Information (PII).

DATES: Effective immediately.

ADDRESSES: Submit comments identified by ''Notice–ID–2023–11, Rescindment of a System of Records'' via *http://www.regulations.gov.* Search for ''Notice–ID–2023–11, Rescindment of a System of Records.'' Select the link ''Comment Now'' that corresponds with ''Notice–ID–2023–11, Rescindment of a System of Records.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Notice–ID–2023–11, Rescindment of a System of Records'' on your attached document.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Chief Privacy Officer, Richard Speidel: telephone 202–969–5830; email *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: The information in the GSA/OAP–4 FedBizOps SORN is now obsolete as all relevant records are now maintained in a different system, GSA's *SAM.gov.* It should be removed from GSA's inventory once OMB approves via ROCIS (OMB OIRA—Office of Information and Regulatory Affairs).

SYSTEM NAME AND NUMBER:

GSA/OAP—4FedBizOps.

HISTORY:

73 FR 22386 on 04/24/2008.

Richard Speidel,

Chief Privacy Officer, Office of the Deputy Chief Information Officer, General Services Administration.

[FR Doc. 2023–20048 Filed 9–14–23; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Thursday, November 16, 2023, from 10 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in-person.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Federal Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland, 20857, (301) 427–1456. For press-related information, please contact Bruce Seeman at (301) 427–1998 or *Bruce.Seeman@AHRQ.hhs.gov.*

Closed captioning will be provided during the meeting. If another reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Tuesday, October 31, 2023. The agenda, roster, and minutes will be available from Jenny Griffith, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Jenny Griffith's phone number is (240) 446–6799.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). 5 U.S.C. 1009. The Council is authorized by section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Thursday, November 16, 2023, NAC members will meet to conduct preparatory work prior to convening the Council meeting at 10:45 a.m., with the call to order by the Council Chair, an introduction of NAC members, and approval of previous Council summary

notes. The NAC members will then receive an update from the AHRQ Director. The agenda will also include an update on the Subcommittee of the National Advisory Council (SNAC) for AHRQ's Patient-Centered Outcomes Research Trust Fund (PCORTF) Investments, as well as an update on the Subcommittee of the National Advisory Council (SNAC) for the National Action Alliance to Advance Patient Safety. The meeting will also include a discussion about the Consumer Assessment of Healthcare Providers and System (CAHPS). The meeting is open to the public and will adjourn at 4 p.m. For information regarding how to access the meeting as well as other meeting details, including information on how to make a public comment, please go to *https://www.ahrq.gov/news/events/nac/.* The final agenda will be available on the AHRQ website no later than Thursday, November 2, 2023.

Dated: September 12, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–20068 Filed 9–14–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10638 and CMS–1500]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 16, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Add-On Payments for New Medical Services and Technologies Paid Under the Inpatient Prospective Payment System (IPPS); *Use:* Sections 1886(d) (5) (K) and (L) of the Act establish a process of identifying and ensuring adequate payment for new medical services and technologies (sometimes collectively referred to in this section as ''new technologies'') under the Inpatient Prospective Payment System (IPPS). Section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered new if it meets criteria established by the Secretary after notice and opportunity for public comment. Section 1886(d)(5)(K)(ii)(I) of the Act specifies that a new medical service or technology may be considered for NTAP if, ''based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate.''

In order to qualify for NTAP under the traditional pathway, a specific technology must be ''new'' and demonstrate that they are not substantially similar to existing technologies under the requirements of § 412.87(b)(2) of our regulations. The statutory provision contemplated the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (no less than 2 years and no more than 3 years). Alternative pathway technologies must also be ''new'' but are considered not substantially similar to existing technologies. Responses to the questions in the application help CMS determine if and how the applicant meets the established. *Form Number:* CMS–10638 (OMB Control Number: 0938–1347); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits and Not-for-profits institutions; *Number of Respondents:* 62; *Number of Responses:* 62; *Total Annual Hours:* 1,655. (For policy questions regarding this collection contact Sophia Chan at 410–786–8348.)

2. *Type of Information Collection Request:* Extension of a currently approved collection of information; *Title of Information Collection:* Health Insurance Common Claims Form; *Use:* The CMS–1500 and the CMS–1490S forms are used to deliver information to CMS in order for CMS to reimburse for provided services. Medicare Administrative Contractors use the data collected on the CMS–1500 and the CMS–1490S to determine the proper amount of reimbursement for Part B medical and other health services (as listed in section 1861(s) of the Social Security Act) provided by physicians and suppliers to beneficiaries. The CMS–1500 is submitted by physicians/suppliers for all Part B Medicare.

Serving as a common claim form, the CMS–1500 can be used by other third-party payers (commercial and nonprofit health insurers) and other Federal programs (*e.g.,* TRICARE, RRB, and Medicaid). *Form Number:* CMS–1500 (OMB Control Number: 0938–1197); *Frequency:* Occasionally; *Affected Public:* Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 2,451,781; *Number of Responses:* 975,664,249; *Total Annual Hours:* 17,163,310. (For policy questions regarding this collection contact Charlene Parks at 410–786–8684.)

Dated: September 12, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–20041 Filed 9–14–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3771]

Annual Status Report Information and Other Submissions for Postmarketing Requirements and Commitments: Using Forms FDA 3988 and FDA 3989; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Annual Status Report Information and Other Submissions for Postmarketing Requirements and Commitments: Using Forms FDA 3988 and FDA 3989.'' Forms FDA 3988, Transmittal of PMR/PMC Submissions for Drugs and Biologics, and FDA 3989, PMR/PMC Annual Status Report for Drugs and Biologics, are intended to facilitate submissions by drug and biological product application holders of complete and accurate information on postmarketing requirements (PMRs) and postmarketing commitments (PMCs) in a consistent format. These forms are expected to result in improved accuracy and timeliness of FDA's identification and review of those submissions containing information on PMRs and PMCs. This guidance covers the purpose of each form, when to use these forms, and how to submit these forms. The guidance also explains where applicants will be able to find the forms and instructions. This guidance finalizes the draft guidance of the same name issued on October 21, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on September 15, 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 should include the Docket No. FDA–2018–N–3771 for ''Annual Status Report Information and Other Submissions for Postmarketing Requirements and Commitments: Using Forms FDA 3988 and FDA 3989.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your

requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kathy Weil, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5367, Silver Spring, MD 20993–0002, 301–796–6054; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Annual Status Report Information and Other Submissions for Postmarketing Requirements and Commitments: Using Forms FDA 3988 and FDA 3989.'' This guidance is intended for applicants that are required to report annually on the status of postmarketing studies and clinical trials for human drug and biological products under section 506B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356b) and its implementing regulations at §§ 314.81(b)(2)(vii) and 601.70 (21 CFR 314.81(b)(2)(vii) and 601.70). The forms were developed, in part, in response to the recommendations from the Government Accountability Office (GAO) and the Department of Health and Human Services (HHS) Office of the Inspector General (OIG) regarding the need for comparable information across annual status reports (ASRs) on PMRs and PMCs, to eliminate manual data entry and to enhance FDA's ability to track PMRs and PMCs. These forms are expected to result in improved accuracy and timeliness of FDA's identification and review of those submissions containing information on PMRs and PMCs. The purpose of the guidance is to explain why Forms FDA 3988 and FDA 3989 were created, describe the contents of the forms, and explain how to submit the forms electronically. The guidance also explains where applicants will be able to find the forms and instructions for their completion. Forms FDA 3988 and FDA 3989 are available for use at FDA's Forms web page (*https://www.fda.gov/about-fda/reports-manuals-forms/forms*).

PMRs and PMCs are studies or clinical trials conducted by the applicant after FDA has approved a drug or biological product for marketing or licensing. These studies or clinical trials can be required under statute or regulation (PMRs) or agreed upon in writing by FDA and the applicant (PMCs). Section 130(a) of the Food and Drug Administration Modernization Act of 1997 amended the FD&C Act by adding section 506B of the FD&C Act. Under section 506B of the FD&C Act and its implementing regulations at §§ 314.81(b)(2)(vii) and 601.70, applicants must submit an ASR on PMRs and PMCs.[1] This report must address the progress of the PMR/PMC or the reasons for failing to conduct the requirement or commitment (section 506B(a) of the FD&C Act).

This guidance does not apply to postmarketing studies or clinical trials that are not subject to the reporting requirements of section 506B of the FD&C Act.[2] For example, the guidance does not apply to voluntary studies or clinical trials performed by an applicant or on an applicant's behalf that are neither required nor agreed upon in writing. This guidance also does not apply to PMCs related to chemistry, manufacturing, and controls or stability studies.

In a December 2015 report from the GAO entitled ''Drug Safety: FDA Expedites Many Applications, but Data for Postapproval Oversight Need Improvement,'' [3] the GAO recommended that FDA improve its data tracking to ensure the completeness, timeliness, and accuracy of information in its database on PMRs/PMCs. Additionally, in a July 2016 HHS OIG study entitled ''FDA is Issuing More Postmarketing Requirements, but Challenges with Oversight Persist,'' [4] the HHS OIG noted that FDA continued to have problems with its data management system and work processes, thereby hindering its ability to track PMRs. OIG recommended that FDA provide standardized forms for ASRs, ensure that the forms are complete, and require applicants to submit the forms electronically.

Based in part on the recommendations from GAO and HHS OIG, FDA created Forms FDA 3988 and FDA 3989 to improve the collection, identification, and use of information regarding PMRs and PMCs. Form FDA 3988 was developed to accompany an applicant's PMR/PMC-related submissions (*e.g.,* draft protocols, final protocols, interim reports, final reports, and PMR/PMC-related correspondence), except the ASR on PMRs and PMCs. Form FDA 3988 allows applicants to identify, in a standardized format, the type of PMR/PMC-related submission the applicant is making (*e.g.,* draft protocol) and the PMR or PMC to which the submission applies. Form FDA 3989 was developed so that applicants may provide ASR information on their PMRs and PMCs in a standardized format. The purpose of these forms is to assist applicants in providing clearly identified PMR/PMC-related submissions and in meeting their annual reporting requirements under section 506B of the FD&C Act and §§ 314.81(b)(2)(vii) and 601.70.

Use of Forms FDA 3988 and 3989 is optional, but FDA encourages their use because the forms should facilitate FDA management and review of the applicant's submissions, as well as enhance the accuracy of data within FDA's electronic document archiving systems. FDA uses these archiving systems as a source from which to obtain data published annually in the **Federal Register** as required under section 506B(c) of the FD&C Act and to provide quarterly status updates of the PMR and PMC data on FDA's Postmarket Requirements and Commitments public web page (available at *https://www.accessdata.fda.gov/scripts/cder/pmc/index.cfm*). This guidance finalizes the draft guidance of the same name issued on October 21, 2020 (85 FR 66995). In addition to editorial changes for clarification, changes from the draft to the final included a minor change regarding what to enter into field 9.g. of Form FDA 2252 and the removal of the appendices to the guidance, which contained drafts of Forms FDA 3988 and 3989.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Annual Status

[1] FDA defines postmarketing studies or clinical trials for which ASRs must be submitted under section 506B of the FD&C Act as those concerning a human drug or biological product's clinical safety, clinical efficacy, clinical pharmacology, or nonclinical toxicology that are either required by FDA (PMRs) or that are committed to, in writing, (PMCs) either at the time of approval of an application or a supplement or after approval of an application or supplement. See §§ 314.81(b)(2)(vii) and 601.70. FDA interprets section 506B of the FD&C Act to apply to postmarketing studies and clinical trials that are required under section 505B of the FD&C Act (21 U.S.C. 355c), the animal efficacy rule (21 CFR 314.610(b)(1) and 601.91(b)(1)), accelerated approval (section 506(c)(2)(A) of the FD&C Act (21 U.S.C. 356(c)(2)(A)); 21 CFR 314.510 and 601.41), and the Food and Drug Administration Amendments Act of 2007 (section 505(*o*)(3) of the FD&C Act (21 U.S.C. 355(*o*)(3)).

[2] Under § 314.81(b)(2)(viii), applicants submitting an annual report for human drug products must include a status report of postmarketing studies and clinical trials not included under § 314.81(b)(2)(vii) that are being performed by, or on behalf of, the applicant.

[3] Available at *https://www.gao.gov/products/GAO-16-192.*

[4] Available at *https://oig.hhs.gov/oei/reports/oei-01-14-00390.asp.*

Report Information and Other Submissions for Postmarketing Requirements and Commitments: Using Forms FDA 3988 and FDA 3989.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information for applicants required to submit ASRs on PMCs and PMRs under section 506B of the FD&C Act and the implementing regulations at §§ 314.81(b)(2)(vii) and 601.70 are approved under OMB control numbers 0910–0001 and 0910–0338, respectively.

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/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20014 Filed 9–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5966]

Breakthrough Devices Program; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Breakthrough Devices Program.'' This final guidance describes policies that FDA intends to use to implement a section of the Federal Food, Drug, and Cosmetic Act (FD&C Act). This guidance updates the previous version of the guidance, of the same title, issued on December 18, 2018, and describes how the Breakthrough Devices Program may also be applicable to certain devices that benefit populations impacted by health and/or healthcare disparities. Consistent with our obligations under the SUPPORT for Patients and Communities Act (SUPPORT Act), the Breakthrough Devices Program may be available for certain non-addictive medical products to treat pain or addiction.

DATES: The announcement of the guidance is published in the **Federal Register** on September 15, 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–2017–D–5966 for ''Breakthrough Devices Program.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a

single hard copy of the guidance document entitled ''Breakthrough Devices Program'' 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.

FOR FURTHER INFORMATION CONTACT: Ouided Rouabhi, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G221, Silver Spring, MD 20993–0002, 240–402–2672; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance entitled ''Breakthrough Devices Program.'' The document describes policies that FDA intends to use to implement section 515B of the FD&C Act (21 U.S.C. 360e–3), as created by section 3051 of the 21st Century Cures Act (Cures Act) (Pub. L. 114–255), amended by section 901 of the FDA Reauthorization Act of 2017 (Pub. L. 115–52), and amended by section 3001 of the SUPPORT for Patients and Communities Act (Pub. L. 115–271) (the ''Breakthrough Devices Program''). The Breakthrough Devices Program is a voluntary program for certain medical devices and device-led combination products that provide for more effective treatment or diagnosis of life-threatening or irreversibly debilitating diseases or conditions. It is available for devices and device-led combination products that are subject to review under a premarket approval application (PMA), premarket notification (510(k)), or De Novo classification request (''De Novo request'').

The Breakthrough Devices Program may also be applicable to certain devices that benefit populations impacted by health and/or healthcare disparities, thereby promoting and advancing health equity. In addition, consistent with our obligations under section 3001 of the SUPPORT Act, the Breakthrough Devices Program may be available for certain non-addictive medical products to treat pain or addiction (section 515B of the FD&C Act). The considerations set forth in the guidance document apply to FDA's review of devices as non-addictive methods to treat pain or addiction. This program is intended to help patients have more timely access to designated medical devices, including those that provide for more effective treatment or diagnosis of life-threatening or irreversibly debilitating diseases or conditions in populations impacted by health and/or healthcare disparities, by expediting their development, assessment, and review, while preserving the statutory standards for PMAs, 510(k) clearance, and De Novo marketing authorization, consistent with the Agency's mission to protect and promote public health.

This guidance finalizes the draft guidance entitled ''Select Updates for the Breakthrough Devices Program Guidance: Reducing Disparities in Health and Healthcare.'' A notice of availability of the draft guidance appeared in the **Federal Register** of October 21, 2022 (87 FR 64057). FDA considered comments received and revised the guidance as appropriate in response to comments, including further clarifying FDA's intent to consider technologies and device features that may help to address health and/or healthcare disparities and promote health equity by providing for more effective treatment or diagnosis in various populations that exhibit health and healthcare disparities. FDA did not substantively change the sections of the existing Breakthrough Devices Program guidance that were not affected by the select update.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the ''Breakthrough Devices Program.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics.* Persons unable to download an electronic copy of ''Breakthrough Guidance Program'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00001833 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
812	Investigational Device Exemption	0910–0078
860, subpart D	De Novo classification process	0910–0844
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions	0910–0756
822	Postmarket Surveillance of Medical Devices	0910–0449
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073

Dated: September 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20007 Filed 9–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0109]

Fostering Medical Device Improvement: Food and Drug Administration Activities and Engagement With the Voluntary Improvement Program; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Fostering Medical Device Improvement: Food and Drug Administration Activities and Engagement with the Voluntary Improvement Program.'' FDA is issuing this guidance to describe its policy regarding FDA's participation in the Voluntary Improvement Program (VIP). The VIP is a voluntary program facilitated through the Medical Device Innovation Consortium (MDIC) that evaluates the capability and performance of a medical device manufacturer's practices using third-party appraisals, and is intended to guide improvement to enhance the quality of devices. The VIP builds on the framework piloted through FDA's 2018 Case for Quality Voluntary Medical Device Manufacturing and Product Quality Pilot Program (CfQ Pilot Program) and incorporates some of the successes and learnings from the pilot.

DATES: The announcement of the guidance is published in the **Federal Register** on September 15, 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–2022–D–0109 for ''Fostering Medical Device Improvement: Food and Drug Administration Activities and Engagement with the Voluntary Improvement Program.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Fostering Medical Device Improvement: Food and Drug Administration Activities and Engagement with the Voluntary Improvement Program'' 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.

FOR FURTHER INFORMATION CONTACT: Francisco Vicenty, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1534, Silver Spring, MD 20993–0002, 301–796–5577.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Center for Devices and Radiological Health's (CDRH's) 2016–2017 strategic priority to ''Promote a Culture of Quality and Organizational Excellence,'' CDRH envisions a future where the medical device ecosystem is

inherently focused on device features and manufacturing practices that have the greatest impact on product quality and patient safety. Among its other regulatory activities, FDA evaluates manufacturers' compliance with regulations governing the design and production of devices. Compliance with the ''Quality System Regulation,'' 21 CFR part 820, is a baseline requirement for medical device manufacturing firms.[1]

In an effort to elevate and enhance manufacturing practices and behaviors through which quality and safety of medical devices can be improved, FDA has collaborated with various stakeholders, brought together through the MDIC public-private partnership, to develop the CfQ Pilot Program. FDA announced the voluntary CfQ Pilot Program in the **Federal Register** on December 28, 2017 (82 FR 61575).

As in the CfQ Pilot Program, the VIP oversees third-party appraisers who evaluate voluntary industry participants, and the VIP assesses the capability and performance of key business processes using a series of integrated best practices. Those practices are detailed in the Information Systems Audit and Control Association Capability Maturity Model Integration (CMMI) system. CMMI provides a roadmap that guides improvement toward disciplined and consistent processes for achieving key business objectives, including quality and performance. The VIP uses a version of the CMMI appraisal appropriate for the medical device industry. This appraisal tool is referred to as the Medical Device Discovery Appraisal Program (MDDAP) model. The baseline appraisal using the MDDAP model covers 11 practices areas, such as Governance, Implementation Infrastructure, and Managing Performance and Measurement. Subsequent appraisals may include an alternate list of practice areas compared to the baseline set. As part of the VIP, and as in the CfQ Pilot Program, the program provides firms and FDA with information about the firm's capability and performance for activities covered in the third-party appraisal.

Details and results from the 2018 CfQ Pilot Program are outlined in MDIC's Case for Quality Pilot Report, available at *https://www.fda.gov/medical-devices/quality-and-compliance-medical-devices/voluntary-medical-device-manufacturing-and-product-quality-pilot-program.*

This voluntary program is currently only available to eligible manufacturers of medical devices regulated by CDRH and whose marketing applications are reviewed under the applicable provisions of the Federal Food, Drug, and Cosmetic Act (including under sections 510(k), 513, 515, and 520) (21 U.S.C. 360(k), 360c, 360e, and 360j).

A notice of availability of the draft guidance appeared in the **Federal Register** of May 6, 2022 (87 FR 27165). FDA considered comments received and revised the guidance as appropriate in response to the comments, including clarifying what participants must demonstrate to benefit from the opportunities offered by VIP, explaining that program participation is not a substitute for an FDA inspection, and providing further detail regarding the role of FDA in VIP.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Fostering Medical Device Improvement: Food and Drug Administration Activities and Engagement with the Voluntary Improvement Program. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Fostering Medical Device Improvement: Food and Drug Administration Activities and Engagement with the Voluntary Improvement Program'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00020039 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The guidance also refers to previously approved FDA collections of information which are also subject to review by OMB under the PRA. The collections of information in the following FDA regulations, guidance, and forms have been approved by OMB as listed in the following table:

21 CFR part; Guidance; or FDA form	Topic	OMB control No.
''Fostering Medical Device Improvement: Food and Drug Administration Activities and Engagement with the Voluntary Improvement Program''.	Voluntary Improvement Program (VIP)	0910–0922
807, subpart E	Premarket notification	0910–0120
7	Recalls	0910–0432
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Device Exemption	0910–0332
860, subpart D	De Novo classification process	0910–0844
803	Medical Device Reporting	0910–0437

[1] On February 23, 2022, FDA proposed to amend the device QS regulation, 21 CFR part 820, to align more closely with international consensus standards for devices (87 FR 10119; available at *https://www.federalregister.gov/documents/2022/02/23/2022-03227/medical-devices-quality-system-regulation-amendments*). Specifically, FDA proposed to withdraw the majority of the current requirements in part 820 and instead incorporate by reference the 2016 edition of the International Organization for Standardization (ISO) 13485, Medical devices—Quality management systems for regulatory purposes, in part 820. As stated in that proposed rule, the requirements in ISO 13485 are, when taken in totality, substantially similar to the requirements of the current part 820, providing a similar level of assurance in a firm's quality management system and ability to consistently manufacture devices that are safe and effective and otherwise in compliance with the FD&C Act. FDA intends to finalize this proposed rule expeditiously. When the final rule takes effect, FDA will also update the references to provisions in 21 CFR part 820 in this guidance to be consistent with that rule.

21 CFR part; Guidance; or FDA form	Topic	OMB control No.
806	Medical Devices; Reports of Corrections and Removals	0910–0359
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
807, subparts A through D	Medical Device Registration and Listing	0910–0625

Dated: September 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20016 Filed 9–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–2654]

Informed Consent Forms for Studies that Enroll Client-Owned Companion Animals; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry (GFI) #282 entitled ''Informed Consent Forms for Studies that Enroll Client-Owned Companion Animals.'' As used in this guidance, informed consent is a documented process by which an owner or owner's agent voluntarily confirms the owner's willingness to allow their animal(s) to participate in a particular study, after having been informed of all aspects of the study that may be relevant to the owner's decision to participate. A sponsor or investigator should ensure the owner is provided with adequate information and time to allow for an informed decision about voluntary participation in a clinical investigation. This draft guidance provides recommendations on informed consent forms (ICF) used for studies that enroll client-owned companion animals (dogs, cats, and horses). FDA's Center for Veterinary Medicine (CVM) recommends all studies conducted with client-owned companion animals use an ICF and be conducted in accordance with Good Clinical Practice (GCP) guidelines.

DATES: Submit either electronic or written comments on the draft guidance by November 14, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–D–2654 for ''Informed Consent Forms for Studies that Enroll Client-Owned Companion Animals.'' 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 Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Steven Fleischer, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0809, *Steven.Fleischer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft GFI #282 entitled ''Informed Consent Forms for Studies that Enroll Client-Owned Companion Animals.'' As used in this guidance, informed consent is a documented process by which an owner or owner's agent voluntarily confirms the owner's willingness to allow their animal(s) to participate in a particular study, after having been informed of all aspects of the study that may be relevant to the owner's decision to participate. A sponsor or investigator should ensure the owner is provided with adequate information and time to allow for an informed decision about voluntary participation in a clinical investigation. This draft guidance provides recommendations on ICFs used for studies that enroll client-owned companion animals (dogs, cats, and horses). CVM recommends all studies conducted with client-owned companion animals use an ICF and be conducted in accordance with GCP guidelines.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Informed Consent Forms for Studies that Enroll Client-Owned Companion Animals.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 514 and section 571 of the Federal Food, Drug, and Cosmetic Act have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 11, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–19951 Filed 9–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3721]

Quality Management Maturity Program for Drug Manufacturing Establishments; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the establishment of a docket to solicit comments that will assist the Agency in developing a Quality Management Maturity (QMM) program for establishments manufacturing human drugs, including biological products, regulated by the Center for Drug Evaluation and Research (CDER).

DATES: Submit either electronic or written comments on the notice by December 14, 2023 to ensure that the Agency considers your comment.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments may not be considered. Electronic comments must be submitted on or before December 14, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–N–3721 for ''Quality Management Maturity Program for Drug Manufacturing Establishments; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Djamila Harouaka, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4160, Silver Spring, MD 20993–0002, 240–402–0224, *CDER-QMM@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Drug manufacturers can achieve higher levels of QMM by successfully integrating business and manufacturing operations with quality practices and technological advancements to optimize manufacturing process performance and product quality, enhance supply chain reliability, and foster proactive continual improvement. CDER is developing a voluntary program to promote QMM at drug manufacturing establishments. The goals of this program are: (1) to foster a strong quality culture mindset; (2) recognize establishments that have advanced quality management practices and acknowledge establishments that strive to continually improve those practices; (3) identify areas where quality management practices can be enhanced and provide suggestions for growth opportunities; and (4) minimize risks to product availability to assure reliable market supply.

The QMM assessment is designed to appraise an establishment's quality culture mindset, behaviors, and commitment to adopting best practices to effectively meet the needs of patients and consumers. QMM assessments would not be used to evaluate compliance with current good manufacturing practice (CGMP).

QMM assessments would be conducted by trained assessors, who would engage directly with establishments, either onsite or in a hybrid (onsite/remote) environment, for 2 to 5 business days. The QMM assessment will cover five practice areas: (1) management commitment to quality; (2) business continuity; (3) advanced pharmaceutical quality system; (4) technical excellence; and (5) employee engagement and empowerment. Within each practice area, the assessors would explore key elements to better understand an establishment's QMM. Examples of elements covered under each practice area could include: management review and resource management (management commitment to quality practice area), supply planning and demand forecasting (business continuity practice area), data governance and process optimization (technical excellence practice area), effectiveness of the corrective action and preventive action process (advanced pharmaceutical quality system practice area), and rewards and recognition (employee engagement practice area). Each establishment's responses, executed practices, and behaviors would be assessed using a standardized assessment protocol and an objective rubric, which is currently under development, to help identify areas of strength and potential areas with opportunities for improvement.

At a November 2, 2022, meeting of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee, FDA sought to determine the support of academic and industry experts for CDER's development of a QMM program. By a vote of 9–0, the committee affirmed that CDER should establish a QMM program to incentivize investments in mature quality management practices . During deliberations, committee members advised the Agency to continue to seek stakeholder input throughout the program's development. Further information about the November 2022 Advisory Committee meeting, including event materials, is available on FDA's website at *https://www.fda.gov/advisory-committees/advisory-committee-calendar/november-2-3-2022-pharmaceutical-science-and-clinical-pharmacology-advisory-committee-meeting.* For further information about QMM, relevant research, and previously conducted pilot programs, please see CDER's QMM web page at *https://www.fda.gov/drugs/pharmaceutical-quality-resources/cder-quality-management-maturity.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

II. Request for Comments

FDA is opening a docket to solicit additional feedback from the public on CDER's planned, voluntary QMM program. The public is invited to provide detailed comments on all aspects described in this notice. To facilitate this input, FDA has developed a list of questions. These questions are not exhaustive, and FDA welcomes other pertinent information the public would like to share on this topic. In all cases, FDA encourages the public to provide the reasoning and specific basis for any comments.

1. If you are a manufacturer, please identify the types of drug(s) produced in your establishment (*e.g.,* active pharmaceutical ingredients, innovator drugs, innovator biologics, generics, biosimilars, or OTC monograph drugs). If you are not a manufacturer, please specify whether you are a purchaser, payor, pharmacy, healthcare provider, patient, regulator, supplier, distributor, contract service provider, or other (please describe).

2. What advantages do you anticipate that your sector (*i.e.,* your organization and others like yours) would gain from CDER's voluntary QMM program?

3. How would participation in a QMM program benefit you or your specific organization?

4. How would you use information from a QMM assessment if it were provided to your organization? For example, if your organization acts as a supplier or contract organization, would you consider sharing information from a QMM assessment with a potential client? If your organization enters into contracts with purchasers, would you consider sharing information from a QMM assessment with a purchaser? If your organization is a purchaser, would you consider requesting information from a QMM assessment?

5. What, if any, unintended consequences, roadblocks, or other concerns do you anticipate with a voluntary QMM program? What barriers to participation do you anticipate? Please explain. Which of these

unintended consequences might be unique to stakeholders like you? Why?

6. FDA anticipates that each establishment would be provided with a detailed report following their QMM assessment. What would you want such a report to contain?

7. With respect to the outcomes of a QMM assessment, what are your thoughts about making outcomes public? Would your thoughts be different if the outcomes were generally qualitative (*e.g.,* descriptive information) versus quantitative (*e.g.,* a numerical rating)?

8. What other feedback would you like the FDA to consider for a voluntary QMM program?

III. References

The following references are on display with the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at *https://www.regulations.gov* as these references are copyright protected. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Maguire, J., A. Fisher, D. Harouaka, N. Rakala, et al., 2023, ''Lessons from CDER's Quality Management Maturity Pilot Programs,'' *The AAPS Journal,* 25(14), January 10, 2023, *https://doi.org/10.1208/s12248-022-00777-z.*

2. Fellows, M., T. Friedli, Y. Li, J. Maguire, et al., 2022, ''Benchmarking the Quality Practices of Global Pharmaceutical Manufacturing to Advance Supply Chain Resilience,'' *The AAPS Journal,* 24(111), October 20, 2022, *https://doi.org/10.1208/s12248-022-00761-7.*

Dated: September 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20015 Filed 9–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–4060]

Medical Devices With Indications Associated With Weight Loss Guidances; Draft Guidances for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of two draft guidances entitled ''Medical Devices with Indications Associated with Weight Loss—Clinical Study and Benefit-Risk Considerations'' and ''Medical Devices with Indications Associated with Weight Loss—Non-Clinical Recommendations.'' These draft guidance documents provide recommendations regarding clinical study design for devices with indications for use associated with weight loss, include discussion on how FDA considers the benefit-risk analysis to support such indications, and provide recommendations for the non-clinical testing to support premarket submissions for these medical devices. These draft guidances are not final nor are they for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 14, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–4060 for ''Medical Devices with Indications Associated with Weight Loss—Clinical Study and Benefit-Risk Considerations'' and ''Medical Devices with Indications Associated with Weight Loss—Non-Clinical Recommendations.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Medical Devices with Indications Associated with Weight Loss—Clinical Study and Benefit-Risk Considerations'' or ''Medical Devices with Indications Associated with Weight Loss—Non-Clinical Recommendations'' 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.

FOR FURTHER INFORMATION CONTACT: April Marrone, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2604, Silver Spring, MD 20993–0002, 240–402–6510.

SUPPLEMENTARY INFORMATION:

I. Background

These draft guidance documents provide recommendations regarding clinical study design for devices with indications for use associated with weight loss, include discussion on how FDA considers the benefit-risk analysis to support such indications, and provide recommendations for non-clinical testing to support premarket submissions for these medical devices. These devices may be indicated for weight loss, weight reduction, weight management, or obesity treatment in patients who are overweight or have obesity. The recommendations and considerations reflect current review practices and are intended to promote consistency and facilitate efficient review of these submissions.

Prior to drafting these guidances, FDA requested public comment on a concept for balancing the benefit of weight loss with the risks of adverse events in a discussion paper (September 2019, Docket No. FDA–2019–N–4060). FDA considered public comments and incorporated the feedback as appropriate in developing the draft guidance, ''Medical Devices with Indications Associated with Weight Loss—Clinical Study and Benefit-Risk Considerations.''

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidance documents, when finalized, will represent the current thinking of FDA on ''Medical Devices with Indications Associated with Weight Loss—Clinical Study and Benefit-Risk Considerations'' and ''Medical Devices with Indications Associated with Weight Loss—Non-Clinical Recommendations.'' They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Medical Devices with Indications Associated with Weight Loss—Clinical Study and Benefit-Risk Considerations (document number GUI00021016)'' or ''Medical Devices with Indications Associated with Weight Loss—Non-Clinical Recommendations (document number GUI00019046)'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
812	Investigational Device Exemption	0910–0078
860, subpart D	De Novo classification process	0910–0844
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-Submissions and Early Payor Feedback Request Programs for Medical Devices.	0910–0756
800, 801, 809, and 830	Medical Device Labeling Regulations; Unique Device Identification	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation.	0910–0073
50, 56	Protection of Human Subjects: Informed Consent; Institutional Review Boards.	0910–0130
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies.	0910–0119

Dated: September 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–20029 Filed 9–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Change in Federal Award Closeout Provisions

AGENCY: Office of the Assistant Secretary for Financial Resources (ASFR), Department of Health and Human Services (HHS or the Department).

ACTION: Notice.

SUMMARY: HHS will follow the Federal award Office of Management and Budget (OMB) closeout provisions modified the closeout provisions rather than the HHS-specific closeout provisions.

FOR FURTHER INFORMATION CONTACT: Johanna Nestor at *Johanna.Nestor@hhs.gov* or (202) 631–0420.

SUPPLEMENTARY INFORMATION:

Background: In 2014, HHS codified the Uniform Administrative Requirements, Cost Principles, and Audit Requirements (UAR) for HHS Awards at 45 CFR part 75. 79 FR 75889 (Dec. 19, 2014). This codification included HHS-specific language, including the adoption of the closeout provisions at 45 CFR 75.381. In 2020, the Office of Management and Budget modified the closeout provisions for Federal awards at 2 CFR 200.344. 85 FR 49506 (Aug. 13, 2020). These modifications:

- Increase the number of days for recipients to submit closeout reports and liquidate all financial obligations from 90 calendar days to 120 calendar days after the end of the period of performance.
- Require awarding agencies to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes.
- Require awarding agencies to close out awards within one year of the end of the period of performance based on available information and report the recipient to the OMB-designated integrity and performance system (currently Federal Awardee Performance and Integrity Information System (FAPIIS)).

The HHS-specific closeout provisions at 45 CFR 75.381 are more restrictive than 2 CFR 200.344 as modified. This may lead to recipient confusion and inconsistencies in closeout timing government-wide. Additionally, the different provisions may result in report submission delays, which can affect closeout task reconciliation and effective completion. Adhering to the 2 CFR 200.344 closeout provisions would provide more time for recipient compliance and conform with other Federal awarding agencies, thus promoting greater equity and fairness.

Action: For the reasons stated above, effective October 1, 2023, HHS will follow the 2 CFR 200.344 closeout provisions This action will minimize the burden on the internal and external grants communities while ensuring the timely closeout of HHS awards.

William D. Bell IV,

Deputy Assistant Secretary for Grants.

[FR Doc. 2023–19954 Filed 9–14–23; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Substance Use and Mental Health Services Survey (N–SUMHSS) (OMB No. 0930–0386)—Revision

Under section 505 of the Public Health Service Act (42 U.S.C. 290aa–4), SAMHSA is required to conduct annual collection of data on substance use and mental health. Selected information collected from the N–SUMHSS is also published on SAMHSA's *FindTreatment.gov* for persons seeking treatment for mental and substance use disorders in the United States. *FindTreatment.gov* is authorized by the 21st Century Cures Act (Pub. L. 114–255, section 9006; 42 U.S.C. 290bb–36d).

In 2021, SAMHSA combined the National Survey of Substance Abuse Treatment Services (N–SSATS) and the National Mental Health Services Survey (N–MHSS) into the N–SUMHSS to reduce the burden on facilities offering both substance use and mental health services, optimize government resources to collect data, and enhance the quality of data collected on the treatment facilities.

The N–SUMHSS is the most comprehensive national source of data on substance use and mental health treatment facilities. On an annual basis, the N–SUMHSS collects information on the facility location, characteristics, and utilization of substance use and mental health treatment services. The survey also collects client counts on individuals receiving services at these facilities. There is an increasing need to collect and maintain data on current and accurate numbers of clients in treatment at the local level for communities to assess capacity and estimate resource requirements. This information on substance use and mental health services has assisted with communities to better respond to life changing events, (*i.e.,* hurricane) and plan for service demands in the event of a natural disaster (*i.e.,* earthquakes).

SAMHSA also maintains the Inventory of Substance Use and Mental Health Treatment Facilities (I–TF) (previously known as the Inventory of Behavioral Health Services [I–BHS]). The I–TF is a master list of all known substance use and mental health treatment facilities in the United States. It also serves as the universe population for the N–SUMHSS.

SAMHSA is requesting OMB approval of revisions to the N–SUMHSS and I–TF related data collections, to include changes to the following instruments:

N–SUMHSS Questionnaire

- *Q1a:* added to clarify if facilities reported providing mental health treatment services in Q1 also provide substance use treatment services, to help respondents understand how to respond accurately and ensure appropriate survey module(s) are completed.

• *A1a:* add the word ''health'' to clarify and improve survey item accuracy.

• *A8a. and QA9:* add ''for opioid use disorder'' and ''for alcohol use disorder'' in the existing question to clarify clients using MAT for specific substance use disorder and to improve survey item accuracy.

• *B7a:* add the following new survey response options to the existing question to improve survey response option comprehensiveness:

○ Add ''Prochlorperazine'' to the existing list of first-generation antipsychotics.

○ Add ''Inhalation'' and ''Don't Know'' to the existing route of administration options for first-generation antipsychotics.

○ Add new response options of ''Sublingual,'' ''Transdermal,'' and ''Don't Know'' to the existing route of administration options for second-generation antipsychotics.

○ Add ''Other first-generation antipsychotic #1 Specify, #2 Specify, and #3 Specify'' and ''Other second-generation antipsychotic #1 Specify, #2 Specify, and #3 Specify'' to the existing list of first-generation and second-generation antipsychotics.

• *B11:* add the word ''currently'' to the question to improve survey item accuracy. Change the word ''persons'' to ''clients'' to increase survey item consistency between survey modules.

• *B19:* update the full title and add the acronyms ''CSBG'' and ''MHBG'' of the two existing Federal grants to improve survey item accuracy. Add ''other'' to clarify and help respondents better comprehend what is being asked.

• *C6a., C7a., C8., C8a:* Update the locator reference from the ''Behavioral Health Treatment Services Locator'' to *FindTreatment.gov* and the reference years associated with reporting client count data.

N–SUMHSS Between Cycle Questionnaire

Since the Mini N–SUMHSS is a subset of the N–SUMHSS, all proposed changes to the N–SUMHSS (listed above) apply to the Mini N–SUMHSS.

N–SUMHSS VA Supplement

SAMHSA proposes a new N–SUMHSS VA Supplement to collect information annually on suicide-related services, standardized suicide screening and evaluation tools, clients at high risk of suicide, referrals and follow-ups from VA substance use and mental health facilities. VA facilities providing only substance use treatment service will answer 7 questions (Attachment C). VA facilities providing only mental health treatment service will answer 12 questions (Attachment D). VA facilities providing both substance use and mental health treatment services will answer 19 questions.

N–SUMHSS EHR Supplement

SAMHSA proposes a new N–SUMHSS EHR Supplement to collect information once from facilities providing substance use and/or mental health treatment services on health IT adoption, use, and interoperability. There are 15 questions in the proposed new N–SUMHSS EHR Supplement.

I–TF Facility Registration Application Form

• Update the locator reference to ''*FindTreatment.gov,*'' and the reference years associated with reporting client count data.

• Replace existing ''substance abuse'' term with a clinically accurate, non-stigmatizing language for ''substance use,'' throughout the form, to help reduce stigma and support treatment for substance use disorders. This revision aligns with the current edition of *The Diagnostic and Statistical Manual of Mental Disorders* (5th ed., American Psychiatric Association, 2013), where ''abuse'' has been replaced by ''use.'' This revision also aligns with the White House Office of National Drug Control Policy 2017 Memo on ''Changing Federal Terminology regarding Substance Use and Substance Use Disorders.

Augmentation Screener Questionnaire

• Replace existing ''substance abuse'' term with 'substance use.''

• Update the locator reference to ''*FindTreatment.gov*.''

• Update the reference of ''Mental Health Survey'' and ''Substance Abuse Survey'' to ''N–SUMHSS'' to improve accuracy.

• Revise the statue citation to be more specific on the level of protection of the information collected from the Augmentation Screener Questionnaire.

• Update the OMB number.

I–TF Online State Add/Update Form

• Update the reference of I–BHS to I–TF throughout the form.

• Update the new SAMHSA logo design throughout the form.

• Replace existing ''substance abuse'' term with ''substance use.''

• Add ''Intake 1a and Intake 2a'' fields to the ''Facility Information'' section and add ''Director's Email'' field to the ''Director Information'' section, to capture more comprehensive information about the new facilities and facility directors.

• Move existing data fields ''State Approved,'' ''State Reviewed,'' ''National Directory Eligible,'' and ''Facility Surveys'' to create a new section ''Directory/Locator Eligibility'' and add a new ''Date Reviewed'' field to improve response efficiency and accuracy.

• Move existing ''Old-ITF ID'' and add ''Parent I–TF ID'' to the ''Other Facilities Details'' section to improve response efficiency.

The estimated annual burden for the N–SUMHSS and I–TF activities is as follows:

Information collection title	Number of respondents	Responses per respondent	Total responses	Hours per response (in hours)	Total burden hours	Average hourly wage	Total annual cost
N–SUMHSS Questionnaire (either SU or MH)	32,000	1	32,000	0.83	26,560	$48.72	$1,294,003
N–SUMHSS Questionnaire (both SU and MH)	5,000	1	5,000	1.28	6,400	48.72	311,808
N–SUMHSS Between Cycle Questionnaire	1,500	1	1,500	0.75	1,125	48.72	54,810
N–SUMHSS VA Supplement	800	1	800	0.05	40	48.72	1,949
N–SUMHSS EHR Supplement*	37,000	1	37,000	0.12	4,440	48.72	216,317
I–TF Facility Registration Application Form	1,500	1	1,500	0.08	120	26.71	3,205

Information collection title	Number of respondents	Responses per respondent	Total responses	Hours per response (in hours)	Total burden hours	Average hourly wage	Total annual cost
Augmentation Screener Questionnaire	1,300	1	1,300	0.08	104	26.71	2,778
I–TF Online State Add Update Form	61	50	3,050	0.08	244	26.71	6,517
Totals			82,150		39,033		1,891,387

* The N–SUMHSS EHR Supplement will be administered one time during the three-year period.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A Rockville, MD 20852 *or* email him a copy at *Carlos.Graham@samhsa.hhs.gov.* Written comments should be received by November 14, 2023.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–20005 Filed 9–14–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Project: GLS State/Tribal Evaluation of the Garrett Lee Smith (GLS) State/Tribal Youth Suicide Prevention and Early Intervention Program—Reinstatement

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) is requesting clearance for the reinstatement of data collection associated with the previously approved evaluation of the Garrett Lee Smith (GLS) Youth Suicide Prevention and Early Intervention Program (GLS Suicide Prevention Program). The GLS State/Tribal Evaluation is a proposed redesign of the currently approved evaluation (OMB No. 0930–0286; Expiration, March 31, 2019) that builds on prior published GLS evaluation proximal and distal outcomes and aggregate findings from program activities (*e.g.,* Condron, Godoy-Garraza, Walrath, McKeon, & Heilbron, 2014; Walrath, Godoy-Garraza, Reid, Goldston, & McKeon, 2015; Godoy-Garraza, Walrath, Kuiper, Goldston, & McKeon, 2018; Condron, Godoy-Garraza, Kuiper, Sukumar, Walrath, & McKeon, 2018; Godoy-Garraza, Kuiper, Goldston, McKeon, & Walrath, 2019; Godoy-Garraza, Kuiper, Cross, Hicks, & Walrath, 2020; Goldston & Walrath, 2023). As a result of the vast body of information collected and analyzed through the previous cross-site evaluation SAMHSA has identified areas for additional investigation and the types of inquiry needed to move the evaluation into its next phase.

The purpose of the GLS Suicide Prevention Program is to facilitate a comprehensive public health approach to prevent suicide. Passed by Congress in 2004, the Garrett Lee Smith Memorial Act (GLSMA) was the first legislation to provide funding for States, Tribes, and institutions of higher education to develop, improve, and evaluate early intervention and suicide prevention programs. GLSMA mandates that the effectiveness of the GLS Suicide Prevention Program be evaluated through both cross-site and local evaluation and reported to Congress.

The GLS State/Tribal Evaluation is designed to gather detailed outcome and impact data to provide SAMHSA with the data and information needed to understand what works, why it works, and under what conditions, relative to program activities.

The purpose of the GLS State/Tribal Evaluation is to build the program's knowledge base by expanding on information gathered through the prior evaluation related to the process, products, context, and impacts of the GLS State/Tribal Program.

The GLS State/Tribal Evaluation incorporates three areas of evaluation to provide a robust understanding of the implementation, outcomes, and impacts of the GLS State/Tribal Program. A behavioral health equity and cultural equity lens will be applied to each area of evaluation to ensure a culturally specific understanding of intervention implementation, outcomes, and impacts.

The Implementation Evaluation inventories the array of strategies and services implemented by grantees and answers questions about the extent to which grantees are implementing required and allowed prevention strategies and services, including related settings, populations, and degree of fidelity to their work plan.

The Outcome Evaluation includes three studies related to trainings, youths' experience of services, and the continuity of care for at-risk youths—*i.e.,* the Training Outcomes Study; Youth Experience, Outcomes, and Resiliency Study (Youth Study); and Continuity of Care Study. These studies will provide a deeper examination of the effectiveness of these strategies as they relate to the long-term gains in trainee skills to identify and manage youths at risk for suicide; youths' perspectives, including an assessment of how youths experience services, supports and facets that encourage building resilience, stress tolerance, and self-management skills; and the effectiveness of a continuum of care that connects youths to treatment services and supports, and post-discharge follow-up.

Finally, the Impact Evaluation will combine data from the Implementation and Outcome Evaluations to assess the effectiveness of the GLS State/Tribal Program on decreasing suicide morbidity and mortality. Through implementation of this evaluation design, it will be possible to isolate prevention strategy impacts and explain cross-program impacts on short-term (*e.g.,* change in self-efficacy to identify change in the number of youths identified as at risk) and long-term program outcomes such as suicide attempts and deaths by suicide.

Nine data collection activities compose the GLS State/Tribal Evaluation—4 revised data collection instruments and 5 new data collection instruments.

Instrument Removals

The current GLS State/Tribal Evaluation does not include data collection with campus grantees, so all campus-specific instruments are being removed. Additionally, due to SAMHSA's current research priorities and the fulfillment of previous data collection requirements, 7 previously approved instruments are being revised or removed from the evaluation. These include: Behavioral Health Provider Survey (BHPS), Prevention Strategies Inventory (PSI) Campus, Student Behavioral Health Form (SBHF), Treatment as Prevention (TASP) Campus, Early Identification, Referral, Follow-up, and Treatment Individual Form, Early Identification, Referral, Follow-up, and Treatment Screening Form, Sustainability One-Year Follow-up (SFUP), SFUP Consent-to-Contact, and Training Utilization and Preservation—Survey (TUP–S) Campus.

Instrument Revisions

- *PSI:* the PSI is a web-based survey that captures all State/Tribal program prevention strategies and products. Data include strategy types and products distributed, intended audiences or populations of focus, and expenditures across major categories (*e.g.,* outreach and awareness, gatekeeper training, screening programs). Each major strategy includes sub-strategies, enabling grantees to specify and provide details about the sub-strategy, including implementation setting/location, timeframe, and intended audiences or populations of focus. The PSI is completed by grantee staff each quarter. PSI data will inform the Training Outcomes Study and Continuity of Care Study. Compared to the prior version of the PSI, the revised PSI includes all previous strategies and integrates new or revised questions related to the following areas of interest: (1) grantees use of emerging technologies (2) implementation of evidence based practices (EBPs), (3) cultural adaptations and health equity practices, and (4) program sustainability. In addition, we have revised the PSI to optimize the assessment of implementation timeframe and location and the alignment of audiences more precisely with grantee strategies implemented.
- *TASP:* the TASP is a web-based survey collecting aggregate-level training data from all State/Tribal grantees. Data include information about the type of training delivered, the number and roles of training participants, and the setting of the training, including ZIP code where the training is held (for use in analysis of GLS program impact). The TASP also assesses intended outcomes, as well as the number of online trainings completed, train-the-trainer events held, and booster trainings that follow the initial training. The TASP also gathers information about the inclusion of behavioral rehearsal or role-play and resources provided at the training as these elements have been found to improve retention of knowledge and skills post-training. Additionally, the TASP collects information about resources or materials provided to trainees (*e.g.,* mobile or online tools or applications for suicide prevention, fact or resource sheets, and wallet card information) to improve understanding of how skills can be maintained over time with materials provided at trainings (Cross et al., 2011). A TASP is completed by grantee program staff within 2 weeks of each in-person training activity and quarterly for virtual training activities. The revised TASP includes more refined assessment of training format including (1) in person; (2) virtual (facilitated on a specific date) and (3) virtual (self-directed; trainee completes training at own pace) and revisions to align with updated Government Performance and Results Act (GPRA) indicators.
- *EIRFT–I:* the web-based EIRFT–I gathers existing data for each at-risk youth identified as a result of the GLS Suicide Prevention Program (via a GLS-trained gatekeeper, a GLS-sponsored screening identification, or via a discharge from an emergency room or inpatient psychiatric treatment). Initial follow-up information (whether a service was received after referral or not) is obtained along with details on all services received in the 6 months following identification. Ensuring adequate resources and services for referral to care is a best practice for both screenings and gatekeeper trainings. In addition, a response system that ensures timely referrals is part of GLS grant requirements. Data can be extracted from case records or other existing data sources, including any organizational staff, community members, or family members who make a mental health identification and referral. Respondents include grant program staff and service providers representing all grantees in all funding years. Data collection is ongoing for each youth identified at risk, screened positive, or discharged from an emergency room or hospital for a suicide attempt and/or suicidal ideation. No personal identifiers are requested on the EIRFT–I. Grantee program staff enter EIRF–I data on an ongoing basis. EIRFT–I data will inform the Training Outcomes and Continuity of Care Studies. This instrument builds upon the previous EIRF–I, with the addition of data collection on follow-up post-discharge from emergency departments or psychiatric hospitalization and additional information on treatment.
- *EIRFT–S:* the web-based EIRFT–S gathers aggregate information about all screening activities conducted as part of the GLS program. Data include aggregate information on the number of youths screened for suicide risk through the GLS program, and the number screening positive. On an ongoing basis, the grantee will submit EIRFT–S forms. EIRFT–S forms are completed once per implementation of a screening tool in a group setting, once per month for clinical screenings, and once per month for one-on-one screenings. For each screening event in which multiple youths are screened at a given time, one EIRFT–S should be completed for the event. For one-on-one screenings in a clinical or other setting, one aggregated EIRFT–S is completed per month to reflect screening outcomes of all youths screened during the month. Grantees develop systems locally to gather identification and referral data, including extracting data from existing electronic health records or forms. No personal identifiers are requested on the EIRFT–S. EIRFT–S data will inform the Continuity of Care Study. This instrument continues the previous EIRF–S.

Instrument Additions

Five instruments will augment the evaluation.

- *TSA–P:* the Training Skills Assessment-Post Training (TSA–P) is a web-based survey to assess trainee confidence in identifying and managing youth at risk for suicide after participation in a training event. At the conclusion of all training events,

trainees will be asked to complete the TSA–P. The instrument is designed to assess baseline confidence following the training, knowledge of suicide prevention, confidence in identifying and managing suicidal youth, and pretraining behaviors related to identifying and managing youths at risk of suicide. As part of the TSA–P, trainees will be asked to complete a consent-to-contact web form indicating their willingness to be contacted by the GLS State/Tribal Evaluation team to participate in the TSA–F and TSA–PS. If a trainer is unable to administer the survey or consent-to-contact form electronically, or a trainee does not have access to a mobile device or computer, they may also complete the survey and consent-to-contact form on paper. The grantee will submit this information to ICF, through direct data entry into the Suicide Prevention Data Center (SPDC), within 2 weeks of the training event. Once consent to contact has been received, ICF will create a random sample of participants for the phone simulation and the 6- and 12-month follow-up surveys. TSA–P data will inform the Training Outcomes Study.

- *TSA–F:* The Training Skills Assessment-Follow up (TSA–F) is a follow-up web-based survey to assess trainees' sustained confidence and skills in identifying and managing youth at risk for suicide, as well as experience with managing at-risk youth since training (interventions with youths, additional training, etc.). The survey will be administered to a sample of training participants at 6- and 12-months after the initial TSA–P is completed. TSA–F data will inform the Training Outcomes Study.
- *TSA–PS:* The Training Skills Assessment-Phone Simulation (TSA–PS) is a follow-up phone simulation using standardized interaction to assess trainee skills in identification and management of a youth in suicidal crisis. A random subsample of training participants will be contacted by the evaluation team to participate in a simulated conversation with a youth in suicidal crisis portrayed by a trained actor. These simulations will occur between 3 and 6 months following their initial training. The simulated conversation between the training participant and actor will last approximately 10 to 30 minutes (community gatekeeper sessions will likely be shorter than the clinician interactions). In total, the session will be scheduled for 45 minutes to allow for consent, instructions, and a debrief. These phone sessions will be administered via tele video and recorded for additional post-simulation scoring and analysis. All sessions will be attended by the training participant, an actor, and an evaluation team member (observer), who will be responsible for facilitating the interaction, administering the consent, scoring the interaction (both in real time and based on the recording), and providing a short debrief to the training participant. TSA–PS data will inform the Training Outcomes Study.
- *YORS:* the Youth Outcomes and Resiliency Survey (YORS) is a web-based survey assessing the experience and outcomes of those youth who are served by the GLS Program. The instrument is designed to assess suicidality, positive youth development, satisfaction with services received, youth engagement experience, and family and school dynamics. Youth between the ages of 14–24 years who receive a positive screening result (as part of the GLS program activities) and receive a referral to a mental health service, or youths who attend skills-based training will be considered eligible for the study. A sample of eligible youth will be enrolled in the Youth Study. The age of the youth respondent will dictate how consent is obtained for the YORS. All youths under the age of 18 at selected grantee sites will be asked to have their parent complete consent-to-contact forms and participate in the YORS and Youth Experience Reflective (YER) Journal when they consent to receiving screening from the grantee. Youths over the age of 18 will be asked to complete consent-to-contact forms at the time of initial referral and screening (after gatekeeper identification). The YORS will be administered at 3-, 6-, and 12-months post enrollment, with enrollment occurring no later than 1 month following referral to a behavioral health service.
- *YER Journal:* the YER Journal is a web-based survey consisting of a weekly journal prompt that youth can respond to with a photo and corresponding narrative interpretation of the photo. For example, youths may be asked to reflect on a recent experience receiving services. The youth would be asked to submit a photo that represents that experience, followed by a prompt that asks: ''What words come to mind? How did it make you feel?'' The narrative description of what the photo represents will be analyzed using qualitative methodologies. Up to 25 youths will be recruited to participate in the YER Journal each year. Youths participating in the YORS will be invited to join the YER Journal via contact through the YORS data collection activities. For example, a youth may complete their third quarterly YORS follow-up, and be invited to join the YER Journal study simultaneously. Our team will leverage innovative data collection technology to engage youth. Weekly prompts will be sent to youths for 6 weeks post enrollment to discover, for example, which components of what youths are receiving are meaningful and helpful, and how youths may be utilizing skills or services following the initial screening, both in the short and long terms.

The estimated response burden to collect this information associated with the redesigned GLS State/Tribal Evaluation is as follows annualized over the requested 3-year clearance period is presented below:

TOTAL AND ANNUALIZED AVERAGES—RESPONDENTS, RESPONSES AND HOURS

Type of respondent	Instrument	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate ($)	Total cost ($)
Project Evaluator	PSI	31	4	124	1.25	155	[1]37.11	$5,752
Project Evaluator	TASP	31	10	310	0.25	78	37.11	2,876
Project Evaluator	EIRFT-Individual Form	31	4	124	2	248	37.11	9,203
Project Evaluator	EIRFT-Screening Form	31	4	124	0.75	93	37.11	3,451
Provider Trainee	TSA Consent to Contact	10,000	1	10,000	0.08	800	27.46	21,968
Provider Trainee	TSA–P	10,000	1	10,000	0.3	3000	27.46	82,380
Provider Trainee	TSA 6-month	187	1	187	0.3	56	27.46	1,541
Provider Trainee	TSA 12-month	140	1	140	0.3	42	27.46	1,153
Provider Trainee	TSA–PS	101	1	101	0.75	76	27.46	2,080
Youth	YORS baseline	300	1	300	0.5	150	7.25	1,088
Youth	YORS 3-month	240	1	240	0.5	120	7.25	870
Youth	YORS 6-month	192	1	192	0.5	96	7.25	696
Youth	YORS 12-month	115	1	115	0.5	58	7.25	417

TOTAL AND ANNUALIZED AVERAGES—RESPONDENTS, RESPONSES AND HOURS—Continued

Type of respondent	Instrument	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate ($)	Total cost ($)
Youth	YER Journal	25	6	150	0.25	38	7.25	272
Total		21,424		22,107		5,008		133,747

* Rounded to the nearest whole number.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, *carlos.graham@samhsa.hhs.gov.* Written comments should be received by November 14, 2023.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–20009 Filed 9–14–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7066–N–11]

60-Day Notice of Proposed Information Collection: Floodplain Management and Protection of Wetlands; OMB Control No.: 2506–0151

AGENCY: Office of Community Planning and Development, 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:* November 14, 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 *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 and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Glenn Schroeder, Program Analyst, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Glenn Schroeder at *glenn.a.schroeder@hud.gov* or telephone 202–402–5849. 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: 24 CFR 55, Floodplain Management and Protection of Wetlands.

OMB Approval Number: 2506–0151.

Type of Request: Extension of currently approved collection:

Description of the need for the information and proposed use: 24 CFR 55 implements decision-making procedures prescribed by Executive Order 11988 with which applicants must comply before HUD financial assistance can be approved for projects that are located within floodplains. Records of compliance must be kept.

Respondents: 575.

Information Collection/Form Number: N/A.

Estimated Number of Respondents: 575.

Frequency of Response: 1.

Responses per Annum: 575.

Average Burden Hours per Response: Varies.

Total Estimated Burdens: 2,500 hours.

Information collection/form No.	Estimated number of respondents	Frequency of response	Responses per annum	Average burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
ICR#: 2506–0151, 24 CFR 55.20	275	1	275	8	2,200	44.00	96,800
ICR#: 2506–0151, 24 CFR 55.21	300	1	300	1	300	44.00	13,200
Total	575	1	575		2,500		110,000

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

[1] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Survey Researchers (code 19–3022); *https://www.bls.gov/oes/current/naics5_541720.htm.*

information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2023–19970 Filed 9–14–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7075–N–10]

60-Day Notice of Proposed Information Collection: Data Collection for HUD's Innovative Housing Showcase; OMB Control No.: 2528–NEW

AGENCY: Office of Policy Development and Research, 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:* November 14, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting, ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Anna Guido, 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: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna Guido at *Anna.P.Guido@hud.gov,* telephone 202–402–5535 (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. Guido.

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: Data Collection for HUD's Innovative Housing Showcase.

OMB Approval Number: 2528–New.

Type of Request: New Collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD seeks to collect information that will be used to identify exhibitors for the Innovative Housing Showcase (Showcase). HUD accepts applications for the Showcase. A template application form will streamline information collection. Below is a brief description of the Innovative Housing Showcase: The Innovative Housing Showcase (Showcase) is a public event to raise awareness of new, innovative housing technologies, especially offsite constructed or factory-built housing. HUD is seeking potential exhibitors who have developed innovative housing technologies to show their technologies to the public.

Respondents: Product manufacturers, innovators, and construction industry stakeholders.

Estimated Number of Respondents: 100.

Estimated Number of Responses: 100.

Frequency of Response: Once annually.

Average Hours per Response: 3 hours.

Total Estimated Burdens: 300 hours.

Estimated Total Annual Cost: The cost to respondents to complete an application is estimated at the marketing manager median hourly wage rate ($76.10) for 3 hours of work. The total estimated cost is $22,830.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Innovative Housing Showcase	100	1	100	3	300	$76.10	$22,830

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 comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy, Development and Research.

[FR Doc. 2023–19971 Filed 9–14–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–55]

30-Day Notice of Proposed Information Collection: CDBG–PRICE Competition Application Collection, OMB Control No.: 2506–New

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* October 16, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email; *Colette.Pollard@hud.gov* or 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. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 13, 2023 at 88 FR 44815.

A. Overview of Information Collection

Title of Information Collection: CDBG–PRICE Competition Grant Program (Manufactured Housing Community Improvement Grant Program) Application Collection.

OMB Approval Number: 2506–PENDING.

Type of Request: New Collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD is issuing this NOFO under the authority of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328, enacted December 29, 2022) to collect applications for the preservation and revitalization of manufactured housing and eligible manufactured housing communities (including pre-1976 mobile homes).

Respondents: State, tribal and local governments; manufactured housing communities, cooperatives, non-profit entities, and Community Development Finance Institutions.

Estimated Number of Respondents: 100+.

Estimated Number of Responses: 100.

Frequency of Response: 1.

Average Hours per Response: 20.

Total Estimated Burdens: 2,000.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
See above	100	1	100	20	2,000	$46.58	$93,700

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.

(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.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–19968 Filed 9–14–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2023–0160; FXES11130200000–234–FF02ENEH00]

East Foundation Programmatic Safe Harbor Agreement for Ocelot Reintroduction and Enhancement of Survival Permit Application; South Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of an application for an enhancement of survival permit pursuant to the Endangered Species Act for the proposed *East Foundation Programmatic Safe Harbor Agreement for Ocelot Reintroduction* in South

Texas. The application package includes the safe harbor agreement and a draft screening form pursuant to the National Environmental Policy Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these documents. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: *Submission of comments:* We will accept comments received on or before October 16, 2023.

ADDRESSES: *Obtaining documents:* You may obtain copies of the enhancement of survival permit application, safe harbor agreement, and draft National Environmental Policy Act screening form online in Docket No. FWS–R2–ES–2023–0160 at *https://www.regulations.gov.* Other related information may be obtained online at *https://www.eastfoundation.net/.*

Submitting comments: You may submit written comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R2–ES–2023–0160; or
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R2–ES–2023–0160; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Please note which document(s) your comment references. For more information, see Public Availability of Comments.

FOR FURTHER INFORMATION CONTACT: Chuck Ardizzone, Field Supervisor, U.S. Fish and Wildlife Service, Houston, Texas, Coastal Ecological Services Field Office; telephone (281) 286–8282. 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: We, the U.S. Fish and Wildlife Service (Service), announce the availability of an application for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) for the proposed *East Foundation Programmatic Safe Harbor Agreement for Ocelot Reintroduction* in South Texas. The application package includes the safe harbor agreement (SHA) and a draft screening form pursuant to the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*).

If the requested enhancement of survival permit is approved, it would authorize East Foundation (applicant) for incidental take of the ocelot (*Leopardus* (=*Felis*) *pardalis*) resulting from conservation and management activities covered by the SHA. With this notice, we also announce the availability of a draft screening form supporting a proposed categorical exclusion that has been prepared to evaluate the enhancement of survival permit application in accordance with NEPA requirements.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538(19)). However, under section 10(a) of the ESA, we may issue permits to authorize take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened species are found at 50 CFR 17.21–22 and 50 CFR 17.31–32, respectively.

Under an SHA, participating landowners voluntarily undertake conservation and management activities on their properties to benefit species listed under the ESA. Enhancement of survival permits are issued to applicants in association with approved SHAs to authorize take of the covered species from covered activities on the enrolled lands that are identified in the SHA. Covered activities are those otherwise lawful actions that cause take of a covered species and for which take is authorized by a permit under 50 CFR 17.22(b)–(c) 50 CFR 17.32(b)–(c), as applicable. Under an SHA, the Service may authorize incidental taking of a covered species at a level that enables the participating landowner ultimately to return the enrolled property back to agreed-upon baseline conditions. Through the SHA and the associated enhancement of survival permit, the Service also provides assurances to enrolled property owners that additional land, water, and/or natural resource use restrictions will not be imposed as a result of their voluntary conservation actions.

Application requirements and issuance criteria for enhancement of survival permits for SHAs are found at 50 CFR 17.22(d)(2)(ii) and 17.32(d)(2)(ii). See also the joint policy on SHAs, which was published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (June 17, 1999, 64 FR 32717).

Proposed Action

The proposed action involves the issuance of an enhancement of survival permit to the East Foundation (applicant) in association with the *East Foundation Programmatic Safe Harbor Agreement for Ocelot Reintroduction* in South Texas. The ocelot is listed as an endangered species throughout its range in South and Central America, Mexico, and southern Texas and southern Arizona (37 FR 6476, 47 FR 31670). In Texas, ocelots are currently known to occur in coastal South Texas in two small, isolated breeding populations that total less than 100 known individuals (Service 2016).

The purpose of the proposed SHA is to expand the ocelot's occupied range in South Texas by reintroducing the species on the East Foundation's San Antonio Viejo Ranch in Jim Hogg and Starr Counties and to provide additional habitat for reintroduced ocelot dispersal onto private lands proximate to the San Antonio Viejo Ranch in Brooks, Hidalgo, Jim Hogg, Starr, and Zapata Counties. It is estimated that 362.6 square kilometers (km^2) (89,600 acres (ac)) of suitable ocelot habitat exist within this area, with 124.3 km^2 (30,715 ac) located on the San Antonio Viejo Ranch. Pursuant to the SHA, the East Foundation will enroll participating landowners through issuance of certificates of inclusion. The enhancement of survival permit would authorize incidental take that may result from the implementation of the proposed conservation and management activities on the enrolled properties during a 30-year permit term, with an option to return the properties to the baseline condition at the conclusion of the permit.

Proposed conservation measures include ocelot reintroduction activities, monitoring, habitat management, and research. Reintroduction activities include the construction of release enclosures, maintenance and monitoring of ocelots in these enclosures, and the actual release of behaviorally and genetically suitable ocelots from the enclosures. Such activities will be implemented in accordance with the most up-to-date version of the *Ocelot Breeding and Reintroduction Manual* (Ocelot

Reintroduction Study Captive Propagation Team 2023) cooperatively developed by the East Foundation, Service, and other partners. Monitoring of reintroduced ocelots and their descendants will occur via geolocation devices and cameras and will allow the East Foundation to evaluate the survival and behavior of individual ocelots on the San Antonio Viejo Ranch and enrolled properties. Habitat management activities are additional, optional measures to further benefit ocelot survival in the reintroduction area. These activities may include wildfire mitigation practices, minimization of brush clearing, habitat restoration, construction of supplemental drinking sources, and potential predator or competitor control. The East Foundation, with the cooperation of partners as appropriate, may also pursue opportunities for additional research in support of ocelot reintroduction.

Proposed management practices include otherwise lawful activities such as cattle grazing, building and maintaining ranch infrastructure, agriculture operations, agritourism, vegetation and wildlife management, and energy development interests. Any negative impacts to ocelots or their habitat due to management practices are anticipated to be minimal and temporary. The ocelot reintroduction program is expected to have a net conservation benefit and contribute to recovery by supporting multiple recovery actions identified in the species' current recovery plan (Service 2016), exceeding any possible negative impacts that may occur on the San Antonio Viejo Ranch or other participating properties due to the covered and otherwise legal activities.

Next Steps

We will evaluate the permit application, SHA, draft screening form, and comments we receive to determine whether the SHA application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the SHA and issue the enhancement of survival permit under section 10(a)(1)(A) of the ESA to the applicant in accordance with the terms of the SHA and specific terms and conditions of the authorizing permit. We will not make our final decision until after the 30-day comment period ends and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2023–19936 Filed 9–14–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23WC000JU4200; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Next Generation Volcano Hazards Assessment (NGVHA)

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 14, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Jessica Ball, P.O. Box 158, Moffett Field, CA 94035; or by email to *jlball@usgs.gov.* Please reference OMB Control Number 1028–NEW Next Generation Volcano Hazards Assessments in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jessica Ball by email at *jlball@usgs.gov,* or by telephone at 650–439–2597. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address,

or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: This project will collect usability data and user feedback for the purpose of updating and improving USGS Volcano Hazards Assessment (VHAs) and associated hazard communication products. This collection may take place via survey, direct interview, focus groups, listening sessions, workshops, or visual exercises such as eye-movement tracking or map annotation. Collection may be done either in-person or virtually (to reduce travel burdens). The questions asked will be consistent across all various methods of collection. This information will be used to assess partner needs with regard to the VHAs and derivative products created by the USGS Volcano Science Center and will ultimately be published in the form of white papers and journal articles as well as being used to create internal templates for the future production (and co-production) of hazard products.

Title of Collection: Next Generation Volcano Hazards Assessments.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Federal, state, local, and Tribal government officials; emergency managers; first responders; community groups; individuals/households.

Total Estimated Number of Annual Respondents: 500 (across all methods).

Total Estimated Number of Annual Responses: 500.

Estimated Completion Time per Response: Varies from 15 minutes to 8 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 300 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Christina Neal,

Director, USGS Volcano Science Center.

[FR Doc. 2023–19938 Filed 9–14–23; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2023–N062; FVHC98220410150–XXX–FF04H00000]

Deepwater Horizon Natural Resource Damage Assessment Open Ocean Trustee Implementation Group Final Restoration Plan 3 and Environmental Assessment: Birds and Finding of No Significant Impact

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces that the Deepwater Horizon (DWH) natural resource Trustees for the Open Ocean Trustee Implementation Group (Open Ocean TIG, or TIG) have prepared and are making available to the public the *Final Restoration Plan 3 and Environmental Assessment: Birds* (Final RP/EA) and Finding of No Significant Impact (FONSI). The Final RP/EA proposes alternatives to help restore birds injured by the DWH oil spill. The Final RP/EA evaluates a reasonable range of project alternatives under the Oil Pollution Act (OPA) and the OPA Natural Resource Damage Assessment regulations, and the National Environmental Policy Act (NEPA) and its implementing regulations, and selects seven projects for funding and implementation. A no action alternative is also evaluated pursuant to NEPA.

ADDRESSES: *Obtaining Documents:* You may view and download the Final RP/EA and FONSI at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/open-ocean.* You may also request a CD–ROM containing the Final RP/EA and FONSI (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado, at *nanciann_regalado@fws.gov* or 678–296–6805. 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: The Deepwater Horizon (DWH) natural resource Trustees for the Open Ocean Trustee Implementation Group (Open Ocean TIG, or TIG) have prepared the *Final Restoration Plan 3 and Environmental Assessment: Birds* (Final RP/EA) and Finding of No Significant Impact (FONSI). The Final RP/EA proposes alternatives to help restore birds injured by the DWH oil spill. The Final RP/EA evaluates a reasonable range of 11 project alternatives under the Oil Pollution Act (OPA) and the OPA Natural Resource Damage Assessment (NRDA) regulations (15 CFR 990), and the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR 1500–1508), and selects seven projects under the Birds Restoration Type for funding and implementation. A no action alternative is also evaluated pursuant to NEPA. The total estimated cost to implement the Open Ocean TIG's seven selected alternatives is approximately $33,280,000. The purpose of this notice is to inform the public of the availability of the Final RP/EA and FONSI.

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* (DWH), which was drilling a well for BP Exploration and Production, Inc. (BP), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in the release of millions of barrels of oil and other discharges into the gulf. Under the authority of OPA, designated Federal and State Trustees, acting on behalf of the public, assessed the injuries to natural resources, and the services they provide, and prepared the *Deepwater Horizon Oil Spill Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement* (Final PDARP/PEIS) and subsequent record of decision (ROD), which sets forth the governance structure and process for DWH restoration planning under the OPA NRDA regulations. On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a consent decree resolving civil claims by the Trustees against BP.

The Open Ocean TIG, which is composed of four Federal agencies—the Department of the Interior, the National Oceanic and Atmospheric Administration, the United States Environmental Protection Agency, and the United States Department of Agriculture—selects and implements restoration projects within the TIG's Restoration Area in accordance with the consent decree. The PDARP/PEIS, ROD, consent decree, and information on the DWH Trustees can be found at *https://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan.*

Background

On March 25, 2021, the Open Ocean TIG issued a notice of solicitation on the Gulf Spill Restoration website requesting project ideas for the Sturgeon and Birds Restoration Types. On March

11, 2022, the TIG announced they had reviewed project idea submissions and initiated drafting an RP/EA, which would include a reasonable range of restoration alternatives (projects) for the Birds Restoration Type.

The TIG released the Draft RP/EA for public review and comment on March 14, 2023, and published a notice of availability in the **Federal Register** (88 FR 15734). The comment period ran through April 28, 2023. To facilitate public understanding of the document, the TIG held webinars on March 28 and April 4, 2023, during which public comments were solicited. After the public review period closed, the TIG reviewed the comments received, prepared responses to those comments, finalized the plan, and prepared a FONSI.

Overview of the Open Ocean TIG's Final RP/EA

In the Final RP/EA, the Open Ocean TIG analyzes a reasonable range of 11 alternatives and, pursuant to NEPA, a no action alternative. The TIG's seven preferred alternatives, listed below, were selected for funding and implementation.

- Predator Removal and Seabird Nesting Colony Restoration at Mona Island
- Seabird Nesting Colony Reestablishment and Protection at Desecheo National Wildlife Refuge
- Seabird Nesting Colony Protection and Enhancement at Dry Tortugas National Park
- Seabird Bycatch Reduction in Northeast U.S. and Atlantic Canada Fisheries
- Northern Gannet Nesting Colony Restoration in Eastern Canada
- Common Tern Nesting Colony Restoration in Manitoba
- Invasive Goat Removal to Restore Seabird Nesting Habitat in St. Vincent and the Grenadines

Funding to implement the selected alternatives will come from the Birds restoration allocation. The total estimated cost to implement the seven selected alternatives is approximately $33,280,000. Restoration planning in the Open Ocean Restoration Area will continue.

Administrative Record

The Administrative Record for the Final RP/EA can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord* under folder 6.5.2.2.3.

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR 1500–1508.

Mary Josie Blanchard,

Department of the Interior, Director of Gulf of Mexico Restoration.

[FR Doc. 2023–19738 Filed 9–14–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500171133]

Notice of Availability of the Final Environmental Impact Statement for Nevada Vanadium Company Gibellini Vanadium Mine Project, Eureka County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (EIS) for the Nevada Vanadium Company Gibellini Vanadium Mine Project.

DATES: The BLM will not issue a decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: The Final EIS and documents pertinent to this proposal are available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/2000633/510.*

FOR FURTHER INFORMATION CONTACT: Scott Distel, Project Manager, telephone: (775) 635–4093; address: 50 Bastian Road, Battle Mountain, Nevada, 89820; email: *sdistel@blm.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 for contacting Mr. Distel. 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:

Purpose and Need for the Proposed Action

The BLM's purpose for the action is to respond to Nevada Vanadium Company's (NVV) proposal, as described in its proposed Plan of Operations, and to analyze the potential environmental effects associated with the Proposed Action, which is the operator's proposed Plan of Operations, and alternatives to the Proposed Action. NEPA mandates that the BLM evaluate the potential effects of the Proposed Action and develop alternatives. The BLM's need for the action is established by the BLM's responsibilities under section 302 of FLPMA and the BLM Surface Management Regulations at 43 CFR subpart 3809 to respond to a proposed Plan of Operations and ensure that operations prevent unnecessary or undue degradation of the public lands.

Proposed Action and Alternatives

Under the proposed Plan of Operations, NVV would construct and operate an open pit mine in the southern extent of the Fish Creek Range. Facilities associated with the Proposed Action include development of an open pit mine, rock disposal area, crushing facilities and stockpile, heap leach pad, process facility, process and make-up water ponds, borrow areas, mine and access roads, water and power supply lines, and ancillary facilities. The estimated project life consists of 1.5 years of construction, 7 years of operation, 4 years of active reclamation and closure, and up to 30 years of post-closure monitoring. In addition, NVV would complete exploration operations as part of the proposed Plan of Operations. The project area includes a total of 6,456 acres of BLM-administered public lands, of which approximately 806 acres of surface disturbance would occur due to project-related operations. No state or private lands are included in the project area. The operator would reclaim surface disturbances under the Proposed Action and would prevent unnecessary or undue degradation of the lands. Final reclamation of the project area would occur at the end the project although every effort would be made to identify concurrent reclamation opportunities during the life of the operation.

The *South Access Road Alternative* would include the same mine components as described for the Proposed Action, except the access road would be constructed in a different location. This alternative access road would be approximately 7 miles long and extend from County Road M–103 (Duckwater Road) to the project area.

The access road would be constructed parallel to the power line corridor. Overall, this alternative would result in approximately 38 additional acres of surface disturbance relative to the Proposed Action. Total surface disturbance would include 844 acres of BLM-administered land. Post-reclamation topography would be similar to that of the Proposed Action, except the access road would be in a different location.

The *Renewable Energy Alternative* would consist of the same overall operations as described for the Proposed Action except this alternative would include supporting the mine operations with a combination of renewable energy sources and a utility interconnection with future large-scale battery storage. This alternative would include the installation of a solar energy facility with enough solar electric photovoltaic capacity for the site to become a net generation facility with battery storage able to perform peak smoothing and daily load management.

This alternative would result in approximately 33 additional acres of surface disturbance compared to the Proposed Action. Total surface disturbance for the Renewable Energy Alternative would include 839 acres of public lands.

Under the *No Action Alternative,* the BLM would not authorize the Plan of Operations, and the operations described in the Proposed Action would not occur. Mineral resources would remain undeveloped, and the construction and operation of the proposed mine and associated facilities would not occur.

Based on the analyses contained in the EIS for the proposed Gibellini Vanadium Mine Project, and after carefully considering input received from the public and cooperating agencies, the BLM has selected the Renewable Energy Alternative as the BLM's environmentally preferred alternative.

Public comments on the Draft EIS received and internal BLM review were considered and incorporated as appropriate into the Final EIS. Public comments resulted in the addition of clarifying text but did not significantly change the impact analyses.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10.)

Douglas W. Furtado,

District Manager, Battle Mountain District.

[FR Doc. 2023–19920 Filed 9–14–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–WS—NPS0036398 ; PPWOWMADL3, PPMPSAS1Y.TD0000 (222); OMB Control Number 1024–0022]

Agency Information Collection Activities; Backcountry/Wilderness Use Permit

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before October 16, 2023.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** 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. Please provide a copy of your comments to Phadrea Ponds, NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive (MS–244) Reston, VA 20192 (mail); or *phadrea_ponds@nps.gov* (email). Please include 1024–0022 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Roger Semler, Chief, Wilderness Stewardship Division at *roger_semler@nps.gov* (email) or 202–430–7615 (Phone). Please reference OMB Control Number 1024–0022 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501*et seq.*) and 5 CFR 1320.8(d)(1), we provide the public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **FederalRegister** notice with a 60-day public comment period soliciting comments on this collection of information was published on (87 FR 73776) on December 1, 2022. We received the following comments in response to that Notice:

Comment #1: Email From John Ryter on 12/1/2022

I'd like to comment on the proposal to require permits for climbing in national parks. It's hard to determine whether this proposal means climbers would be required to get permits in advance, and whether there would be limits on the number of permits available for a given day. If there is a limit on how many are available on a given day, I am concerned that the addition of permits would cause fewer climbers to abandon or reschedule their climbs due to weather, and we would see an increase in injuries, rescues, and fatalities occurring in national parks. This could be mitigated by reducing the time in advance that permits could be acquired (*e.g.,* cannot get permits more than 4 days in advance), but that presents its own challenges.

There are already cases where a permit is a de facto requirement for doing a climb, such as those where backcountry camping is necessary for most non-professional climbers. In my experience, this hasn't been an issue (there have been enough sites available that it was possible to get a site the day of), but since so many climbs require early starts (6 a.m. or earlier), day-of permits would be pretty challenging to do. It would also be good to link those sorts of campsites, like the lower saddle of the Grand Teton, with the climbing permits in some way so people don't end up with one and not the other.

If it's simply a sign-in sheet at the trailhead, that seems very reasonable and I have no concerns. My only other question is what the cutoff grade for climbing would be—all off-trail travel, class 3 or 4 or higher, or roped vs un-roped? Either way, being able to do the permit at the trailhead or online would be a great idea.

NPS Response/Action Taken

During the 60-day **Federal Register** comment period, the National Park Service proposed creating a new Form

10–404C that intends to renew the current Backcountry/Wilderness related to permitting fixed anchors in the wilderness. *After review and consultation, the NPS will not add the new form to the collection.*

Comment #2: Email From the Alaska State ANILCA Program Coordinator on 1/26/2023

A three-page letter (attached in ROCIS) submitted in PDF format was submitted expressing the State of Alaska's viewpoints regarding a proposed new form 10–404C—Application to install fixed anchors in the wilderness.

NPS Response/Action Taken

During the 60-day **Federal Register** comment period, the National Park Service proposed creating a new Form 10–404C. After review and consultation, the NPS will not add the new form to the collection.

Comment #3: Email From Access Fund Vice President of Policy and Government Affairs on 1/27/2023

A four-page letter (attached) was submitted expressing viewpoints and concerns regarding creating an application form regarding a proposed new form 10–404C—Application to install fixed anchors in the wilderness installation of fixed anchors in the wilderness.

NPS Response/Action Taken

During the 60-day **Federal Register** comment period, the National Park Service proposed creating a new Form 10–404C. After review and consultation, the NPS will not add the new form to the collection.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Backcountry/Wilderness Use Permit is an extension of the NPS statutory authority and responsibility to protect the park areas it administers and to manage the public use thereof (54 U.S.C. 100101, 100751, and 320102). In 1976, the NPS initiated a backcountry registration system by the regulations codified in 36 CFR 1.5, 1.6, and 2.10. The NPS regulations codified in 36 CFR parts 1 through 7, 12, and 13 are designated to implement statutory mandates that provide for resource protection and public enjoyment. The registration system aims to provide users access to backcountry and wilderness areas of national parks while enhancing the protection of natural and cultural resources by using better management practices by the park management. Data collected through the registration process serves as an important resource that informs backcountry/wilderness management and stewardship planning, decision-making, and operations, and provides a means of disseminating public safety and outdoor ethics messages regarding backcountry/wilderness travel and camping along with continuing opportunities for primitive and unconfined recreation. Permitting enhances the ability of the NPS to educate users on potential hazards, search and rescue efforts, and resource protection. The objectives of the permit system carried out by park managers are to ensure:

(1) Requests by backcountry users are evaluated by park managers per applicable statutes and NPS regulations.

(2) The use of consistent standards and permitting criteria throughout the agency.

(3) To the extent possible, the use of a single and efficient permitting document, NPS Forms 10–404 *Backcountry/Wilderness Use Permit Application* and 10–404A *Backcountry/Wilderness Use Permit Hangtag* are used to provide access to NPS backcountry areas, including areas that require a reservation to enter where use limits are imposed per other NPS regulations. The 10–404AK *Alaska Backcountry/Wilderness Use Permit Application,* is used within Alaskan park units, Denali National Park and Preserve and Glacier Bay National Park and Preserve, due to unique, park-specific requirements like the additional permitted methods of travel as regulated by ANILCA Section 1110(a).

We've decided to not add the previously proposed (in the 60-day FRN publication) new form 10–404C *Backcountry/Wilderness Use Permit Application for Climbing* to this collection, upon consideration of the comments received during the 60-day comment period.

Title of Collection: Backcountry/Wilderness Use Permit, 36 CFR 1.5, 1.6, and 2.10.

OMB Control Number: 1024–0022.

Form Number: NPS Forms 10–404 *Backcountry/Wilderness Use Permit Application,* 10–404A *Backcountry/Wilderness Use Permit Hangtag,* 10–404AK *Alaska Backcountry/Wilderness Use Permit Application.*

Type of Review: Renewal of a currently approved collection.

Respondents/Affected Public: Individuals, private sector, and state, local, or tribal government entities applying to use backcountry and wilderness areas within units of the national park system.

Total Estimated Number of Annual Responses: 473,872.

Estimated Completion Time per Response: Varies from 5 minutes to 8 minutes depending on the activity.

Total Estimated Number of Annual Burden Hours: 51,337.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–19979 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036554; 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 associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Los Angeles and Ventura Counties, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 16, 2023.

ADDRESSES: Patricia Capone, PMAE, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@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, 43 individuals were removed from Los Angeles County, CA. In 1877, Paul Schumacher led an expedition on behalf of the PMAE to the Channel Islands. Schumacher removed the human remains from an area he described as ''Graves at the Isthmus'' on Santa Catalina Island. The 15 associated funerary objects are one bone awl; one lot consisting of glass and shell beads; one lot consisting of brass buttons and glass and shell beads; one lot consisting of shell beads and faunal fragments; one lot consisting of fragmentary faunal remains; one lot consisting of a copper cup, cloth, basket fragments, and a string of beads; and nine bags of shells beads.

Human remains representing, at minimum, two individuals were removed from Los Angeles County, CA. During the 1877 expedition, Schumacher removed the human remains from an area he identified as Johnson's Place on Santa Catalina Island. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Los Angeles County, CA. As part of the same 1877 expedition, Schumacher removed the human remains from an area he identified as Pots Valley on Santa Catalina Island. No associated funerary objects are present.

Human remains representing, at minimum, 23 individuals were removed from Los Angeles County, CA. In 1877, Paul Schumacher visited San Clemente Island as part of the PMAE expedition and removed the human remains from unknown locations on San Clemente Island. No associated funerary objects are present.

Human remains representing, at minimum, five individuals were removed from Los Angeles County, CA. In 1878, Paul Schumacher led an expedition on behalf of the PMAE to the Channel Islands. During this expedition, he removed the human remains from a place he identified as Whitney's Place on Santa Catalina Island. No associated funerary objects are present.

Human remains representing, at minimum, one individual was removed from San Nicolas Island in Ventura County, CA, at an unknown date. Mrs. Thomas Bishop donated the human remains to the PMAE in 1907. Bishop likely acquired the human remains from Paul Schumacher after one of his expeditions to San Nicolas Island between 1875 and 1878. No known associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects 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 evidence were used to reasonably trace the relationship: oral traditional, geographical, biological, kinship, and archeological.

Oral tradition, geographical, biological, kinship, and archeological evidence indicate the southern Channel Islands are culturally affiliated to the mainland coastal groups that are known in the anthropological record as the Luiseño, Chumash, and Gabrielino peoples. (The Gabrielino, a nonfederally recognized Indian group, are related linguistically to the Luiseño.)

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 76 individuals of Native American ancestry.
- The 15 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the La Jolla Band of Luiseno Indians, California; Pala Band of Mission Indians; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Indians (*Previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California); Rincon Band of Luiseno Indians (*Previously* listed as Rincon Band of Luiseno Mission Indians of Rincon Reservation, California); Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California; and the Soboba Band of Luiseno Indians, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects 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 and associated funerary objects in this notice to a requestor may occur on or after October 16, 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 and associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes 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: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19959 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036553; 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 associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Jefferson County, CO.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 16, 2023.

ADDRESSES: Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@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 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 PMAE.

Description

In 1959 and 1960, the human remains of, at minimum, six individuals were removed by Cynthia Irwin-Williams and Henry Irwin from the Magic Mountain site (5JF223), in Jefferson County, CO, during field excavations undertaken on behalf of Harvard University. The six associated funerary objects are three shell beads, one shell fragment, one lot consisting of charcoal and dirt, and one lot consisting of faunal remain fragments.

Sometime prior to 1960, the human remains of, at minimum, three individuals were removed by amateur archeologist Jack Putnam from the Magic Mountain site (5JF223) in Jefferson County, CO. These human remains were donated by Putnam to PMAE at an unknown date. The 10 associated funerary objects are one antler fragment, two chipped stone flakes, one organic floral remain, and six faunal remain fragments.

In 1940, the human remains of, at minimum, one individual were removed by Harold A. and Betty H. Huscher of the Colorado Museum of Natural History (now Denver Museum of Nature and Science) from the Magic Mountain Site (5JF223) in Jefferson County, CO. In 1960 or later, the human remains came into the possession of PMAE. The one associated funerary object is a faunal remain fragment.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from a known geographic location. This location is the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission and a treaty.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- The 17 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Cheyenne and Arapaho Tribes, Oklahoma; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes 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, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 16, 2023. If competing requests for disposition are received, the PMAE must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes 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 and 10.11.

Dated: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19958 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036560; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Fish and Wildlife Service, Southwest Region, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Cameron County, TX.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 16, 2023.

ADDRESSES: George MacDonell, U.S Fish and Wildlife Service, Southwest Region, 500 Gold Avenue SW, Albuquerque, NM 87102, telephone (505) 312–3683, email *george_macdonell@fws.gov.*

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 USFWS. 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 USFWS.

Description

Human remains representing, at minimum, one individual were removed from the Unland Site (41CF111) at Laguna Atascosa Wildlife Refuge, in Cameron County, TX. On or around August 10, 1976, human remains belonging to three individuals were uncovered during construction. Sometime prior to November 16, 1990, the remains of these individuals were transferred to an unrecorded Indian Tribe and were reburied. However, fragmentary human remains that had been transferred to the Texas Historical Commission still remained in their custody. On March 12, 2001, a long bone fragment belonging to one of the reburied individuals and several associated funerary objects were found at the Texas Historical Commission. The five associated funerary objects are three lots consisting of organic burial matrixes; one turtle shell; and one lot consisting of clay balls.

Cultural Affiliation

The human remains and associated funerary objects 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: oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the USFWS has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The five objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects 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 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 and associated funerary objects in this notice to a requestor may occur on or after October 16, 2023. If competing requests for repatriation are received, the USFWS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The USFWS 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: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19963 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036555; 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 removed from West Feliciana Parish, LA.

DATES: Repatriation of the human remains in this notice may occur on or after October 16, 2023.

ADDRESSES: Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@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

In 1972, human remains representing, at minimum, two individuals were removed from the Trudeau Site (LMS 29–J–1) in West Feliciana Parish, LA, by Jeffrey P. Brain as part of the Lower Mississippi Survey Expedition. At that time, the Survey Expedition was a project of Harvard University. No associated funerary objects are present.

Based on Native American ceramics, glass beads, and European objects recovered from LMS 29–J–1, the Trudeau site is known to have been the primary village and cemetery of the Tunica people from 1731 through 1764. Historical, ethnohistorical, and oral historical evidence summarized by Mr. Brain in his publication, *Tunica Archaeology,* support the proposition that the present-day descendants of the 18th century Tunica are the Tunica-Biloxi Indian Tribe of Louisiana.

Cultural Affiliation

The human remains and associated funerary objects 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: anthropological, archeological, geographical, historical, and oral tradition.

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 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 Tunica-Biloxi Indian Tribe.

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 October 16, 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: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19960 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036561; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Illinois State Museum 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 removed from Camden, Madison, Phelps, Pulaski, Ralls, and St. Louis Counties, Missouri.

DATES: Repatriation of the human remains in this notice may occur on or after October 16, 2023.

ADDRESSES: Brooke M. Morgan, Illinois State Museum Research & Collections Center, 1011 East Ash Street, Springfield, IL 62701, telephone (217) 785–8930, email *brooke.morgan@illinois.gov.*

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 Illinois State Museum. 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 Illinois State Museum.

Description

Between 1956 and 1957, human remains representing, at minimum, one individual were removed from the Jerry Long Cave site in Ralls County, MO. In 1957, faunal remains from this site were transferred to the Illinois State Museum for analysis. During that analysis, fragmentary human remains were identified. No associated funerary objects are present. These human remains are likely pre-contact in date.

Between 1961 and 1962, human remains representing, at minimum, three individuals were removed from the Tick Creek Cave site (23PH145) in Phelps County, MO. In 1963, faunal remains from this site were transferred to the Illinois State Museum for analysis. During that analysis, fragmentary human remains were identified. No associated funerary objects are present. Tick Creek Cave dates from the Late Archaic through the Woodland period.

Sometime prior to 1967, human remains representing, at minimum, three individuals were removed from an unknown location in St. Louis County, MO. These human remains were part of the Dickson Pathology Collection formerly used in exhibits at Dickson Mounds Museum. In 1967, these human remains were purchased from a private citizen by the Illinois State Museum. No associated funerary objects are present. The human remains are pre-contact in date.

In 1961, human remains representing, at minimum, one individual were removed from Goat Bluff Cave (also known as Bruce Cave) in Pulaski County, MO, during an archaeological survey. In 2007, the human remains were transferred to the Illinois State Museum. No associated funerary objects

are present. The human remains are pre-contact in date.

Sometime in the 1970s, human remains representing, at minimum, six individuals were removed from an unknown location in Pulaski County, MO. In 2014, these human remains were transferred by a private citizen to the Illinois State Museum. No associated funerary objects are present. The human remains are pre-contact in date.

Sometime prior to 1977, human remains representing, at minimum, four individuals were removed from a location near Fredericktown, in Madison County, MO. In 2016, these human remains were transferred by a private citizen to the Illinois State Museum. No associated funerary objects are present. The human remains are pre-contact in date.

Sometime between 1960 and 1984, human remains representing, at minimum, one individual were removed from Carroll Cave, in Camden County, MO, by the University of Central Missouri. In 1985, a collection of faunal remains known as the Hawksley Collection of vertebrate paleontological specimens was transferred to the Illinois State Museum geology department. In 2023, human remains were discovered in this paleontological collection and were transferred to the Illinois State Museum anthropology department. No associated funerary objects are present. The human remains are pre-contact in date.

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: anthropological, archeological, geographical, historical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Illinois State Museum has determined that:

- The human remains described in this notice represent the physical remains of 19 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 Osage 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 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 October 16, 2023. If competing requests for repatriation are received, the Illinois State Museum 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 Illinois State Museum 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: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19964 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036559; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside (UCR) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Riverside in Riverside County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 16, 2023.

ADDRESSES: Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email *megan.murphy@ucr.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 University of California, Riverside. 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 University of California, Riverside.

Description

Human remains representing, at minimum, one individual were removed from Riverside, CA. In 1980, members of the UCR Archaeological Research Unit and the Archaeological Resource Management Corporation conducted excavations ahead of the construction of a flood channel in the La Quinta area of the Central Coachella Valley. The sites excavated included CA–RIV–1180, CA–RIV–119, CA–RIV–158, CA–RIV–1174, CA–RIV–1770, and CA–RIV–1838. CA–RIV–1180, or the La Quinta Cove Site, is an area well-known to contain ancestral Cahuilla cremation burials. The collections associated with the excavations were subsequently curated by the UCR Archaeological Curation Unit. In 2021, during analysis of the faunal skeletal remains in the collections, human remains were identified. Subsequent consultation with tribal representatives from multiple Cahuilla Bands resulted in the identification of funerary objects within the same collection. The 10 associated funerary objects are one lot consisting of ceramics, one lot consisting of lithics, one lot consisting of metal, one lot consisting of shell beads, one lot consisting of animal bones, one lot consisting of botanical material, one lot consisting of fire-altered rock, one lot consisting of geological materials, one lot consisting of unmodified shells, and one lot consisting of mineralogical objects.

Cultural Affiliation

The human remains and associated funerary objects 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: anthropological, archeological, biological, geographical, historical, oral traditional, and expert tribal opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Riverside has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 10 lots of objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Torres Martinez Desert Cahuilla Indians, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects 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 and associated funerary objects in this notice to a requestor may occur on or after October 16, 2023. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Riverside 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: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19962 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036562; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) has completed an inventory of an associated funerary object and has determined that there is a cultural affiliation between the associated funerary object and Indian Tribes or Native Hawaiian organizations in this notice. The associated funerary object was removed from Clallam County, WA.

DATES: Repatriation of the associated funerary object in this notice may occur on or after October 16, 2023.

ADDRESSES: Tamara Billie, U.S. Department of Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Mailbox 44, Albuquerque, NM 87104, telephone (505) 879–9711, email *tamara.billie@bia.gov.*

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 BIA. 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 BIA.

Description

Sometime prior to 1938, a coffin was removed from Neah Bay on the Makah Reservation, in Clallam County, WA, by Captain Fred W. Griffiths. In 1938, it was accessioned by the Karshner Museum and Center for Culture & Arts.

Cultural Affiliation

The associated funerary object in this notice is 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 type of information was used to reasonably trace the relationship: geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the BIA has determined that:

- The one object described in this notice is reasonably believed to have been made exclusively for burial purposes or to contain human remains.
- There is a relationship of shared group identity that can be reasonably traced between the associated funerary object described in this notice and the Makah Indian Tribe of the Makah Indian Reservation.

Requests for Repatriation

Written requests for repatriation of the associated funerary object 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 associated funerary object in this notice to a requestor may occur on or after October 16, 2023. If competing requests for repatriation are received, the BIA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary object are considered a single request and not competing requests. The BIA 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: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19965 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0036556; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin-Milwaukee, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin-Milwaukee (UWM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary object and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary object were removed from Henderson County, IL.

DATES: Repatriation of the human remains and associated funerary object in this notice may occur on or after October 16, 2023.

ADDRESSES: Jennifer R. Haas, NAGPRA Coordinator, University of Wisconsin-Milwaukee, P.O. Box 413, Milwaukee, WI 53201, telephone (414) 229–3078, email *haasjr@uwm.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 UWM. 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 UWM.

Description

In 1972 and 1979, human remains representing, at minimum, three individuals were removed during an archeological surface survey by UWM of the Dusty Rhodes site (11–HE–14) in Henderson County, IL. The site dates to the Middle Woodland Havana/Hopewell (A.D. 0 to 400) and Late Woodland (A.D. 600 to 1200) periods. After completion of the survey, these human remains were transferred to UWM. The one associated funerary object is one lot consisting of faunal skeletal elements, a projectile point, bifaces, lithic debitage, pottery sherds, and shell fragments.

Cultural Affiliation

The human remains and associated funerary object 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: geographical, historical, oral traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the UWM has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Miami Tribe of Oklahoma; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; The Osage Nation; and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary object 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 and associated funerary object in this notice to a requestor may occur on or after October 16, 2023. If competing requests for repatriation are received, the UWM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary object are considered a single request and not competing requests. The UWM is responsible for sending a copy of this notice to the Indian Tribes 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: September 8, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–19961 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–USPP- NPS0036081; PPWOUSPPS5, PPMPRLE02.YC0000 (222); OMB Control Number 1024–0245]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; United States Park Police Pre-Employment Suitability Determination Process

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before October 16, 2023.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in DATES 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. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0245'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Captain Scott H. Brecht, 1100 Ohio Dr. SW, Washington DC 20242; or by email at *scott_brecht@nps.gov;* or 202–610–7088 (telephone). Please reference OMB Control Number 1024–0245 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 12, 2022 (87 FR 55847). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The United States Park Police (USPP) collects information from applicants during the Pre-employment Suitability Determination Phase as part of the application process for consideration as a candidate for park police positions. The USPP is authorized by Title 5, CFR, Section 5.2, ''Investigation and evaluations,'' to collect information as required in the USPP Pre-employment Suitability Process. The USPP uses the forms described below as a part of the application process required to conduct an OPM background investigation.

Form 10–2201, ''Personal Qualifications Statement''—provides information on the personal history of the candidate.

Form 10–2201A, ''Information Release Form''—authorizes the release of all personal and confidential records, including medical records concerning physical and mental health.

Form 10–2201B, ''Release to Obtain a Credit Report''—authorizes the release of information from consumer reporting agencies.

Form 10–2201C, ''Lautenberg Certification''—requires information and certification by the applicant regarding a conviction of a misdemeanor crime of domestic violence.

Form 10–2201D, ''Physical Efficiency Battery Waiver''—requires the candidate to provide information regarding medical conditions which may impede their ability to meet the minimum efficiency score on the Physical Efficiency Battery (PEB).

Proposed Revisions

Form 10–2201E (Removed)—Physician Consent Form—This form is no longer necessary. The USPP Pre-Employment Physical Efficiency Battery (PEB) does not require a physician to clear or medically qualify the applicant for basic physical activity. Applicants can make the determination themselves if they are medically fit enough to participate in the PEB.

Form 10–2201F (Removed) Applicant Documentation Form—This form is no longer necessary. Applicants defer or decline USPP's offer of employment through email to NPS Human Resources.

Title of Collection: United States Park Police Pre-Employment Suitability Determination Process.

OMB Control Number: 1024–0245.

Form Number: NPS Forms 10–2201, 10–2201A, 10–2201B, 10–2201C, 10–2201D.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Candidates for employment as a United States Park Police Officer.

Total Estimated Number of Annual Respondents: 1,250.

Total Estimated Number of Annual Responses: 1,250.

Estimated Completion Time per Response: 5 minutes to 7 hours (times vary depending upon the activity).

Total Estimated Number of Annual Burden Hours: 1,897.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $26,750 (printing, notarizing, and providing supporting documentation).

Activity	Total annual responses	Completion time per response	Total annual burden hours *
Form 10–2201—Personal Qualifications Statement	250	7 Hours	1,750
Form 10–2201A—''Information Release Form''	250	15 Min	63
Form 10–2201B—Release to Obtain a Credit Report	250	10 Min	42
Form 10–2201C—Lautenberg Certification	250	5 Min	21
Form 10–2201D—Physical Efficiency Battery Waiver	250	5 Min	21
Total	1,250		1,897

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–19980 Filed 9–14–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0057; Docket ID: BOEM–2023–0004]

Agency Information Collection Activities; Pollution Prevention and Control

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes this information collection request (ICR) to renew Office of Management and Budget (OMB) control number 1010–0057.

DATES: Comments must be received by BOEM no later than November 14, 2023.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB control number 1010–0057 in the subject line of your comments. You may view the ICR and its related documents by searching the docket number ''BOEM–2023–0004'' at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov,* or by telephone at 703–787–1025. 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 of the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on the proposed ICR described below. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time.

For BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Even if BOEM withholds your personally identifiable information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the DOI's FOIA implementing regulations (43 CFR part 2) and applicable law.

BOEM will make available for public inspection all comments in their entirety (except privileged or confidential information) submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses. BOEM protects privileged and confidential information in accordance with FOIA and the DOI's implementing regulations.

Title of Collection: 30 CFR part 550, subpart C, ''Pollution Prevention and Control.''

Abstract: Section 5(a) of the Outer Continental Shelf Lands Act (OCSLA), as amended (43 U.S.C. 1334(a)), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to manage the energy and mineral resources of the Outer Continental Shelf (OCS). Such rules and regulations apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way.

Section 5(a)(8) of OCSLA requires that regulations prescribed by the Secretary include provisions ''for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this subchapter significantly affect the air quality of any State.'' This information

collection renewal concerns information that is submitted to BOEM under 30 CFR part 550, subpart C, ''Pollution Prevention and Control,'' which implements section 5(a)(8), and related notices to lessees and operators (NTLs), which clarify and provide additional, nonbinding guidance on aspects of the regulations. BOEM uses this information to inform its decisions on plan approval, to ensure operations are conducted according to all applicable regulations and plan conditions of approval, and to inform State and regional planning organizations' modeling efforts.

BOEM prepares an emission inventory every 3 years to help ensure that its regulations comply with section 5(a)(8) of OCSLA and to implement the requirements at 30 CFR 550.303(k) and 550.304(g). These emission inventories provide the essential input that BOEM needs to assess the impacts of OCS oil and gas activity on the States as mandated by the OCSLA. Also, these inventories provide the States with essential information needed to perform their implementation plan demonstrations to the U.S. Environmental Protection Agency (USEPA). Finally, these inventories provide operators with essential data for their mandatory reporting of greenhouse gases to the USEPA.

BOEM began planning for the 2023 OCS emissions inventory by issuing NTL No. 2022–N01 on October 1, 2022. The NTL instructed lessees and operators on submitting information about their facility operations, as required by OCSLA and BOEM's regulations, through BOEM's web-based emissions reporting tool, the Air Quality System (AQS). AQS allows operators to submit their facility activity data electronically into the system, instantaneously calculates monthly and annual emissions, assures and controls data quality, generates reports such as emission inventory reports, and creates data graphics including geographic information system maps for operators and BOEM. AQS makes it easy for users to enter activity data, calculate emissions data in real-time, and leverage built-in validation features to quality check calculations prior to submission.

OMB Control Number: 1010–0057.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil and gas or sulfur lessees and operators and States.

Total Estimated Number of Annual Responses: 807 responses.

Total Estimated Number of Annual Burden Hours: 51,080 hours.

Respondent's Obligation: Required to retain or obtain a benefit.

Frequency of Collection: Every 3 years.

Total Estimated Annual Non-Hour Burden Cost: None.

The following table details the individual BOEM information collections under OMB Control Number 1010–0057 and respective hour burden estimates for this ICR.

BURDEN TABLE

Citation 30 CFR part 550, subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Facilities described in new or revised EP or DPP				
303; 304(a), (f)	Submit, modify, or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR part 550, subpart B.	Burden covered under 1010–0151 (30 CFR part 550, subpart B).		
303(k); 304(a), (g); NTL	Collect and report (in manner specified) air quality emissions related data (such as facility, equipment, fuel usage, and other activity information) during each specified calendar year for input into BOEM's impacts assessments, and State and regional planning organizations' modeling through specified software. (*e.g.,* NTL No. 2022–N01: 2023 OCS Emissions Inventory).	64 hrs per facility	794 facilities	50,816
303(l); 304(h)	Collect and submit (in manner specified) meteorological data (not routinely collected); emission data for existing facilities to a State.	8	1 submission	8
Subtotal			795 responses	50,824
Existing Facilities				
304(a), (f)	Affected State may submit request, with supporting information, to BOEM for basic emission data from existing facilities to update State's emission inventory.	16	5 requests	80
304(e)(2)	Submit compliance schedule for application of best available control technology (BACT).	40	1 schedule	40
304(e)(2)	Apply for suspension of operations	Burden covered under BSEE 1014–0022 (30 CFR 250.174).		0
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State. Submit additional information to determine if controls are required.	16	1 submission	16
Subtotal			7 responses	136

BURDEN TABLE—Continued

Citation 30 CFR part 550, subpart C and related NTL(s)	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
General				
303–304	Departure and alternative compliance (as cited in 550.142) requests from 550.303 and 550.304 not specifically covered elsewhere in subpart C regulations.	24	5 requests	120
Subtotal			5 responses	120
Total Burden			807 responses	51,080

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2023–20053 Filed 9–14–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2022–0053]

Notice of Availability of the Empire Offshore Wind Final Environmental Impact Statement

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability; final environmental impact statement.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the final environmental impact statement (FEIS) for the construction and operations plan (COP) submitted by Empire Wind, LLC (Empire Wind) for its proposed Empire Wind Offshore Wind Farm Project (Project) offshore New York. The FEIS analyzes the potential environmental impacts of the Project as described in the COP (the proposed action) and the alternatives to the proposed action. The FEIS will inform BOEM's decision whether to approve, approve with modifications, or disapprove the COP.

ADDRESSES: The FEIS and detailed information about the Project, including the COP, can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/empire-wind.*

FOR FURTHER INFORMATION CONTACT: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1730 or *jessica.stromberg@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Empire Wind seeks approval to construct, operate, and maintain the Project: a wind energy facility and its associated export cables on the Outer Continental Shelf (OCS) offshore New York. The Project would be developed within the range of design parameters outlined in the Empire Wind COP, subject to applicable mitigation measures. Empire Wind proposes to develop the lease area in two wind farms, known as Empire Wind 1 (EW 1) and Empire Wind 2 (EW 2) (collectively, the Project). EW 1 and EW 2 will be independent from each other. In total, Empire Wind proposes constructing and operating up to 147 wind turbines and up to 2 offshore substations with 2 cable routes under the terms of Renewable Energy Lease OCS–A 0512.

The Project is located 14 statute miles from Long Island, New York, and 19.5 statute miles from Long Branch, New Jersey. The onshore components of the Project will include up to three export cable landfalls in New York (one for EW 1 and up to two for EW 2) and two onshore substations: EW 1 onshore substation in Brooklyn, New York; and EW 2 onshore substation in either Oceanside, New York, Island Park, New York, or both.

Alternatives: BOEM considered 30 alternatives when preparing the FEIS and carried forward 7 alternatives for further analysis in the FEIS. These seven alternatives include six action alternatives and the no action alternative. Twenty-three alternatives were rejected because they did not meet the purpose and need for the proposed action or did not meet screening criteria, which are presented in FEIS section 2.2. The screening criteria included consistency with law and regulations; technical and economic feasibility; environmental impact; and geographic considerations.

Availability of the FEIS: The FEIS, Empire Wind COP, and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/empire-wind.* BOEM has distributed digital copies of the FEIS to all parties listed in FEIS appendix K. If you require a digital copy on a flash drive or a paper copy, BOEM will provide one upon request, as long as these materials are available. You may request a flash drive or paper copy of the FEIS by contacting Brandi Sangunett at (703) 787–1015 or *brandi.sangunett@boem.gov.*

Cooperating Agencies: The following Federal agencies and State and city governmental entities participated as cooperating agencies in the preparation of the FEIS: Bureau of Safety and Environmental Enforcement; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Army Corps of Engineers; U.S. Coast Guard; Maritime Administration; National Park Service; New York State Department of Environmental Conservation; New York State Department of State; New York State Department of Environmental Conservation; New York State Energy Research and Development Authority; and New York City Mayor's Office of Environmental Coordination. The following Federal and Tribal entities participated as participating agencies in the preparation of the FEIS: The Shinnecock Indian Nation; Wampanoag Tribe of Gay Head (Aquinnah), Delaware Nation, Delaware Tribe of Indians, Stockbridge-Munsee Community Band of Mohican Indians, U.S. Fish and Wildlife Service; Department of Defense, and Department of the Navy.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2023–19956 Filed 9–14–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02054000, 23XR0680A1, RX.02148941.332CR00]

Central Valley Project Improvement Act 2023 Criteria for Evaluating Water Management Plans (Standard Criteria)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation (Reclamation) has made available the draft 2023 Criteria for Evaluating Water Management Plans (Standard Criteria) for public review and comment.

DATES: Submit written comments on the draft 2023 Standard Criteria on or before October 25, 2023.

ADDRESSES: Send written comments to Ms. Anitalee C. Bronner, Bureau of Reclamation, Attn: CBG–400, 2800 Cottage Way, Sacramento, CA 95825; or via email at *abronner@usbr.gov*. To view a copy of the draft 2023 Standard Criteria, go to *https://www.usbr.gov/mp/watershare*.

FOR FURTHER INFORMATION CONTACT: For further information on the draft Standard Criteria or to be placed on a mailing list for any subsequent information, please contact Ms. Anitalee C. Bronner at (916) 978–5380, or via email at *abronner@usbr.gov*.

Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Section 3405(e) of the Central Valley Project Improvement Act (title 34 Pub. L. 102–575) requires the Secretary of the Interior to, among other things, ''develop criteria for evaluating the adequacy of all water conservation plans'' developed by certain contractors. According to section 3405(e)(1), these criteria must promote ''the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' In accordance with this legislative mandate, Reclamation developed and published the Standard Criteria, which is updated every 3 years.

Public Disclosure. We invite the public to comment on our preliminary (*i.e.,* draft) 2023 Standard Criteria. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Adam Nickels,

Regional Resources Manager, Division of Resources Management, California-Great Basin—Interior Region 10.

[FR Doc. 2023–20034 Filed 9–14–23; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–895 (Fourth Review)]

Pure Granular Magnesium From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on pure granular magnesium from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on February 1, 2023 (88 FR 6784) and determined on May 8, 2023 that it would conduct an expedited review (88 FR 37275, June 7, 2023).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on September 11, 2023. The views of the Commission are contained in USITC Publication 5458 (September 2023), entitled *Pure Granular Magnesium from China: Investigation No. 731–TA–895 (Fourth Review).*

By order of the Commission.

Issued: September 11, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–19953 Filed 9–14–23; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Amy A. Karpel not participating.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–693 and 731–TA–1629–1640 (Preliminary)]

Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan, provided for in subheadings 9404.21.00, 9404.29.10, and 9404.29.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and by reason of imports of mattresses from Indonesia that are alleged to be subsidized by the government of Indonesia.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 57412 and 88 FR 57433 (August 23, 2023).

appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

Background

On July 28, 2023, Brooklyn Bedding LLC, Phoenix, Arizona; Carpenter Company, Richmond, Virginia; Corsicana Mattress Company, Dallas, Texas; Future Foam, Inc., Council Bluffs, Iowa; FXI, Inc., Radnor, Pennsylvania; Kolcraft Enterprises, Inc., Chicago, Illinois; Leggett & Platt, Incorporated, Carthage, Missouri; Serta Simmons Bedding, Inc., Doraville, Georgia; Southerland Inc., Antioch, Tennessee; Tempur Sealy International, Inc., Lexington, Kentucky; the International Brotherhood of Teamsters, Washington, DC; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, Washington, DC, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of mattresses from Indonesia and LTFV imports of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan. Accordingly, effective July 28, 2023, the Commission instituted countervailing duty investigation No. 701–TA–693 and antidumping duty investigation Nos. 731–TA–1629–1640 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 3, 2023 (88 FR 51351). The Commission conducted its conference on August 18, 2023. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on September 11, 2023. The views of the Commission are contained in USITC Publication 5460 (September 2023), entitled *Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan: Investigation Nos. 701–TA–693 and 731–TA–1629–1640 (Preliminary).*

By order of the Commission.

Issued: September 11, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–19955 Filed 9–14–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–044]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 21, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos 701–TA–487 and 731–TA–1197–1198 (Second Review) (Steel Wire Garment Hangers from Taiwan and Vietnam). The Commission currently is scheduled to complete and file its determinations and views of the Commission on September 29, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: September 12, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–20093 Filed 9–13–23; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1334]

Certain Raised Garden Beds and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on September 8, 2023, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Edward S. Jou, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3316. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United

States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain raised garden beds and components thereof imported, sold for importation, and/or sold after importation by Respondents Huizhou Green Giant Technology Co., Ltd. and Utopban Limited; and a cease and desist order directed to Utopban Limited. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on September 8, 2023. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on October 10, 2023.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1334'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 12, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–20040 Filed 9–14–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1263]

Importer of Controlled Substances Application: AndersonBrecon, Inc. DBA PCI Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: AndersonBrecon, Inc. DBA PCI Pharma Services has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 16, 2023. Such persons may also file a written request for a hearing on the application on or before October 16, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal

Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 27, 2023, AndersonBrecon, Inc. DBA PCI Pharma Services, 4545 Assembly Drive, Rockford, Illinois 61109–3081, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Dimethyltryptamine	7435	I

The company plans to import the listed controlled substances for clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–19988 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1264]

Bulk Manufacturer of Controlled Substances Application: AMPAC Fine Chemicals Virginia LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: AMPAC Fine Chemicals Virginia LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 14, 2023. Such persons may also file a written request for a hearing on the application on or before November 14, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 2, 2023, AMPAC Fine Chemicals Virginia LLC., 2820 North Normandy Drive, Petersburg, Virginia 23805–2380, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Levomethorphan	9210	II
Levorphanol	9220	II
Morphine	9300	II
Thebaine	9333	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to bulk manufacture the above listed controlled substances for the internal use as intermediates or for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–20003 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1260]

Importer of Controlled Substances Application: Olon Ricerca Bioscience, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Olon Ricerca Bioscience, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 16, 2023. Such persons may also file a written request for a hearing on the application on or before October 16, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 11, 2023, Olon Ricerca Bioscience, LLC, 7528 Auburn Road, Concord Township, Ohio 44077–9176, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug Code	Schedule
Phenylacetone	8501	II

The company plans to import the listed controlled substance to manufacture into other controlled substances which will be distributed to its customers. No other activities for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–19987 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1259]

Importer of Controlled Substances Application: Curia New York, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curia New York, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 16, 2023. Such persons may also file a written request for a hearing on the application on or before October 16, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 10, 2023, Curia New York, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Poppy Straw Concentrate.	9670	II

The company plans to import the listed controlled substances for bulk manufacturing into other controlled substances to be distributed to their customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–19986 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1265]

Importer of Controlled Substances Application: Experic LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Experic LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 16, 2023. Such persons may also file a written request for a hearing on the application on or before October 16, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 18, 2023, Experic LLC, 2 Clarke Drive, Cranbury, New Jersey 08512–3619, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine.	7431	I
Nabilone	7379	II

The company plans to import drug code Nabilone (7379) as finished dosage units for research and clinical trial purposes. The company plans to import 5-Methoxy-N-N-dimethyltryptamine (7431) for internal research purposes and distribution to its customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of Food and Drug Administration-approved or non-

approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–19997 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1267]

Importer of Controlled Substances Application: Veterans Pharmaceuticals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Veterans Pharmaceuticals, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 16, 2023. Such persons may also file a written request for a hearing on the application on or before October 16, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 24, 2023, Veterans Pharmaceuticals, Inc. 7220 Trade Street, Suite 350, San Diego, California 92121, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import the listed controlled substances to support research and clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–20002 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1262]

Importer of Controlled Substances Application: Cambrex High Point, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambrex High Point, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 16, 2023. Such persons may also file a written request for a hearing on the application on or before October 16, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 7, 2023, Cambrex High Point, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265–8017, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Poppy Straw Concentrate.	9670	II

The company plans to import the listed controlled substances for research and development purposes. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–19996 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1266]

Importer of Controlled Substances Application: Benuvia Operations, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Benuvia Operations, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 16, 2023. Such persons may also file a written request for a hearing on the application on or before October 16, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 10, 2023, Benuvia Operations, LLC, 3950 North Mays Street, Round Rock, Texas 78665–2729, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ibogaine	7260	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N,N-dimethyltryptamine	7431	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
Dronabinol in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration	7365	II

The company plans to import the listed controlled substances for clinical trial manufacturing and analytical purposes. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–19998 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1248]

Bulk Manufacturer of Controlled Substances Application: PCI Synthesis

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: PCI Synthesis has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 14, 2023. Such persons may also file a written request for a hearing on the application on or before November 14, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 30, 2023, PCI Synthesis, 9 Opportunity Way, Newburyport, Massachusetts 01950–0195, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II

Controlled substance	Drug code	Schedule
Methamphetamine	1105	II

The company plans to develop manufacturing processes, conduct analytical method validation and conduct bulk product stability studies. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–19989 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0017]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Firearms Manufacturing and Exportation Report (AFMER)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will 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. The proposed information collection was previously published in the **Federal Register**, on July 6, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until October 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have 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: Leslie Anderson, by email at *Leslie.anderson@atf.gov,* or by telephone at 301–616–4634.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0017. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report (AFMER).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5300.11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Private Sector—Businesses or other for-profit.

Abstract: The information collected is used to compile statistics on the manufacture and exportation of firearms. The furnishing of this information is mandatory under 18 U.S.C. 923(g)(5)(A). This form must be submitted annually for every Type 07 and Type 10 Federal Firearms Licensees (FFLs), even if no firearms were exported or distributed into commerce. The information collection (IC) OMB #1140–0017 is being revised due to material and non-material changes to the form, such as added instructions, definitions, formatting changes (to adjust form length), bolded lines (to fillable boxes), grammatical changes (sentence rephrasing/statement modification), and instruction clarification.

5. *Obligation to Respond:* Mandatory. The statutory requirements are implemented under 18 U.S.C. chapter 44.

6. *Total Estimated Number of Respondents:* 19,200 respondents.

7. *Estimated Time per Respondent:* 20 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 6,400 hours.

10. *Total Estimated Annual Other Costs Burden:* No new cost is associated with this collection. All respondents can electronically submit the AFMER to ATF free of charge, however, it is estimated that half the respondents submit the form to the Federal Firearms Licensing Center by mail. The annual cost has increased due to a change in the postal rate from $0.55 during the last renewal in 2020, to $0.63 in 2023. Consequently, the new public cost burden will be reported as $6,048.00, which is equal to $0.63 (mailing cost per respondent) * 19,200 (# of respondents) * 50% (percentage of responses submitted by mail).

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: September 11, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19941 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0076]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Restoration of Explosives Privileges

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will 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. The proposed information collection was previously published in the **Federal Register**, on July 6, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until October 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have 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: Laura O'Lena, by email at *FROD@atf.gov,* or by telephone at 256–261–7640.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0076. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection:

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Application for Restoration of Explosives Privileges.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5400.29.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* Individuals or households, Private sector—business or other for-profit.

Abstract: Persons who wish to ship, transport, receive, or possess explosive materials, but are prohibited from doing so, will complete this form. The form will be submitted to ATF to determine whether the person who provided the information is likely to act in a manner dangerous to public safety and that the granting of relief is not contrary to the public interest. The information collection (IC) OMB #1140–0076 is being revised due to minor material changes to the form, such as adding instruction clarification and ''month/year'' (to block (b) and (c) of item 9 and block (c) and (d) of item 10).

5. *Obligation to Respond:* The obligation to respond is required to obtain/retain a benefit under 27 CFR, part 555.

6. *Total Estimated Number of Respondents:* 300 respondents.

7. *Estimated Time per Respondent:* 30 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 150 hours.

10. *Total Estimated Annual Other Costs Burden:* ATF estimates the cost to individuals impacted will be $9,789 collectively.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: September 11, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19942 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Monthly Return of Arson Offenses Known to Law Enforcement

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, Department of Justice (DOJ), 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 November 14, 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 Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone number: 304–625–4830 or email: *elabraham@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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: Under 34 United States Code 41303, Uniform Federal Crime Reporting Act of 1988; the Anti-Arson Act of 1982; and FBI, General Functions, 28 Code of Federal Regulations section 0.85(f); this collection requests the number of reported arson offenses from federal, state, local, tribal, and territorial LEAs in order for the FBI's Uniform Crime Reporting (UCR) Program to serve as the national clearinghouse for the collection and dissemination of arson data and to publish these statistics.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Monthly Return of Arson Offenses Known to Law Enforcement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1–725. The applicable component within DOJ is the CJIS Division, FBI.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public State, local and tribal governments, Federal Government. The obligation to respond is mandatory per 28 Code of Federal Regulations 0.85(f).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of LEAs submitting arson data to the UCR Program monthly is 5,200. The estimated time it takes for an average respondent to respond is 9 minutes.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Annually, the estimated 5,200 LEAs submit an estimated 62,400 responses (5,200 LEAs × 12 months = 62,400 responses). Therefore, the estimated annual public burden is 9,360 hours. (62,400 annual responses × 9 minutes per response]/60 minutes per hour = 9,360 total annual hours)

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
1–725	5,200	12	62,400	9	9,360
Total	5,200		62,400		9,360

If additional information is required contact: Darwin Arceo, 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: August 28, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19944 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; ASRE of Persons Arrested Under 18 Years of Age; ASRE of Persons Arrested 18 Years of Age and Over

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, Department of Justice (DOJ), 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 November 14, 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 Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D–1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; telephone number: 304–625–4830, email: *elabraham@fbi.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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: Under the Uniform Federal Crime Reporting Act of 1988, 34 United States Code 41303; the William Wilberforce Trafficking Victims Protection Reauthorization Act of 1988, 34 U.S.C. 41309; and 28 Code of Federal Regulations 0.85(f), FBI, General Functions, this collection requests the number of arrests from federal, state, county, city, tribal, and territorial LEAs in order for the FBI's Uniform Crime Reporting (UCR) Program to obtain ASRE data in furtherance of serving as the national clearinghouse for the collection and dissemination of criminal statistics and to publish these statistics.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* ASRE of Persons Arrested Under 18 Years of Age; ASRE of Persons Arrested 18 Years of Age and Over.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form numbers are 1–708a and 1–708. The applicable component within DOJ is the CJIS Division, FBI.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: State, local and tribal governments, Federal Government. The obligation to respond is mandatory per 28 Code of Federal Regulations 0.85(f).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 4,800 LEA respondents submitting to the UCR Program monthly for an estimated total of 57,600 responses for each form. The estimated time it takes for an average respondent to respond is 15 minutes for form number 1–708 and 12 minutes for form number 1–708a (average of 13.5 minutes for the entire collection).

6. *An estimate of the total annual burden (in hours) associated with the collection:* There are approximately 25,920 hours annual burden hours for this information collection.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
1–708a	4,800	12	57,600	15	14,400
1–708	4,800	12	57,600	12	11,520
Unduplicated Totals	4,800		57,600		25,920

If additional information is required contact: Darwin Arceo, 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: September 5, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19945 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Prevent All Cigarette Trafficking (PACT) Act Registration Form and Prevent All Cigarette Trafficking (PACT) Act Registration Continuation Sheet

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will 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. The proposed information collection was previously published in the **Federal Register**, on July 6, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until October 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have 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: Moliki Alexander, by email at *Moliki.alexander@atf.gov* or by telephone at 202–648–7720.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—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.

Written comments and recommendations for this information collection should be submitted within

30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0098. This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Prevent All Cigarette Trafficking (PACT) Act Registration Form and Prevent All Cigarette Trafficking (PACT) Act Registration Continuation Sheet.

3. Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: ATF Form 5070.1/5070.1A.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Affected Public: Private Sector—business or other for-profit.

Abstract: This form is required for Electronic Nicotine Delivery System (ENDS), for delivery sellers to register with ATF, States and localities that these products are shipped into and report sales into these jurisdictions and requires distributors who engage in delivery sales to comply with State and local tax, and regulatory laws involving the distribution of ENDS to minors. Effective March 27, 2021, electronic nicotine delivery systems (ENDS) became subject to regulation under the Prevent All Cigarette Trafficking (PACT) Act (15 U.S.C. 375).

5. *Obligation to Respond:* The obligation to respond is mandatory per 15 U.S.C. 375.

6. *Total Estimated Number of Respondents:* 800 respondents.

7. *Estimated Time per Respondent:* 1 hour.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 800 hours.

10. *Total Estimated Annual Other Costs Burden:* ATF estimates the cost to businesses impacted will be $27,368 collectively.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: September 11, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19940 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0055]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; NICS Firearm Disposition Record

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, Department of Justice (DOJ), 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 November 14, 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 the Federal Bureau of Investigation, Criminal Justice Information Services Division, National Instant Criminal Background Check System Section, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, *nicsliaison@fbi.gov* or (304) 625–2000.

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: In November 1993, the Brady Handgun Violence Prevention Act of 1993 (Brady Act) Public Law 103–159, was signed into law and required federal firearms licensees (FFL) to request background checks on individuals attempting to purchase or receive a firearm. The permanent provisions of the Brady Act, which went into effect on November 30, 1998, required the United States Attorney General to establish a NICS that FFLs may contact by telephone, or other electronic means in addition to telephone for information to be supplied immediately on whether the receipt of a firearm by a prospective transferee would violate Section 922 (g) or (n) of Title 18, United States Code, or state law. There are additional authorized uses of NICS found at Title 28, CFR 25.6(j). The FBI authorized CJAs to initiate a NICS background check to assist their transfer of firearms to private individuals as a change to 28 CFR 25.6(j) in the **Federal Register**.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* NICS Firearm Disposition Record.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: None. Component: FBI, CJIS Division.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public:

State, local and tribal governments, Federal Government. The obligation to respond is mandatory per 28, CFR 25.6(j).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total annual respondent entities taking advantage of this disposition process is 20,172 CJAs. It is estimated the time burden for the CJAs associated with this collection is three minutes per transaction, depending on the individual circumstance.

6. *An estimate of the total annual burden (in hours) associated with the collection:* Anticipating a similar volume, at three minutes per transaction, the estimated total annual burden is 6,301 (6,300.7) hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
NICS Firearm Disposition Record.	20,172	6.24697601	126,014	3	6,301
Unduplicated Totals	20,172		126,014		6,301

If additional information is required contact: Darwin Arceo, 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: August 28, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19943 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0013]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will 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. The proposed information collection was previously published in the **Federal Register**, on July 6, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until October 16, 2023.

FOR FURTHER INFORMATION CONTACT: If you have 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, by email at *NFAOMBCOMMENTS@ATF.GOV,* or by telephone at 304–616–5400.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0013. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 3 (5320.3).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* Private Sector—Business or other for-profit, Federal Government.

Abstract: ATF Form 3 (5320.3) is filed by Federal firearms licensees who have paid the special (occupational) tax to import, manufacture or deal in NFA firearms to transfer an NFA firearm to a similarly qualified licensee.

5. *Obligation to Respond:* Mandatory under the provisions of 26 U.S.C. 5812.

6. *Total Estimated Number of Respondents:* 255,888 respondents.

7. *Estimated Time per Respondent:* 30 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 127,944 hours.

10. *Total Estimated Annual Other Costs Burden:* $3,020 (If used full universe of 255,888 × $.63 = $161,209).

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: September 11, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19939 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0330]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Law Enforcement Congressional Badge of Bravery

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office of Justice Programs, Bureau of Justice Assistance (BJA), Department of Justice (DOJ), 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 November 14, 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 Gregory Joy at 202–514–1369, Policy Advisor, Bureau of Justice Assistance, 810 7th Street NW, Washington, DC 20531; email: *gregory.joy@usdoj.gov* and telephone: (202) 514–1369.

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: BJA will use the CBOB nomination information to confirm the eligibility nominees to be considered for the CBOB, and forward all eligible nominations as appropriate, to the Federal or the State and Local CBOB Board for their further consideration. In General—the agency heads of Federal/State and Local law enforcement agencies many nominate for a Federal/State and Local Law Enforcement CBOB, an individual—(1) who is a Federal/State and Local law enforcement officer working within the agency of the Federal/State and Local agency head making the nomination; and (2) who—(A)(i) sustained a physical injury while—(I) engaged in the lawful duties of the individual; and (II) performing an act characterized as bravery by the Federal/State and Local agency head making the nomination; and (ii) put the individual at personal risk when the injury described in clause (i) occurred; or (B) while not injured, performed and act characterized as bravery by the Federal/State and Local agency head making the nomination that placed the individual at risk of serious physical injury or death. BJA has been authorized to administer the CBOB Program.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Law Enforcement Congressional Badge of Bravery (CBOB).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. Sponsoring business component: Office of Justice Programs, Bureau of Justice Assistance (BJA).

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* State, local and Tribal Governments. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Over the last three years of this program, an average of 164 state and local nominations were submitted annually. Each nomination must be submitted via the online nomination system and should take 15 minutes to complete.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is: 41 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* There are no direct costs to the nominators other than the time taken to complete and submit the voluntary online nomination. Nominators are not requested to create and maintain an independent data collection, reporting systems, nor travel. Consequently, the nominators incur no additional costs.

If additional information is required contact: Darwin Arceo, 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: September 11, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–19946 Filed 9–14–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Aerial Lifts Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 October 16, 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) 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; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Employers who modify an aerial lift for uses other than those provided by the manufacturer must obtain a certificate from the manufacturer or equivalent entity certifying that the modification is in conformance with applicable ANSI standards and that the equipment is as safe as it was prior to the modification. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 3, 2023 (88 FR 19680).

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–OSHA.

Title of Collection: Aerial Lifts Standard.

OMB Control Number: 1218–0216.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 1 hour.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023–19957 Filed 9–14–23; 8:45 am]

BILLING CODE 4510–26–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: John S. McCain III National Center for Environmental Conflict Resolution (National Center), Morris K. Udall and Stewart L. Udall Foundation.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act, the Morris K. Udall and Stewart L. Udall Foundation's John S. McCain III National Center for Environmental Conflict Resolution is proposing to renew and update six ICRs. The proposed ICRs are necessary to measure, improve, and report on National Center performance and delivery of its services.

DATES: Interested persons are invited to submit comments on or before November 14, 2023.

ADDRESSES: To access and review the documents related to the ICRs listed in this notice, please visit *https://www.udall.gov/ICR.* You may send comments, identified by OMB Control Number, by mail to Mitch Chrismer, Morris K. Udall and Stewart L. Udall Foundation, 434 E. University Blvd., Suite 300, Tucson, AZ 85705 or by email to *info@udall.gov. Please note that comments submitted by fax and those submitted after the comment period will not be accepted.*

FOR FURTHER INFORMATION CONTACT: For specific questions or to request additional information about these ICRs, contact Mitch Chrismer at *chrismer@udall.gov,* or by telephone at 520–901–8544. 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: The Morris K. Udall and Stewart L. Udall Foundation's National Center, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the National Center assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the National Center's information collection requirements and provide the requested data in the desired format. The National Center is soliciting comments on six proposed ICR renewals that are described below. These ICRs are consolidated under one announcement to provide additional context for the overall scope of the National Center's information collection activities. The proposed ICRs are necessary to measure, improve, and report on National Center performance and delivery of its services. They are not expected to have a significant economic impact on respondents or to affect a substantial number of small entities. The National Center is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the National Center; (2) will this information have practical utility; (3) is the estimate of burden accurate; (4) how might the National Center enhance the quality, utility, and clarity of the information to be collected; and (5) how might the National Center 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. Also, comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget's (OMB) approval.

Title of Collection: National Center for Environmental Conflict Resolution Assessment Evaluation—Requester Questionnaire.

OMB Control Number: 3320–0003.

Respondents/Affected Public: Individuals or households; business or other for-profit; not-for-profit; federal

government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 4.2.

Abstract: This survey collects information on assessments conducted by the National Center. An assessment generally includes the following elements: assessing the causes of the conflict or challenge; identifying the entities and individuals who would be substantively affected by the conflict's or issue's outcome; assessing those persons' interests to identify a preliminary set of topics that they believe relevant; evaluating the feasibility of using a consensus-building or other collaborative process to address these topics; educating interested parties on collaborative processes so as to help them consider whether they want to participate; and designing the structure and membership of a collaborative process (if applicable) to address the conflict or challenge. This survey is a primary means by which the National Center evaluates its performance on this key agency activity.

Title of Collection: Mediation Services Participant Questionnaire (Agreement Seeking).

OMB Control Number: 3320–0004.

Respondents/Affected Public: Individuals or households; business or other for-profit; not-for-profit; federal government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 40.

Total Estimated Number of Annual Burden Hours: 12.

Abstract: This survey collects information to evaluate mediations conducted by the National Center. Mediation is an agreement-seeking facilitated negotiation in which a skilled, impartial third party seeks to enhance negotiations between parties to a conflict or their representatives by improving communication, identifying interests, and exploring possibilities for a mutually agreeable resolution. This survey is a primary means by which the National Center evaluates its performance on this integral agency activity.

Title of Collection: Training Services Participant Questionnaire.

OMB Control Number: 3320–0006.

Respondents/Affected Public: Individuals or households; business or other for-profit; not-for-profit; federal government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 600.

Total Estimated Number of Annual Burden Hours: 55.

Abstract: This survey collects information to evaluate trainings conducted by the National Center. Trainings include any session of three hours or more in the following categories: skill-building workshops requested by agencies for their staff (*e.g.,* interest-based negotiation training for complex intergovernmental conflicts); ECCR project-specific capacity building for stakeholders (*e.g.,* stakeholder orientations related to multiparty negotiation); and all of the Udall Foundation certificate program ECCR trainings. This survey is a primary means by which the National Center evaluates its performance on this critical agency activity.

Title of Collection: Facilitated Meeting/Workshop Services Participant Questionnaire.

OMB Control Number: 3320–0007.

Respondents/Affected Public: Individuals or households; business or other for-profit; not-for-profit; federal government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 400.

Total Estimated Number of Annual Burden Hours: 33.3.

Abstract: This survey collects information to evaluate short-term (typically one-day) facilitated meetings and workshops conducted by the National Center. Facilitated meetings and workshops are a core activity of the National Center, and this survey is a primary means by which the National Center evaluates its performance on this key activity.

Title of Collection: ECR Support Services Evaluation—Requester Questionnaire.

OMB Control Number: 3320–0009.

Respondents/Affected Public: Business or other for-profit; not-for-profit; federal government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 2.1.

Abstract: This survey collects information to evaluate programmatic support activities conducted by the National Center, which includes assistance with designing, implementing, and/or refining federal ECCR programs; systems for handling administrative disputes; or approaches for managing environmental decision making, for example, with National Environmental Policy Act (NEPA) processes. This survey is a primary means by which the National Center collects information to evaluate its performance on key activities that fall outside of other collection instruments used by the agency.

Title of Collection: National Center for Environmental Conflict Resolution Facilitated Process Evaluation—Participant Questionnaire.

OMB Control Number: 3320–0010.

Respondents/Affected Public: Individuals or households; business or other for-profit; not-for-profit; federal government; and state, local or tribal government.

Total Estimated Number of Annual Responses: 250.

Total Estimated Number of Annual Burden Hours: 50

Abstract: This survey collects information to evaluate facilitation processes conducted by the National Center. Facilitation is a collaborative process in which a neutral seeks to assist a group of individuals or other parties to discuss constructively a number of complex, potentially controversial issues. Facilitation is a core activity of the National Center, and this survey is a primary means by which the National Center evaluates its performance on this key activity. (20 U.S.C. 5601–5609)

Dated: September 11, 2023.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation.

[FR Doc. 2023–19933 Filed 9–14–23; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 16, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2024–009

1. Applicant

Steve Wellmeier, Director of Special Projects, Poseidon Expeditions USA LLC, 245 Warwick Ave, Suite 119, Warwick, RI 02889

Activity for Which Permit Is Requested

Waste Management. The applicant seeks an Antarctic Conservation Act permit for waste management activities associated with coastal camping and the operation of a remotely piloted aircraft system (RPAS) in the Antarctic Peninsula region. The applicant seeks permission for no more than 30 campers and expedition staff to camp overnight at select locations for a maximum of 10 hours ashore. Camping would be away from vegetated sites and wildlife concentrations, avoiding any lakes, protected areas, historical sites, and scientific stations. Tents would be pitched on snow, ice, or bare smooth rock, at least 20m from the high-water line. No food, other than emergency rations, would be brought onshore and all wastes, including human waste, would be collected and returned to the ship for proper disposal. For remotely piloted aircraft systems (RPAS) operation, the applicant proposes to operate small, battery-operated RPAS consisting, in part, of a quadcopter equipped with cameras to collect commercial and educational footage of the Antarctic. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by pilots with extensive experience, who are pre-approved by the Expedition Leader.

Location

Port Lockroy, Damoy Point/Dorian Bay, Paradise Bay, Errera Channel, Neumeyer Channel, Petermann Island, other locations south of the Lemaire Channel, locations in the South Shetland Islands and Antarctic Sound, Antarctic Peninsula area.

Dates of Permitted Activities

October 28, 2023–March 30, 2028.

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–19966 Filed 9–14–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–611 and 50–612; NRC–2023–0138]

Kairos Power, LLC; Hermes 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Construction permit application; acceptance for docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff accepts and dockets an application for a construction permit for the Hermes 2 test reactor facility to be built in Oak Ridge, Tennessee.

DATES: This action becomes effective on September 11, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0138 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0138. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Public website:* The construction permit application is available under the NRC's Hermes Construction Permit Application public website at *https://www.nrc.gov/reactors/non-power/new-facility-licensing/hermes2-kairos.html.*

FOR FURTHER INFORMATION CONTACT: Michael Orenak, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3229; email: *Michael.Orenak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On July 14, 2023, Kairos Power LLC (Kairos) filed, pursuant to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' an application (ADAMS Package Accession No. ML23195A121) for a construction permit for the Hermes 2 test reactor facility (a ''testing facility'' as defined in 10 CFR 50.2), which would be located in Oak Ridge, Tennessee. The Hermes 2 facility would contain two fluoride-salt cooled, high-temperature reactors that use solid tri-structural isotropic fuel in pebble form, intermediate liquid-sodium loops, and a common power conversion unit. A notice of receipt and availability was published in the **Federal Register** on August 4, 2023 (88 FR 51876).

The Hermes 2 construction permit application consists of the following information:

- The general information required by 10 CFR 50.33,
- The Preliminary Safety Analysis Report required by 10 CFR 50.34(a),
- The Environmental Report required by 10 CFR 50.30(f),
- Exemption requests to support issuance of a construction permit,
- Two technical reports, KP–TR–017 and KP–TR–022,
- A summary of the deletions from the Hermes Preliminary Safety Analysis Report, and

• A request to invoice the filing fee required by 10 CFR 50.30(e) and 10 CFR 170.21.

The NRC staff determined that the application is acceptable for docketing under Docket Nos. 50–611 and 50–612. The NRC staff provided Kairos notice of the acceptance and docketing determinations by letter dated September 11, 2023 (ADAMS Accession No. ML23233A167).

The NRC staff will perform a detailed technical review of the construction permit application and document its safety findings in a safety evaluation report. Also, the NRC staff will perform an environmental review and document its findings in accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' and the National Environmental Policy Act.

Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The construction permit application will be referred to the Advisory Committee on Reactor Safeguards for review and report consistent with 10 CFR 50.58, ''Hearings and report of the Advisory Committee on Reactor Safeguards.'' If, after holding an evidentiary hearing, the Commission finds that the construction permit application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that any required notifications to other agencies and bodies have been made, the Commission will issue a construction permit, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

The Commission will announce, in a future **Federal Register** notice, the opportunity to petition for leave to intervene in a proceeding on the construction permit application.

Dated: September 11, 2023.

For the Nuclear Regulatory Commission.

Michael D. Orenak,

Project Manager, Advanced Reactor Licensing Branch 1, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–19935 Filed 9–14–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 18, 25, October 2, 9, 16, 23, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of September 18, 2023

There are no meetings scheduled for the week of September 18, 2023.

Week of September 25, 2023—Tentative

There are no meetings scheduled for the week of September 25, 2023.

Week of October 2, 2023—Tentative

There are no meetings scheduled for the week of October 2, 2023.

Week of October 9, 2023—Tentative

There are no meetings scheduled for the week of October 9, 2023.

Week of October 16, 2023—Tentative

Thursday, October 19, 2023

9:00 a.m. Hearing on Construction Permit for Kairos Hermes Non-Power Test Reactor: Section 189a of the Atomic Energy Act Proceeding (Public Meeting); (Contact: Matthew Hiser: 301–415–2454; Tami Dozier: 301–415–2272)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—*https://video.nrc.gov/.*

Week of October 23, 2023—Tentative

There are no meetings scheduled for the week of October 23, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: September 13, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–20164 Filed 9–13–23; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98349; File No. SR–FINRA–2023–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

September 11, 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 August 29, 2023, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend, to May 22, 2024, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates, as defined more fully in the filing (collectively, ''Covered Agency Transactions''). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[4]

Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would become effective on December 15, 2016, six months from the Approval Date.[5]

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR–FINRA–2015–036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend margining agreements and related documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance[6] and, pursuant to SR–FINRA–2017–029,[7] extended the implementation date of the requirements of SR–FINRA–2015–036 to June 25, 2018, except for the risk limit determination requirements, which, as announced in *Regulatory Notice* 16–31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and mid-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration. In response to these concerns, FINRA further extended the implementation date of the requirements of SR–FINRA–2015–036, other than the risk limit determination requirements, most recently to October 25, 2023 (the ''October 25, 2023 implementation date''),[8] and, informed by extensive dialogue, both with industry participants and other regulators, including the staff of the SEC and the Federal Reserve System, FINRA proposed amendments to the requirements of SR–FINRA–2015–036 (the ''Proposed Amendments'').[9]

The SEC approved the Proposed Amendments on July 27, 2023.[10] As FINRA stated in Partial Amendment No. 1 to SR–FINRA–2021–010, and consistent with the SEC Approval Order,[11] FINRA has issued *Regulatory Notice* 23–14[12] announcing May 22, 2024, as the implementation date of the Proposed Amendments (the ''Amendments Implementation Date''). FINRA believes it is appropriate, in the interest of regulatory clarity, to adjust the implementation date of the requirements pursuant to SR–FINRA–2015–036 in alignment with the Amendments Implementation Date. To that end, FINRA is proposing to extend the October 25, 2023 implementation date to May 22, 2024. FINRA notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December

[4] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

[5] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: *www.finra.org.*

[6] *See* Responses to Frequently Asked Questions Regarding Covered Agency Transactions Under FINRA Rule 4210, at: <*https://www.finra.org/rules-guidance/guidance/faqs/responses-frequently-asked-questions-regarding-covered-agency-transactions-under-finra-rule*>. Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: <*https://www.finra.org/rules-guidance/guidance/faqs/responses-frequently-asked-questions-regarding-covered-agency-transactions-under-finra-rule*>.

[7] *See* Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2017–029); *see also Regulatory Notice* 17–28 (September 2017).

[8] *See* Securities Exchange Act Release No. 97062 (March 7, 2023), 88 FR 15473 (March 13, 2023) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2023–002).

[9] *See* Securities Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (Notice of Filing of a Proposed Rule Change to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–010). *See also* Partial Amendment No. 1 to SR–FINRA–2021–010, and Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, SEC, dated September 16, 2021, both available at: <*www.finra.org*>.

[10] *See* Securities Exchange Act Release No. 98003 (July 27, 2023), 88 FR 50205 (August 1, 2023) (Order Setting Aside Action by Delegated Authority and Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–010) (the ''SEC Approval Order''); *see also* Securities Exchange Act Release No. 94013 (January 20, 2022), 87 FR 4076 (January 26, 2022) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–010).

[11] FINRA stated, and the SEC noted, that the amendments would become effective between nine and ten months following the SEC's approval. *See* Partial Amendment No. 1; *see also* SEC Approval Order, *supra* note 10, 88 FR 50205, 50229.

[12] *Regulatory Notice* 23–14 (August 2023), available at: <*www.finra.org*>.

15, 2016, and, as such, are not affected by the proposed rule change.[13]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change serves the interest of regulatory clarity in the Covered Agency Transaction market by aligning the implementation of the requirements pursuant to SR–FINRA–2015–036, other than the risk limit determination requirements, with the Amendments Implementation Date. FINRA believes that this will thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that aligning the implementation date of the requirements pursuant to SR–FINRA–2015–036, other than the risk limit determination requirements, with the Amendments Implementation Date will help to provide clarity to industry participants and to promote stability in the Covered Agency Transaction market, thereby benefiting all parties.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[13] The Proposed Amendments make certain revisions to the risk limit determination requirements as originally approved pursuant to SR–FINRA–2015–036. As announced in *Regulatory Notice* 23–14, these revisions will become effective on May 22, 2024, as with all the other amendments approved pursuant to the SEC Approval Order.

[14] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated it believes that immediate operation of the proposed rule change is appropriate because alignment of the implementation date of the requirements pursuant to SR–FINRA–2015–036, other than the risk limit determination requirements, with the Amendments Implementation Date will help to promote stability in the Covered Agency Transaction market.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to align the implementation date of the amendments to Rule 4210 pursuant to SR–FINRA–2015–036, other than the risk limit determination requirements, with the Amendments Implementation Date does not raise any new or novel issues and will reduce any potential uncertainty in the Covered Agency Transaction market. Therefore, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[19]

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[19] For purposes of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2023–011 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–FINRA–2023–011. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2023–011 and should be submitted on or before October 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–19948 Filed 9–14–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98347; File No. SR–NYSEARCA–2023–59]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

September 11, 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 August 28, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to eliminate the fees and credits applicable to the Retail Liquidity Program. The Exchange proposes to implement the fee change effective August 28, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to eliminate the fees and credits applicable to the Retail Liquidity Program. The Exchange proposes to implement the fee change effective August 28, 2023.

The Retail Liquidity Program (''Program'') is designed to attract retail order flow in NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to this order flow.[3] Under the Program, a class of market participant called Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order (''RPI Order'').[4] When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.[5] Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order's instructions.[6] The segmentation in the Program is intended to allow retail order flow to receive potential price improvement as a result of their order flow being deemed more desirable by liquidity providers. ETP Holders other than RLPs are also permitted, but not required, to submit RPIs.

The Exchange currently provides RLP executions of RPIs against Retail Orders with a credit of $0.0003 per share.[7] An RMO Retail Order that executes outside of the Retail Liquidity Program is considered just a Retail Order (not an ''RMO'' Retail Order) and receives pricing applicable to Tiered or Standard Rates in the Fee Schedule.[8] In addition, RMOs are not currently charged a fee or provided with a credit for executions of Retail Orders if executed against RPIs and other price-improving interest.

The Exchange recently filed a proposed rule change to discontinue the Retail Liquidity Program on the Exchange,[9] effective August 28, 2023.[10] As a result, the Retail Liquidity Program has become obsolete. Therefore, the Exchange proposes to eliminate the Retail Liquidity Program and remove it, along with references to RPI and RMO in footnote 2, from the Fee Schedule.

The proposed rule changes are intended to streamline the Fee Schedule by eliminating credits and fees that have become obsolete.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Retail Liquidity Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. *See* Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR–NYSEArca–2019–63).

[4] *See* Rules 7.44–E(a)(1) (defining an RLP) and 7.44–E(a)(4) (defining RPI Order).

[5] *See* Rule 7.44–E(j).

[6] *See* Rule 7.44–E(a)(2) (defining RMO); Rules 7.44–E(a)(3) and 7.44–E(k) (describing Retail Orders).

[7] *See* Securities Exchange Act Release No. 71722 (March 13, 2014), 79 FR 15376 (March 19, 2014) (NYSEARCA–2014–22); *See also* Securities Exchange Act Release No. 73013 (September 5, 2014), 79 FR 54322 (September 11, 2014) (NYSEARCA–2014–95).

[8] As is currently the case, applicable charges are based on an ETP Holder's qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange applies the most favorable rate available under such tiers.

[9] *See* Securities Exchange Act Release No. 98168 (August 18, 2023) (SR–NYSEARCA–2023–55).

[10] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000633192/NYSE_National_Retail_Liquidity_Program_August_2023.pdf.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable to eliminate credits and fees associated with the Retail Liquidity Program when such fees and credits become obsolete. In particular, the Exchange believes that the proposed rule change to eliminate the fees and credits associated with the Retail Liquidity Program is reasonable because the Exchange intends to no longer operate this activity thus rendering the financial incentives associated with the Retail Liquidity Program as unnecessary. The Exchange believes that amending the Fee Schedule to remove fees and credits associated with the Retail Liquidity Program would promote the protection of investors and the public interest because it would promote clarity and transparency in the Fee Schedule.

The Exchange believes that the proposed rule change is reasonable because it would also streamline the Fee Schedule by deleting obsolete rule text. The Exchange believes deleting obsolete rule text would promote clarity to the Fee Schedule and reduce confusion to ETP Holders as to which fees and credits are applicable to their trading activity on the Exchange. The Exchange believes it is reasonable to delete the obsolete fees and credits from the Fee Schedule and thereby, streamline the Fee Schedule, to promote clarity and reduce confusion as to the applicability of fees and credits that ETP Holders would be subject to. The Exchange believes deleting obsolete fees and credits would also simplify the Fee Schedule.

The Exchange believes that deleting obsolete fees and credits from the Fee Schedule is equitable and not unfairly discriminatory because the resulting streamlined Fee Schedule would continue to apply to ETP Holders as it does currently because the Exchange is not adopting any new fees or credits or removing any current fees or credits from the Fee Schedule that impact ETP Holders. All ETP Holders would continue to be subject to the same fees and credits that currently apply to them.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[13] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange's proposal to delete obsolete fees and credits from the Fee Schedule will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all ETP Holders would continue to be subject to the same fees and credits that currently apply to them. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that a streamlined Fee Schedule would promote clarity and reduce confusion with respect to the fees and credits that ETP Holders would be subject to.

Intermarket Competition. 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. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and paragraph (f) 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.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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–NYSEARCA–2023–59 and should be submitted on or before October 6, 2023.

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–19949 Filed 9–14–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18020 and #18021; Minnesota Disaster Number MN–00107]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Minnesota

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–4722–DR), dated 07/19/2023.

Incident: Severe Storms and Flooding.

Incident Period: 04/11/2023 through 04/30/2023.

DATES: Issued on 09/07/2023.

Physical Loan Application Deadline Date: 09/18/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/19/2024.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 07/19/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Mille Lacs, Wabasha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–19973 Filed 9–14–23; 8:45 am]

BILLING CODE 8026–09–P

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18147 and #18148; Georgia Disaster Number GA–00161]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Georgia (FEMA–4738–DR), dated 09/09/2023.

Incident: Hurricane Idalia.

Incident Period: 08/30/2023.

DATES: Issued on 09/09/2023.

Physical Loan Application Deadline Date: 11/08/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2024.

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 President's major disaster declaration on 09/09/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Appling, Atkinson, Bacon, Berrien, Brantley, Brooks, Bulloch, Camden, Candler, Charlton, Clinch, Coffee, Colquitt, Cook, Echols, Emanuel, Glynn, Jeff Davis, Jenkins, Lanier, Lowndes, Pierce, Screven, Tattnall, Thomas, Tift, Ware, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18147 8 and for economic injury is 18148 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–19978 Filed 9–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18026 and #18027; Vermont Disaster Number VT–00047]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Vermont

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–4720–DR), dated 07/14/2023.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 07/07/2023 through 07/17/2023.

DATES: Issued on 09/06/2023.

Physical Loan Application Deadline Date: 09/12/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/15/2024.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Vermont, dated 07/14/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Essex.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–19981 Filed 9–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18022 and #18023; OKLAHOMA Disaster Number OK–00171]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4721–DR), dated 07/19/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 06/14/2023 through 06/18/2023.

DATES: Issued on 09/07/2023.

Physical Loan Application Deadline Date: 09/18/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 04/19/2024.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 07/19/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Choctaw, Pawnee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–20039 Filed 9–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18145 and #18146; Florida Disaster Number FL–00193]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4734–DR), dated 09/09/2023.

Incident: Hurricane Idalia.

Incident Period: 08/27/2023 through 09/04/2023.

DATES: Issued on 09/09/2023.

Physical Loan Application Deadline Date: 11/08/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2024.

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 President's major disaster declaration on 09/09/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Citrus, Dixie, Franklin, Gadsden, Hamilton, Hernando, Lafayette, Leon, Levy, Madison, Suwannee, Taylor, Wakulla.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18145 8 and for economic injury is 18146 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–19975 Filed 9–14–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18118 and #18119; FLORIDA Disaster Number FL–00192]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–4734–DR), dated 08/31/2023.

Incident: Hurricane Idalia.

Incident Period: 08/27/2023 through 09/04/2023.

DATES: Issued on 09/09/2023.

Physical Loan Application Deadline Date: 10/30/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2024.

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: The notice of the President's major disaster declaration for the State of Florida, dated 08/31/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Manatee, Sarasota.

Contiguous Counties (Economic Injury Loans Only):

Florida: Charlotte, DeSoto, Hardee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–19974 Filed 9–14–23; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0002]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Veterans Affairs (VA), Veterans Benefits Administration. Under this matching program, VA will provide SSA with compensation and pension payment data necessary to administer Supplemental Security Income (SSI) and Special Veterans Benefits (SVB) and to fulfill SSA's obligations for the Medicare Savings Program and Medicare Prescription Drug (Medicare Part D) subsidy (Extra Help).

DATES: The deadline to submit comments on the proposed matching program is October 16, 2023. The matching program will be applicable on November 11, 2023, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2023–0002 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the *Search* function to find docket number SSA–2023–0002 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to 1 (833) 410–1631.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Cynthia Scott, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 966–1943, or send an email to *Cynthia.Scott@ssa.gov.*

SUPPLEMENTARY INFORMATION: SSA will use VA compensation and pension payment data to verify eligibility, or amount of payments, for SSI and SVB recipients. SSA will also use the VA compensation and pension payment data to verify an individual's self-certification of eligibility for Extra Help. Additionally, SSA will use the VA compensation and pension payment data to identify individuals who may qualify for Medicare cost-sharing assistance through the Medicare Savings Programs (MSP) or Extra Help to contact these individuals about the availability of these programs.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies

SSA and VA.

Authority for Conducting the Matching Program

This matching agreement between SSA and VA is executed under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, Public Law (Pub. L.) 100–503, 102 Stat. 2507 (1988), as amended, and the Computer Matching and Privacy Protection Amendments of 1990, and the regulations and guidance promulgated thereunder.

The legal authorities for SSA to conduct this exchange are sections 806(b), 1144, 1631(e)(1)(B) and (f), and 1860D–14(a)(3) of the Social Security Act (Act) (42 U.S.C. 1006(b), 1320b–14, 1383(e)(1)(B) and (f), and 1395w–114(a)(3)).

The legal authority for VA to disclose information under this agreement is section 1631(f) of the Act (42 U.S.C. 1383(f)), which requires Federal agencies to provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

Section 1144(a)(1) and (b)(1) of the Act (42 U.S.C. 1320b–14(a)(1) and (b)(1)) requires SSA to take actions to notify individuals about the availability of Medicare cost-sharing and subsidies for low-income individuals under title XVIII of the Act (Medicare), including MSP and Extra Help.

Section 1860D–14(a)(3) of the Act (42 U.S.C. 1395w–114(a)(3)) sets forth the eligibility determination requirements for Extra Help.

Purpose(s)

This agreement sets forth the terms and conditions under which VA will provide SSA with compensation and pension payment data necessary to administer SSI and SVB and to fulfill SSA's obligations for the Medicare Savings Program and Medicare Part D Extra Help. SSA will use VA compensation and pension payment data to verify eligibility, or amount of payments, for SSI and SVB recipients. SSA will also use the VA compensation and pension payment data to verify an individual's self-certification of eligibility for Extra Help. Additionally, SSA will use the VA compensation and pension payment data to identify individuals who may qualify for Medicare cost-sharing assistance through the MSP or Extra Help to contact these individuals about the availability of these programs.

Categories of Individuals

The individuals whose information is involved in this matching program are those individuals who are receiving VA compensation or pension benefits and are matched with data in SSA's SSI Record and SVB system of records (SOR) or SSA's Medicare database SOR.

Categories of Records

VA will provide SSA with electronic files containing compensation and pension payment data. SSA will match the VA data with its SSI/SVB payment information and Medicare database information. SSA will conduct the match using the Social Security number, name, date of birth, and VA claim number on the VA file, the SSI Record and SVB SOR, and the Medicare database SOR.

System(s) of Records

VA will provide SSA with electronic files containing compensation and pension payment data from its SOR entitled the ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28), republished with updated name at 74 FR 14865 (April 1, 2009) and last

amended at 86 FR 61858 (November 8, 2021).

SSA will match the VA compensation and pension payment data with SSI/SVB payment information maintained in its SOR entitled ''Supplemental Security Income Record and Special Veterans Benefits'' (60–0103), last fully published at 71 FR 1830 (January 11, 2006), and amended at 72 FR 69723 (December 10, 2007), 83 FR 31250–31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018).

SSA will also match the VA information with its Medicare Database (MDB) File, 60–0321, last fully published at 71 FR 42159 (July 25, 2006), and amended at 72 FR 69723 (December 10, 2007) and 83 FR 54969 (November 1, 2018).

The SORs involved in this matching program have routine uses permitting the disclosures needed to conduct this match.

[FR Doc. 2023–20045 Filed 9–14–23; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36722]

Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—Cedar River Railroad Company

Chicago, Central & Pacific Railroad Company (CCP) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for acquisition of overhead trackage rights over approximately 41.5 miles of rail line owned by Cedar River Railroad Company (CEDR) [1] between milepost 0.0 at Mona Junction in Cedar Falls, Iowa, and milepost 41.5 in Charles City, Iowa (the Line).

CCP and CEDR have entered into a March 23, 2023 written trackage rights agreement [2] that grants CCP overhead trackage rights over the Line. According to the verified notice, the transaction, together with another transaction that would grant CCP and CEDR limited trackage rights over a connecting rail line owned by Dakota, Minnesota & Eastern Railroad Company (DM&E),[3] will permit CCP to operate trains with its own crews between Mona Junction in Cedar Falls and Valero Marketing & Supply Company's ethanol facility in Floyd County, Iowa.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

The transaction may be consummated on or after October 1, 2023, the effective date of the exemption. If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 22, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36722, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants' representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to CCP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 12, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–20025 Filed 9–14–23; 8:45 am]

BILLING CODE 4915–01–P

[1] The verified notice states that both CCP and CEDR are indirect rail carrier subsidiaries of Canadian National Railway Company (CN), whose U.S. rail carrier subsidiaries (including CCP and CEDR) are held directly or indirectly by CN's wholly owned subsidiary Grand Trunk Corporation. *See Canadian Nat'l Ry.—Control—Ill. Cent. Corp.,* 4 S.T.B. 122 (1999); *Ill. Cent. Corp.—Control—CCP Holdings, Inc.,* FD 32858 (STB served May 14, 1996).

[2] A redacted version of the trackage rights agreement was filed with the verified notice. An unredacted version of the agreement was submitted to the Board under seal concurrently with a motion for protective order, which was granted in a decision served on September 7, 2023.

[3] In a related proceeding, CCP and CEDR have filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for the acquisition of limited local trackage rights over approximately 3.75 miles of rail line owned by DM&E, between milepost 88.85 in Charles City and the east mainline switch to the Valero ethanol facility at approximately milepost 92.6, west of Charles City. *See Cedar River R.R.—Trackage Rts. Exemption—Dakota, Minn. & E. R.R.,* Docket No. FD 36721.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36721]

Cedar River Railroad Company and Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—Dakota, Minnesota & Eastern Railroad Corporation

Cedar River Railroad Company (CEDR) and Chicago, Central & Pacific Railroad Company (CCP) [1] (collectively, Applicants) have filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for acquisition of limited local trackage rights over approximately 3.75 miles of rail line owned by Dakota, Minnesota & Eastern Railroad Company, d/b/a Canadian Pacific Kansas City (DM&E),[2] between approximately milepost 88.85 in Charles City, Iowa, and the east mainline switch to the Valero ethanol facility at approximately milepost 92.6, west of Charles City (the Line).

Applicants and DM&E have entered into a March 3, 2022 written trackage rights agreement [3] that grants Applicants local trackage rights over the Line, limited to the provision of freight rail service to the Valero facility and to the movement of no more than seven loaded trains per week.[4]

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

The transaction may be consummated on or after October 1, 2023, the effective

[1] The verified notice states that both CEDR and CCP are indirect rail carrier subsidiaries of Canadian National Railway Company (CN), whose U.S. rail carrier subsidiaries (including CEDR and CCP) are held directly or indirectly by CN's wholly owned subsidiary Grand Trunk Corporation. *See Canadian Nat'l Ry.—Control—Ill. Cent. Corp.,* 4 S.T.B. 122 (1999); *Ill. Cent. Corp.—Control—CCP Holdings, Inc.,* FD 32858 (STB served May 14, 1996).

[2] The verified notice states that DM&E is part of the Canadian Pacific Kansas City system. *See Canadian Pac. Ry.—Control—Kan. City S.,* FD 36500, slip op. at 3 n.3 (STB served Mar. 15, 2023).

[3] A redacted version of the trackage rights agreement was filed with the verified notice. An unredacted version of the agreement was submitted to the Board under seal concurrently with a motion for protective order, which was granted in a decision served on September 7, 2023.

[4] In a related proceeding, CCP has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for the acquisition of overhead trackage rights over approximately 41.5 miles of rail line owned by CEDR between Cedar Falls, Iowa, and Charles City. *See Chi., Cent. & Pac. R.R.—Trackage Rts. Exemption—Cedar River R.R.,* Docket No. FD 36722. Applicants state that CCP's service to the Valero facility will be provided in conjunction with such overhead trackage rights.

date of the exemption. If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 22, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36721, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Applicants' representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to Applicants, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 12, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2023–20024 Filed 9–14–23; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. BKV Operating, LLC; Pad ID: Frystak Central Pad; ABR–201108012.R2; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 15, 2023.

2. Coterra Energy Inc.; Pad ID: BiniewiczS P1; ABR–201308001.R2; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 15, 2023.

3. EQT ARO LLC; Pad ID: Ann C Good Pad A; ABR–201208009.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 15, 2023.

4. EQT ARO LLC; Pad ID: Salt Run HC Pad A; ABR–201208007.R2; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 15, 2023.

5. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 322 Pad E; ABR–201308002.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 15, 2023.

6. Pennsylvania General Energy Company, L.L.C.; Pad ID: SGL75 PAD B; ABR–201308004.R2; McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 15, 2023.

7. Repsol Oil & Gas USA, LLC; Pad ID: ACRES (05 229) M; ABR–201108010.R2; Windham Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 15, 2023.

8. Repsol Oil & Gas USA, LLC; Pad ID: STEPHANI (03 111); ABR–201108009.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 15, 2023.

9. Repsol Oil & Gas USA, LLC; Pad ID: VANBLARCOM (03 113) R; ABR–201108003.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 15, 2023.

10. Coterra Energy Inc.; Pad ID: BennettC P1; ABR–201308008.R2; Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 17, 2023.

11. Coterra Energy Inc.; Pad ID: BurkeG P1; ABR–201808001.R1; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 17, 2023.

12. Coterra Energy Inc.; Pad ID: HauserJ P1; ABR–201808002.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 17, 2023.

13. Coterra Energy Inc.; Pad ID: MarchoW&M P1; ABR–201308009.R2; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 17, 2023.

14. EQT ARO LLC; Pad ID: Larry's Creek F&G Pad G; ABR–201308007.R2; Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 17, 2023.

15. Range Resources—Appalachia, LLC; Pad ID: Dog Run HC Unit 4H–6H; ABR–201308011.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 17, 2023.

16. Range Resources—Appalachia, LLC; Pad ID: Laurel Hill 9H–11H; ABR–201308010.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 17, 2023.

17. Coterra Energy Inc.; Pad ID: PayneD P1; ABR–201308014.R2; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 22, 2023.

18. Seneca Resources Company, LLC; Pad ID: DCNR 100 Pad G; ABR–201108032.R2; McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2023.

19. Seneca Resources Company, LLC; Pad ID: DCNR 595 Pad L; ABR–201108033.R2; Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2023.

20. Chesapeake Appalachia, L.L.C.; Pad ID: BKT; ABR–201208012.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 27, 2023.

21. Chesapeake Appalachia, L.L.C.; Pad ID: Harlan; ABR–201208005.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 27, 2023.

22. Chesapeake Appalachia, L.L.C.; Pad ID: Stethers; ABR–201208004.R2; Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 27, 2023.

23. Seneca Resources Company, LLC; Pad ID: Chaapel Hollow Unit; ABR–201305016.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 27, 2023.

24. Chesapeake Appalachia, L.L.C.; Pad ID: Nina; ABR–201208003.R2; Asylum Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 28, 2023.

25. Chesapeake Appalachia, L.L.C.; Pad ID: Ronmary; ABR–201208013.R2; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 28, 2023.

26. Coterra Energy Inc.; Pad ID: KeevesJ P1; ABR–201308003.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 28, 2023.

27. Coterra Energy Inc.; Pad ID: MeadB P1; ABR–201308013.R2; Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 28, 2023.

28. Chesapeake Appalachia, L.L.C.; Pad ID: Borek; ABR–201208021.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 29, 2023.

29. Chesapeake Appalachia, L.L.C.; Pad ID: Tufano; ABR–201208020.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 29, 2023.

30. Repsol Oil & Gas USA, LLC; Pad ID: DCNR 594 (02–207); ABR–201808003.R1; Bloss, Hamilton, and Liberty Townships, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 29, 2023.

31. Coterra Energy Inc.; Pad ID: CorbinJ P1; ABR–201108049.R2; Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 31, 2023.

32. Repsol Oil & Gas USA, LLC; Pad ID: FREDERICK (02 109) L; ABR–201108046.R2; Hamilton Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 31, 2023.

33. SWN Production Company, LLC; Pad ID: Dropp-Range-Pad46; ABR–201308016.R2; Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: August 31, 2023.

34. Chesapeake Appalachia, L.L.C.; Pad ID: Yonkin Drilling Pad #1; ABR–201109020.R2.1; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 31, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: September 12, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–20010 Filed 9–14–23; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0003]

Agency Information Collection Activities: Request for Comments for a New Information Collection; Withdrawal

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; withdrawal.

SUMMARY: The FHWA is withdrawing the notice, ''Agency Information Collection Activities: Request for Comments for a New Information Collection,'' published in the **Federal Register** on February 8, 2023.

FOR FURTHER INFORMATION CONTACT: Janelle Hinton, (202) 366 1604/*janelle.hinton@dot.gov;* Martha Kenley, (202) 604–6979/*martha.kenley@dot.gov,* Department of Transportation, Federal Highway Administration, Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA is withdrawing the notice published in the **Federal Register** on February 8, 2023 at 88 FR 8339 (FR Number 2023–02640).

Issued on: September 7, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–19717 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0026]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0026 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Janelle Hinton, (202) 366 1604/*janelle.hinton@dot.gov;* Martha Kenley, (202) 604–6979/*martha.kenley@dot.gov,* Department of Transportation, Federal Highway Administration, Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Safe Streets and Roads for All Grant Program.

Background: The Department of Transportation's (DOT) Office of the Secretary and the Federal Highway Administration are committed to a comprehensive strategy to address the unacceptable number of traffic deaths and serious injuries occurring on our roads and streets. The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), Section 24112 aligns with the Department's safety priority through the creation of the Safe Streets and Roads for All Grant Program. This grant program supports local initiatives to prevent deaths and serious injuries on roads and streets and is intended for metropolitan planning organizations, political subdivisions of a State, federally recognized Tribal governments, and multijurisdictional groups of these entities.

This program includes grant funds to develop a comprehensive safety action plan; to conduct planning, design and development activities for projects and

strategies identified in a comprehensive safety action plan; or to carry out projects and strategies identified in a comprehensive safety action plan. To receive applications for grant funds, evaluate the effectiveness of projects that have been awarded grant funds, and monitor project financial conditions and project progress, a collection of information is necessary.

Eligible applicants will request Safe Streets and Roads for All funds in the form of a grant application. Additional information submission will be required of grant recipients during the grant agreement, implementation, and evaluation phases.

Responding to the grant opportunity is on a voluntary-response basis, utilizing an electronic grant platform. The grant application is planned as a one-time information collection. DOT estimates that it will take approximately 30 hours to complete an application for a comprehensive safety action plan grant and approximately 110 hours to complete an application for an implementation grant.

Respondents: Metropolitan planning organizations, political subdivisions of a State, Federally recognized Tribal governments and multijurisdictional groups of these entities.

Frequency: One time per grant application.

During the project management phase, the grantee will complete quarterly progress and monitoring reports to ensure that the project budget and schedule are maintained to the maximum extent possible, that compliance with Federal regulations will be met, and that the project will be completed with the highest degree of quality. Reporting responsibilities include quarterly program performance reports using the Performance Progress Report (SF–PPR) and quarterly financial status using the SF–425 (also known as the Federal Financial Report or SF–FFR).

Respondents: Grant recipients.

Frequency: quarterly throughout the period of performance.

During the project management phase, each grantee that expends $750,000 or more during their own fiscal year in all Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR 200.501. (The $750,000 threshold is not limited to Safe Streets and Roads for All funding.) This reporting responsibility is required annually and uses a form, the SF–SAC. It is estimated that this survey will take an average of 100 hours for large auditees and 21 hours for all other auditees to complete, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Grant recipients.

Frequency: annually during any fiscal year in which $750,000 or more in any Federal funds are expended, throughout the period of performance.

During the project evaluation phase, the reporting requirement is necessary to assess program effectiveness for the Federal government and to comply with Subsection 24112(g). This report provides information regarding how the project is achieving the outcomes that grantees have targeted to help measure the effectiveness of the Safe Streets and Roads for All Grant Program. In addition, under Subsection 24112(h), at the end of the period of performance for a grant under the program each grant recipient is required to submit a report that describes the costs of each eligible project carried out using the grant funds; the outcomes and benefits generated; the lessons learned; and any recommendations relating to future projects or strategies.

Respondents: Grant recipients.

Frequency: one time after the period of performance ends.

Estimated Average Burden per Response:

- *Application phase:* approximately 30 hours for the comprehensive safety action plan grants and 110 hours for the implementation grants per respondent.
- *Grant Agreement phase:* approximately 1 hour per respondent (comprehensive safety action plan or implementation grant).
- *For grantees expending $750,000 or more of all Federal funds in a fiscal year only:*

Approximately 100 hours for large grantees.

Approximately 21 hours for all other grantees.

- *Project Management phase:* 8 hours annually per grant.
- *Project Evaluation phase:* 12 hours annually per implementation grant; 2 hours annually per action plan grant.

Estimated Total Annual Burden Hours:

First year: Approximately 41 hours, including grant application, for comprehensive safety action plan grants and approximately 131 hours, including grant application, for implementation grants.

Subsequent years (cumulative): 10 hours for action plan grants (expected period of performance: 2 years); 48 hours for implementation grants (expected period of performance: 5 years); add 100 hours for single audits for large grantees and 21 hours for all other grantees expending $750,000 or more of Federal funds in a single fiscal year.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 23 U.S.C. 134 and 135; and 23 CFR chapter 1, subchapter E, part 450.

Issued On: September 12, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–20042 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0027]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 16, 2023.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit comments by only one of the following means:

Website: Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation,

West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number or the Information Collection Review (ICR/RFC) Reference Number for this Notice at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Paul Jodoin, 202–366–5465, Office of Operations, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: National Traffic Incident Management Annual Self-Assessment (TIMSA).

Background: Each of the over 6 million crashes per year presents a safety danger to motorists and responders while often causing delays on the nation's roads. It is critical to safety and mobility for these crashes to be mitigated as efficiently and safely as possible. To address these concerns, dozens of Traffic Incident Management (TIM) Programs have been established throughout the country over the past 25–30 years. Most of the top 75 metropolitan areas and several rural areas have some form of TIM Program, often coordinated through a multi-disciplinary committee comprised of all the response disciplines. The TIMSA tool was established to help regions assess the level of TIM Program maturity and to identify areas for improvement.

The information is used by each jurisdiction to better understand opportunities for improving safety and mobility in their region. The FHWA also uses the data to assess progress of the FHWA national TIM program and identify opportunities to help regions improve.

Respondents: Approximately 100 individuals will complete the questionnaire in collaboration with an estimated average of 5 other participants.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 1–2 hours.

Estimated Total Annual Burden Hours: 200.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Issued on: September 12, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–20021 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Mid-States Corridor Project in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces final actions taken by FHWA and the United States Fish and Wildlife Service (USFWS) relating to the proposed Mid-States Corridor Project in southern Indiana. The public is advised that FHWA issued a Record of Decision (ROD) which concludes the Tier 1 Mid-States Corridor Project studies. The ROD is combined with the Mid-States Corridor Project Tier 1 Final Environmental Impact Statement (EIS) prepared by FHWA and the Indiana Department of Transportation (INDOT).

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 12, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Jermaine R. Hannon, Division Administrator, Federal Highway Administration, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204–1576; telephone: (317) 226–7475; email: *jermaine.hannon@dot.gov.* For the USFWS: Ms. Susan E. Cooper, Field Supervisor, Indiana Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403–2121; telephone: (812) 334–4261; email: *Susan_E_Cooper@fws.gov.* Normal business hours for the USFWS Indiana Field Office are: 8 a.m. to 4:30 p.m., Eastern Time. For INDOT, you may contact Laura Hilden, Director—Environmental Services, 100 North Senate Avenue, Room N758–ES, Indianapolis, IN 46204; telephone: (317) 552–9692; email: *lhilden@indot.in.gov.* Normal business hours for INDOT are: 8:00 a.m. to 4:30 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has approved the Tier 1 Final Environmental Impact Statement (FEIS) for the Mid-States Corridor Project and issued the combined FEIS/ROD on September 15, 2023. The FHWA used a tiered EIS for the Mid-States Corridor Project in accordance with the National Environmental Policy Act (NEPA); the Council on Environmental Quality regulations implementing NEPA (40 CFR parts 1500 through 1508), FHWA's regulations implementing NEPA (23 CFR part 771), and Section 4(f) (23 CFR part 774). The Tier 1 FEIS included in-depth analysis of environmental, transportation, and economic impacts and estimated project costs. The Tier 1 EIS also analyzed a reasonable range of corridor alternatives, which led to identification of Refined Alternative P as the selected alternative. The FHWA has concurred in that recommendation.

The Tier 1 FEIS and ROD established Sections of Independent Utility (SIUs) for the project. A Tier 2 NEPA study will be conducted for each SIU prior to construction and will include identification of specific alignments and alternatives. The Tier 2 studies will be more closely tailored to address transportation needs within the SIUs, and evaluation of alternatives will include consideration of the social, economic, traffic, cost, and environmental impacts among other factors.

This FEIS and ROD identified Refined Alternative P as the Selected Alternative. Decisions in the FEIS and ROD included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Screening of alternatives and the identification of alternatives to be carried forward for more detailed

analysis in the Draft Environmental Impact Statement (DEIS).

4. Identification of Alternative P as the Preferred Alternative in the DEIS.

5. Refinement to the Preferred Alternative P based on public input (Refined Preferred Alternative P).

6. Identification of Refined Preferred Alternative P as the Selected Alternative in the FEIS and ROD.

The Selected Alternative, Refined Preferred Alternative P, begins at the I–64/US 231 interchange and continues north and west to the I–69/US 231 Interchange, and includes local improvements along the existing US 231. The analysis showed that Refined Alternative P has the lowest impacts to environmental resources and the lowest cost of the three alternatives determined to meet the Purpose and Need. In response to public comments and in the interest of minimizing any potential economic impacts, Refined Alternative P contains three additional variations in the area near Loogootee, Indiana, which will be further evaluated in Tier 2 studies to determine a single alignment. Interested parties may consult the FEIS and ROD for details about each of the decisions described above and for information on other issues decided. The FEIS and ROD can be viewed and downloaded from the project website at *https://midstatescorridor.com/*. People unable to access the website may contact FHWA or INDOT at the addresses listed above.

This notice applies to all final Federal Agency decisions in the Mid-States Corridor Tier 1 FEIS and ROD as of the issuance date of this notice, and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351].

2. Endangered Species Act [16 U.S.C. 1531–1544].

3. Fish and Wildlife Coordination Act [16 U.S.C. 661–667d].

4. Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Bald and Golden Eagle Protection Act [16 U.S.C. 688–688c].

6. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

7. Clean Air Act, 42 U.S.C. 7401–7671(q).

8. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

9. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470] and Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

10. Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)].

11. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

12. Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Uniform Relocation Assistance and Real Property Acquisition Act [42 U.S.C. 61].

13. Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

14. Noise Control Act of 1972 [42 U.S.C. 4901 et seq].

15. Clean Water Act (Section 319, Section 401, Section 402, Section 404) [22 U.S.C. 1251 *et seq.*].

16. Executive Order (E.O.) 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514, Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species; E.O. 13166, Improving Access for Persons with Limited English Proficiency.

Notice is hereby given that the USFWS has taken the final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing the following:

1. A letter dated June 29, 2023, concurring with the effects determinations in the Biological Assessment (BA) and identifying that absent new information in Tier 2 studies or significant change to the project plans, no further coordination with the USFWS is needed for the gray bat, sheepnose mussel, rough pigtoe mussel and lake sturgeon which received a ''may effect, not likely to adversely affect'' determination.

2. A Biological Opinion (BO) dated June 29, 2023, that the Mid-States Corridor Project would not jeopardize the continued existence of the Indiana bat, northern long eared bat, fanshell mussel, and fat pocketbook mussel.

3. A Conference Opinion (CO) dated June 29, 2023, that the Mid-States Corridor Project would not jeopardize the continued existence of the tricolored bat, little brown bat, salamander mussel and monarch butterfly.

4. The BO and CO also identified activities for Tier 2 studies. They included bat surveys, mussel surveys and anticipated mitigation activities.

5. In its June 29, 2023, letter USFWS also states that incidental take statements would be developed during Tier 2 studies, and are not made as part of this Tier 1 BO and CO.

The BA and BO/CO and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, are available by contacting the FHWA, INDOT, or USFWS at the addresses provided above. The BA and BO/CO can be viewed in Appendices PP and QQ of the Mid-States Corridor Tier 1 FEIS, respectively.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Jermaine R. Hannon,

Division Administrator, FHWA, Indianapolis, Indiana.

[FR Doc. 2023–19810 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0026]

Agency Information Collection Activities: Request for Comments for a New Information Collection; Withdrawal

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; withdrawal.

SUMMARY: The FHWA is withdrawing the notice, ''Agency Information Collection Activities: Request for Comments for a New Information Collection,'' published in the **Federal Register** on August 31, 2023.

FOR FURTHER INFORMATION CONTACT: Spencer Stevens, 202–366–6221, Office of Planning, Environment and Realty Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The FHWA is withdrawing the notice published in the **Federal Register** on August 31, 2023 at 88 FR 60260 (FR Number 2023–18838).

Issued on: September 7, 2023.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2023–19697 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–24]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On November 14, 2022, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before October 16, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *Arlette.Mussington@dot.gov* or telephone: (571) 609–1285, or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On November 14, 2022, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 87 FR 68226. FRA received one comment from the Association of American Railroads (AAR) related to the proposed collection of information.

On January 13, 2023, AAR submitted a spreadsheet containing suggestions for changes to the proposed collection. AAR's suggestions fell into three categories: (1) changes to the data validation and listed options, (2) options to fill in a cell with a blank, ''N/A'', or ''Other'' if there was not a valid option in the proposed list, and (3) general changes to the form's instructions to improve clarity.

For data validation and listed options, AAR asked that the software version numbers allow for free text, so versions such as ''6.3.24.2'' be allowed rather than just numbers with a single decimal point, such as 6.3. The restrictions on the cell were removed to allow for free text entry. AAR additionally asked that, for ''Type of Reportable Issue'', a listed option be changed to ''Previously Unidentified Hazard'' from the incorrectly listed prior two options that stated ''Previously'' and ''Unidentified Hazard.'' In the dropdown list, the two original line items were combined into ''Previously Unidentified Hazard'' to correct for the typographical error.

AAR asked for the option to fill in many cells with ''N/A'', a blank, or provide an ''Other'' option to record additional entries outside of the original list. Doing so would allow for cases where an entity might not know the information requested but could provide an answer to the form rather than leaving it blank. For example, positive train control (PTC) Suppliers or Vendors do not often know confidential information about the railroad, such as mile posts or track segment designations, and this option would allow them to submit without knowing milepost or track segment associated with the failure. The following sections now allow for ''N/A'' or ''Other'' options: ''Affected Railroad, Supplier or Vendor'', ''Track Segment'', and ''Nature of Failure''.

Additionally, several of the form instructions were clarified or elaborated on as requested by AAR. The revisions did not require changing the context of a cell, but rather allowed for multiple cases and a better understanding of what FRA is asking for within the form. The following sections were updated: ''Submission Instructions'', ''Additional Affected Railroad(s), Supplier(s), or Vendor(s).'' As the ''Submission Instructions'' were updated, FRA elected not to revise the instructions next to the cells themselves as the revisions that were made were sufficient.

Finally, AAR made two suggestions that FRA did not act on. First, AAR recommended removing the ''Estimated Date to Correct Failure'' field. However, this is required per regulatory compliance, so FRA has not removed this field. Second, AAR noted that the proposed form cells need to ''grow'' as text is entered. FRA conducted testing on several noted cells, such as the ''Synopsis'' field, and confirmed that the field did expand as the user entered more text.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Positive Train Control and Other Signal Systems.

OMB Control Number: 2130–0553.

Abstract: FRA's regulations require that both railroads and PTC vendors and suppliers notify FRA of certain PTC system errors and malfunctions. 49 CFR 236.1023. For example, railroads must maintain a database of all safety-relevant hazards identified in their PTC Safety Plans (PTCSP) and those that had not previously been identified in their PTCSPs. 49 CFR 236.1023(e). If the frequency of a safety-relevant hazard exceeds the thresholds in a railroad's PTCSP, or such hazard has not been previously identified in a railroad's risk analysis, then the railroad must notify FRA of the failure, malfunction, or defective condition that decreased or eliminated the safety functionality of

the railroad's PTC system. 49 CFR 236.1023(e)(1). In addition, FRA's regulations require PTC vendors and suppliers to notify FRA of any safety-relevant failure, defective condition, or previously unidentified hazard discovered by the vendor or supplier and the identity of each affected and notified railroad. 49 CFR 236.1023(h)(2). Currently, each railroad or PTC vendor and supplier that must submit notifications of such a failure, malfunction, or defective condition does so by emailing the information to an FRA inbox (*FRAPart2361023 Notification@dot.gov*). The information is sent in different formats by each railroad or PTC supplier and vendor because there is currently no standardized form.

Therefore, FRA is hereby proposing to standardize the reporting process required by 49 CFR 236.1023(e)(1), (h), and (f) by creating the Errors and Malfunctions Notification Form (Form FRA F 6180.179), which is one part of the existing information collection request under OMB Control No. 2130–0553. This proposed Form FRA F 6180.179 will be in an Excel format and will make it easier for the entities to notify FRA of each applicable failure, malfunction, or defective condition, and for FRA to synthesize and act on the reported failure. The Errors and Malfunctions Notification Form would not change the requirements that each railroad or PTC supplier and vendor currently must follow to notify FRA of each reportable failure, malfunction, or defective condition. *See, e.g.,* 49 CFR 236.1023(e), (h), and (f). The proposed Form FRA F 6180.179 would be submitted to *FRAPart2361023 Notification@dot.gov* within the 15-day deadline under 49 CFR 236.1023(f)(1).

With the current reporting process, FRA estimated that each notification would take 8 hours to prepare. With the new standardized Form, FRA estimates that, on average, each notification will be reduced to 7.5 hours to prepare if the railroad or PTC supplier or vendor uses the FRA-provided Excel Form. This estimate is based on the fact that the proposed new Form FRA F 6180.179 offers drop-down menus that would allow railroads or PTC suppliers and vendors to select an answer from an established list instead of creating each answer from scratch. The revised burden would also account for the review of the instructions in the FRA-provided Excel Form. Thus, FRA estimates that by creating this Form, the total annual burden hours will decrease by 14 hours.[1]

Type of Request: Revision to a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.179 (new form) and FRA F 6180.152 (existing form).[2]

Respondent Universe: 742 railroads and 10 vendors.[3]

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 4,567,826.

Total Estimated Annual Burden: 51,930 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $4,324,155.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–19976 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–06–P

[1] The current inventory exhibits a total burden of 51,993 hours and 4,567,826 responses, while the total burden in this notice is 51,930 hours and 4,567,826 responses. As noted in the 60-day FRN, the decrease in burden is due to the proposed standardized reporting process using FRA F 6180.179 and in this notice, FRA has made adjustments to correct rounding errors in previously reported burden hours.

[2] OMB-approved form FRA F 6180.152 remains unchanged.

[3] While included in the PRA table published, FRA inadvertently did not include the 10 vendors as part of the respondent universe summary.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2023–0125]

Notice of Funding Opportunity To Establish Cooperative Agreements With Technical Assistance Providers for the Fiscal Year 2023 Thriving Communities Program

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

ACTION: Notice of Funding Opportunity (NOFO), Assistance Listing Number: 20.942.

SUMMARY: The purpose of this notice is to publish DOT's application submission requirements and application review procedures to select national and State, Tribal, or regional capacity builders to provide technical assistance, planning, and capacity building support to communities through cooperative agreements with DOT, as authorized by the Consolidated Appropriations Act, 2023.

DATES: The deadline for application submission is 4:59 p.m. eastern time on November 28, 2023. Proposals or applications received after the above deadlines will not be reviewed or considered. See section E of this NOFO regarding DOT's review process and section G of the NOFO for DOT's contact information.

ADDRESSES: Applications must be submitted through *https://www.grants.gov.* Opportunity number: DOT–TCP–FY23–01.

FOR FURTHER INFORMATION CONTACT:

Ongoing updates, webinar notices, FAQs: https://www.transportation.gov/thriving-communities.

POC: Monica Guerra, (202) 366–7738, *monica.guerra@dot.gov.*

Email: ThrivingCommunities@dot.gov. A Telecommunications Device for the Deaf (TDD) is available (202) 366–3993.

SUPPLEMENTARY INFORMATION:

SUMMARY OVERVIEW AND KEY INFORMATION: THRIVING COMMUNITIES PROGRAM (TCP)

Issuing Agency	U.S. Department of Transportation, Office of the Secretary (OST).
Program Overview	The Consolidated Appropriations Act, 2023 provided $25 million to the US Department of Transportation (DOT) for a Thriving Communities Program (TCP) to develop and implement technical assistance, planning, and capacity building to help improve and foster thriving communities through transportation improvements. Through TCP, DOT will award cooperative agreements for Capacity Builders to provide technical assistance, planning, and capacity building support that advances transformative infrastructure plans, projects, and processes primarily in communities that have disproportionate rates of pollution and poor air quality, communities experiencing disproportionate human health and environmental effects (as defined by Executive Order No. 12898), areas of persistent poverty as defined in section 6702(a)(1) of title 49, United States Code, or historically disadvantaged communities.
Program Types	*Thriving Communities National Capacity Builder Program (TCP–N):* Funds TCP–N Capacity Builders through cooperative agreements to provide individualized technical assistance, planning, and capacity building support to 15–20 communities located around the country, selected and assigned by DOT, and organized into a Community of Practice. TCP–N Capacity Builders will work with communities to co-design tailored scopes of work based on the community's individual needs and stage in the transportation planning, design, and development process to be carried out over two years of intensive TCP support. TCP–N Capacity Builders will also facilitate peer learning networks across the communities assigned to their Community of Practice. Evaluation, reporting, resource development, and transition activities will be the Capacity Builders' focus during the third year of the period of performance. *Thriving Communities Regional Pilot Program (TCP–R):* Funds State and local governments and their agencies, Tribal governments, and regional governments or organizations through cooperative agreements to provide support to communities selected by the applicant that are located within their jurisdiction or service area. The focus of this program is to enable State, Tribal, local, and regional governments to support the advancement of transportation opportunities in disadvantaged communities that align with State, Tribal, or regional housing, economic development, public health, climate, and other community development goals. While this program overlaps with the TCP–N Program in scope and purpose, it has a narrower focus on coordination and alignment within a specific geography. TCP–R Capacity Builders will play a coordination and capacity building role rather than providing intensive, tailored technical assistance. TCP–R Capacity Builders will facilitate peer learning across communities in their State, Tribe and/or region to scale program impact and act as a model for other jurisdictions. The first two years of the period of performance will be focused on both individual community support and peer learning, while the third year will focus on evaluation, reporting, resource development, and transition activities.
Eligible Activities	*TCP–N Capacity Builder Cooperative Agreements:* Deep-dive technical assistance, planning, and capacity building support that could include, but is not limited to, the following set of activities: • identifying and responding to funding opportunities that align with projects that implement local community mobility, access, climate and community development goals and regional or statewide plans. • activities to support grant writing, project management, and compliance with grant administration requirements. • conducting project scoping, planning, and pre-engineering studies, market, and other technical analysis. • supplementing local staffing, training, and workforce development capacity. • developing systems or structures that improve compliance with Federal grant management, including but not limited to title VI of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and procurement requirements. • supporting comprehensive community planning activities that better coordinate transportation with other land use, housing, climate, health, and other infrastructure. • implementing innovative public engagement strategies, particularly to involve traditionally underrepresented voices in the planning, project identification, and prioritization process. • sub-granting to local technical assistance and capacity building partners who bring local expertise and capacity. • building organizational capacity to strengthen relationships between key stakeholders that deepen regional engagement and collaboration, position partners for future funding opportunities, and/or support inclusive planning processes. • evaluating and establishing emerging transportation and planning technologies, data systems, and software. • fostering peer learning and participation within a Community of Practice to advance policies, practices, and projects informed by meaningful public involvement and partnership. *TCP–R Cooperative Agreements:* Support provided by State governments and their agencies, Tribal governments, local governments and their agencies, or regional governments and organizations to advance transformative infrastructure in disadvantaged communities that face barriers to infrastructure advancement and implementation. This may include, but is not limited to: • identifying funding opportunities that align with transportation goals and advance mobility access, climate resilience, equitable community development, healthy communities in support of regional or statewide plans. • supporting predevelopment planning and scoping of projects that coordinate transportation with other land use, housing, and infrastructure development. • building organizational capacity and strengthened relationships between key stakeholders that deepen regional engagement and collaboration, position partners for future funding opportunities, and/or support inclusive planning processes. • funding planning and technical assistance activities that reform local land use and zoning policies to align transportation infrastructure investment with equitable community development. • establishing pooled resources and/or innovative funding tools that increase community investments in transportation, housing, environment, and health. • supporting regional economic and workforce development that promotes local hiring, access to transit, and jobs in high quality industries. • activities to support grant writing, project management, and compliance with grant administration requirements. • peer-learning, networking, and knowledge sharing on strategies, types of tools, and lessons learned with other communities in the applicant's State or region.
Eligible Applicants	*TCP–N Capacity Builders:* • Non-profit organizations; • philanthropic entities; and • other technical assistance providers including academic institutions and private sector organizations with a demonstrated capacity to develop and provide technical assistance, planning, and capacity building to a range of communities located across multiple States and regions. *TCP–R Capacity Builders:* • State governments and their agencies; • Indian Tribes; • local governments and their agencies; • governmental planning or transportation organizations working at the regional or metropolitan level; or • regional planning non-profit organizations.
Funding Amount	For FY 2023, the Department expects to award two different types of cooperative agreements through this NOFO, with up to $22 million total being available for award. • TCP–N Capacity Builder cooperative agreements are anticipated to be in the range of $4–5 million each; and • TCP–R cooperative agreements are anticipated to be in the range of $1–2 million each.

SUMMARY OVERVIEW AND KEY INFORMATION: THRIVING COMMUNITIES PROGRAM (TCP)—Continued

Cost Share	No cost sharing or matching is required as a condition of eligibility under this competition. DOT will fund up to 100 percent of eligible project costs through a monthly reimbursement invoicing model. Priority consideration will be given to those applicants that can demonstrate leveraging of other funding and resources.
Deadlines	November 28, 2023 at 4:59 p.m. ET via *Grants.gov.* Opportunity number: DOT–TCP–FY23–01.
Contact Information	Ongoing updates, webinar notices, FAQs: [*https://www.transportation.gov/grants/thriving-communities*]. Email: *ThrivingCommunities@dot.gov.* Phone: (202) 366–7738. A Telecommunications Device for the Deaf (TDD) is available (202) 366–3993.

Table of Contents

A. Program Description

1. Overview

The U.S. Department of Transportation's (DOT or the Department) Thriving Communities Program (TCP) was established by the Consolidated Appropriations Act of 2022 (Pub. L. 117–103 division L, title I) and received additional funding through the Consolidated Appropriations Act of 2023 (Pub. L. 117–328 division L, title I). The goal of the TCP is to ensure disadvantaged or transportation-insecure communities adversely and/or disproportionately affected by environmental, climate, and human health policy outcomes have the technical tools and organizational capacity to comprehensively plan for and deliver quality infrastructure projects and community development projects that enable their communities and neighborhoods to thrive.

The TCP was created by Congress specifically to facilitate the planning and development of transportation and community revitalization activities supported by DOT under titles 23, 46, and 49, United States Code, that increase mobility, reduce pollution from transportation sources, expand affordable transportation options, facilitate efficient land use, preserve or expand jobs, improve housing conditions, enhance connections to health care, education, and food security, or improve health outcomes. To achieve this, communities, particularly those that are disadvantaged and/or transportation burdened or those that have limited technical capacity or budgets, need greater levels of support to successfully take advantage of the recent historic Federal investments in transportation infrastructure and build capacity to successfully fund these projects in the long-term.

DOT's FY2022–2026 Strategic Plan [*https://www.transportation.gov/dot-strategic-plan*] and its Equity Action Plan [*https://www.transportation.gov/priorities/equity/equity-action-plan*] articulate the Department's commitment to equity as a transportation cornerstone. The TCP embodies this commitment with a focus on ensuring that all communities, regardless of their size or current capacity, have the necessary tools to access DOT funding and that equity is infused into decision making and planning, procurement, and hiring processes. TCP is a Justice40 covered program, created to ensure that disadvantaged communities can successfully identify, develop, fund, and deliver infrastructure projects informed by meaningful public involvement that generate multiple economic, climate, health, equity, and other community benefits. Find more information on the Justice40 Initiative and other programs that that can support equity goals on the DOT Justice40 website [*https://www.transportation.gov/equity-Justice40*].

This Notice of Funding Opportunity (NOFO) continues investment in a national technical assistance program (TCP–N) and provides new opportunities for State-, Tribal-, local-, and regional-level community support through the Thriving Communities Regional Pilot Program (TCP–R) that will drive innovation, advance equity outcomes, and build a national pipeline of community-driven infrastructure projects. In its first year, TCP supported deep-dive technical assistance in 64 communities across the country. For the TCP's second year, DOT seeks to support at least another 45–60 communities through its National program, depending on responses to the Letters of Interest and the size and number of cooperative agreements awarded through this NOFO, and additional communities selected by TCP–R applicants.

For the FY 2023 TCP, there are two distinct programs, each of which will involve a team of Capacity Builders providing assistance to disadvantaged and/or low-capacity communities. The opportunities to provide and receive assistance are summarized below:

	Thriving Communities National (TCP–N) program		Thriving Communities Regional Pilots (TCP–R) program	
	National capacity builders	Recipient communities	TCP–R capacity builders	Recipient communities
How to Apply	Submit an application via *grants.gov* in response to this NOFO.	Submit a Letter of Interest via [*https://www.transportation.gov/grants/thriving-communities-program-LOI-webform*]. Find more information in the Call for LOIs [*https://www.transportation.gov/grants/thriving-communities/call-for-letters-of-interest-fy23*].	Submit an application via *grants.gov* in response to this NOFO.	*No application required;* communities selected directly by TCP–R Capacity Builder. Identified communities must include Letters of Commitment in TCP–R application.

	Thriving Communities National (TCP–N) program		Thriving Communities Regional Pilots (TCP–R) program	
	National capacity builders	Recipient communities	TCP–R capacity builders	Recipient communities
Purpose	Fund National Capacity Builders to provide direct no-cost planning, technical assistance, and capacity building support to selected TCP communities located across the country for a three-year period of performance.	Receive, at no cost, TCP technical assistance, capacity building, and planning support from the DOT-funded National Capacity Builders.	Fund State, Tribal, local, and regional entities to provide direct no-cost planning, technical assistance, and capacity building to communities of their choice within their jurisdictions for a three-year period of performance.	Receive, at no cost, TCP technical assistance, capacity building, and planning support from the DOT-funded TCP–R Capacity Builders.
Primary Activity	*Provide* technical assistance, planning, and capacity building support.	*Receive* technical assistance, planning, and capacity building support.	*Coordinate* assistance and support to advance and align infrastructure goals and projects.	*Receive* assistance and support to advance and align infrastructure goals and projects.
Eligible Applicants	• Non-profit organizations. • philanthropic entities; and • other technical assistance providers including academic institutions or private sector organizations with a demonstrated capacity to develop and provide technical assistance, planning, and capacity building to a range of communities located across multiple States and regions.	• States. • Local governments. • Indian Tribes. • United States territories. • metropolitan planning organizations (MPOs). • transit agencies. • other political subdivisions of State or local governments.	• States government and its agencies. • Indian Tribes. • Local government and its agencies. • a governmental planning, economic development, or transportation organization working at the regional or metropolitan level, or • a regional, Tribal or Statewide planning non-profit organization.	• Local governments. • Indian Tribes. • United States territories. • transit agencies. • or other political subdivisions of State or local governments.
Partnership Requirements	Applicants are encouraged to partner with other Capacity Builders, which may include other eligible applicants including non-profits, and other technical assistance providers to deepen and broaden technical assistance and capacity building expertise.	Applicants are *required* to identify at least two community partners with whom they will work to advance local goals to be supported through TCP–N assistance. Find more information in the Call for LOIs [*https://www.transportation.gov/grants/thriving-communities/call-for-letters-of-interest-fy23*].	Applicants are encouraged to partner with other Capacity Builders, which may include other entities including local governments, non-profits, and other technical assistance providers to deepen and broaden technical assistance and capacity building expertise.	Partnerships are not required at the community level but are encouraged to ensure meaningful coordination and engagement across stakeholders.
Anticipated Funding Levels per Cooperative Agreement.	$4–$5 million	None directly.	$1–$2 million	None directly.

DOT staff from headquarters and from regional and division offices will be identified to serve as Federal liaisons with both the National and Regional Capacity Builders and with selected TCP communities to facilitate connections with other Federal technical assistance resources that can assist in project pre-development, community engagement, planning, financing, and project delivery activities. The DOT Navigator [*https://www.transportation.gov/dot-navigator*] provides information on existing DOT-supported technical assistance resources that may be a useful reference for Capacity Builders. Note that key definitions for terms relevant to TCP are provided in section H.1 of this NOFO.

a. National Capacity Builder Program

As it did in the first year of the program, the FY 2023 the TCP–N will provide technical assistance, planning, and capacity building support at a national level to help communities scope, develop, and deliver transportation projects that advance community stabilization or revitalization activities that benefit disadvantaged populations and communities. Within the project scoping, development, and design phases, the TCP will support and build local capacity to accelerate projects; access and manage Federal funding; and deploy local hiring, workforce development, and inclusive community engagement practices. DOT seeks applications from technical assistance, planning, and capacity building providers—henceforth referred to as TCP–N Capacity Builders. Eligible applicants are identified in section C.1. of this NOFO.

i. Individualized Deep Dive Technical Assistance, Planning, and Capacity Building Support

The primary focus of support through TCP–N is on assisting individual communities—recipients include government agencies and their community partner organizations—to successfully advance projects identified through meaningful public involvement that deliver a broad set of transportation, climate, equity, housing, economic, and other community benefits. DOT is requiring communities, through a separate Letter of Interest (LOI) process, to form and apply as coalitions with organizations that may also serve as local capacity building and technical assistance implementation partners and generate deeper community engagement, particularly from historically under-represented populations and environmental justice stakeholders. The composition of these community partnerships will be at the discretion of each LOI applicant and identified in their LOI, but could include other government entities, non-profits, non-governmental and community-based organizations, labor unions, advocacy groups, chambers of commerce and major employers or anchor institutions, and philanthropic organizations. For an overview of the communities selected in FY 2022, their challenges, and their visions for TCP support, visit the FY 2022 Selected Communities Fact Sheet [*https://www.transportation.gov/grants/thriving-communities/thriving-communities-program-fy-2022-selected-communities-fact-sheet*].

Each TCP–N Capacity Building team will provide individualized deep-dive support to a set of 15–20 communities selected by DOT. DOT will assign these recipient communities to a specific TCP–N Capacity Builder team prior to finalizing cooperative agreements. Note

that there may be more than one Capacity Builder team per Community of Practice, and the final number of communities assigned by DOT to the TCP–N Capacity Builder teams will be informed by the LOIs received. Once matched with the DOT-selected communities, TCP–N Capacity Builders will develop processes to engage with these recipients and their community partners to co-design a tailored scope of work and set of equitable development outcomes to be achieved over a two-year period within 90 days of the period of performance start date.

Technical assistance, planning, and capacity building support could include, but is not limited to, the following set of activities:

- identifying and responding to funding opportunities that align with projects that implement local community mobility, access, climate, and community development goals and regional or statewide plans
- activities to support grant writing, project management, and compliance with grant administration requirements
- conducting project scoping, planning, and pre-engineering studies, market, and other technical analysis
- supplementing local staffing and workforce development capacity
- developing systems or structures that improve compliance with Federal grant management, including but not limited to Title VI of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and procurement requirements
- supporting comprehensive community planning activities that better coordinate transportation with other land use, housing, climate, health, and other infrastructure
- implementing innovative public engagement strategies, particularly to involve traditionally underrepresented voices in the planning, project identification, and prioritization process.
- sub-granting to local technical assistance and capacity building partners who bring local expertise and capacity
- building organizational capacity to strengthen relationships between key stakeholders that deepen regional engagement and collaboration, position partners for future funding opportunities, and/or support inclusive planning processes
- evaluating and establishing emerging transportation and planning technologies, data systems, and software

ii. TCP Community of Practice Support

To build collective and sustained learning, TCP–N Capacity Builders will also support a Community of Practice throughout the period of performance that facilitates peer learning across selected TCP communities. This may include face-to-face meetings, as well as web-based collaborative environments to communicate, connect, and conduct activities that collectively facilitate long-term capacity building and systems change. Applicants should propose methods and tasks that will be undertaken to support a Community of Practice among the specific communities they are assigned to support and within the individual communities to build capacity between the lead applicant and community partners. DOT believes that communities best know the specific challenges and opportunities they face. TCP–N Capacity Builders will utilize a community-centered approach to work with selected recipient communities to refine the areas of focus for specific places and for the overall Community of Practice.

The full period of performance for the TCP–N is three years; however, during the third year Capacity Builders will shift away from individualized community support and focus on program evaluation and reporting, transition activities for assigned communities within the Community of Practice and developing shared resources for sustained learning for those within and outside of the Community of Practice. See section B for more information.

Communities of Practice Typology

DOT established three Communities of Practice in FY 2022 to organize communities and their technical assistance, planning, and capacity building needs in relation to shared demographics, transportation challenges, and programmatic opportunities. These include Main Streets, Complete Neighborhoods, and Networked Communities. TCP seeks to amplify the program's impact and generate noteworthy practices that can be scaled and replicated in other regions. Within selected communities, Community of Practices provide an opportunity to foster cross-sector collaboration between the lead recipient of technical assistance (*i.e.,* eligible government entities), their identified community partners, and other community stakeholders that have not historically been engaged in infrastructure, economic and community development planning and decision making; or those who bear the heaviest environmental, health, mobility, housing, economic and/or social costs of infrastructure projects. These Communities of Practice will be maintained for the FY 2023 program and include:

Main Streets

The Thriving Communities Main Streets communities of practice consists of eligible rural recipients from Indian Tribes, US Territories, rural communities, and small towns, including communities that are not part of an MPO. Less dense populations, longer travel distances, older and changing demographics, declining, or transitioning economies, and smaller government budgets and inadequate staff are just a few of the shared challenges faced by this cohort, which also impact the ability of government to deploy innovative workforce development, climate resilience, equity, and technology solutions. Illustrative of the possible transportation issues that this cohort may address are road network improvement and safety projects; resiliency and climate related improvements; improving infrastructure conditions alongside strategies to support economic and community revitalization with investments in high-speed internet deployment, water and sewage lines, and electric vehicle charging stations; rural transit, micro mobility and transportation alternatives including multimodal trails; context sensitive design solutions that will improve mobility and access particularly for disadvantaged populations and populations of older adults, people with disabilities, youth, and those without access to a personal automobile; transportation worker recruitment and training strategies; and place-making strategies to leverage local cultural, natural, and community assets. State DOTs are a critical partner, facility owner, and funder in these communities.

TCP–N Capacity Builder teams seeking to support the Main Streets Community of Practice must demonstrate their expertise and familiarity in working with rural, U.S. Territories, and/or Tribal communities, such as through members of their team that have experience working with culturally, racially, language diverse communities (*e.g.,* experience working with immigrant communities, foreign language competencies), or proven experience working on Federal Tribal and rural transportation, community, housing, and economic development programs.

Complete Neighborhoods

The Complete Neighborhoods Community of Practice consists of eligible urban and suburban recipients that are included in a metropolitan planning organization's (MPO) planning area. This cohort is focused on comprehensive strategies to enhance community connectivity, improve coordination of land use, housing, economic development, and transportation, and to accelerate innovation specifically for disadvantaged communities or neighborhoods. Areas of persistent poverty and declining economies or property values create challenges for some, while others may be experiencing market-induced or climate-induced gentrification and displacement. Technical assistance and capacity building can advance equity by addressing the inequities and systemic barriers created by decades of discrimination, segregation, urban renewal, and suburban sprawl impacting these communities.

Illustrative of the possible transportation issues that the Complete Neighborhoods Community of Practice may address are increasing accessibility to affordable and reliable multi-modal transportation options to reach regional jobs and community facilities, such as health care centers, libraries, public schools and grocery stores; deploying transit-oriented and walkable development policies; reducing greenhouse gas emissions and improving air quality; and improving safety for all users of the transportation system including bicyclists, pedestrians and people of all ages and abilities. This cohort will look to leverage planning, project development and transportation projects that serve community and economic development goals and promote revitalization strategies, such as street level retail and community space, urban place-making, and local and economic hiring preferences to support community wealth building in economically disadvantaged communities within the region. MPOs and other types of regional planning bodies are important infrastructure implementation partners, especially to coordinate transportation with housing and economic development planning and advance projects benefitting disadvantaged communities.

Networked Communities

The Networked Communities Community of Practice consists of eligible recipients from urban, suburban, and rural communities that are located near intercity transportation facilities, such as ports, airports, and freight or passenger rail facilities. These communities may face local environmental justice, economic development, and mobility access issues exacerbated by their proximity to large-scale regionally or nationally significant transportation projects. Networked Communities have a distinct need to work with a range of stakeholders to advance equity by addressing both existing and future mobility, health and safety, and workforce development and labor opportunities from locally disadvantaged communities given the context of each hub. Illustrative of the possible transportation issues that this cohort may face are community access and connectivity; roadway safety and design improvements, including of major arterials and service roads; strategies to reduce air and noise pollution, including transitioning to decarbonization technologies and clean economies; or preparing for new or extended passenger rail service. Private sector partners may play a critical role as utility and facility owners, rail operators, port and airport authorities, whose interests are generally broader than those of the surrounding community. The technical assistance priorities for the Networked Communities Community of Practice can include advancing equity by addressing environmental injustice, mobility, pollution, public health, economic development, and land use planning through meaningful public involvement for communities, particularly those that are lower income and/or have a higher proportion of people of color, that reside near multimodal hubs. DOT may decide to create sub-cohorts within each of these Communities of Practice based upon the needs of the selected communities informed by the LOI process.

For the FY 2023 TCP–N, Capacity Builders will support the communities they have been specifically assigned for their selected Community of Practice and will also support networking across all Communities of Practice, including those established in FY 2022 and TCP communities that may be selected in future years to build upon and scale capacity building resources and learning opportunities. DOT may assign Capacity Builders to provide targeted technical and limited support to TCP communities and/or other DOT and Federal technical assistance recipients, as needed, to assist disadvantaged communities and government agencies to advance projects and processes aligned with DOT's Strategic Plan and Equity Action Plan priorities for equity, workforce development, labor and hiring preferences, small business development and procurement, climate, safety, technology transformation. TCP–N Capacity builders are not expected to provide targeted support to more than a total of 20 total communities.

b. Thriving Communities Regional Pilots (TCP–R)

For the FY 2023 TCP, up to five TCP-Rs will be funded to advance transformative infrastructure projects in disadvantaged communities or jurisdictions located within a specific State, Tribe, or metropolitan region that face barriers to implementation. For the TCP–R, ''region'' refers to the geographic area within an individual State or Indian Tribe; or the service area covered by a regional transportation or planning organization. The TCP–R will fund efforts by State, Tribal, local, or regional organizations to provide technical assistance, planning and capacity building support for transportation projects located within their geography or service area that align with housing, economic development, public health, climate, and other community development plans and goals. Eligible applicants for TCP–R will select the communities within their jurisdiction or service area to receive technical assistance and capacity building support through TCP and will use TCP funding to advance these types of transportation projects forward into the next phase of development, deepen community engagement, and align with local or regional zoning, land use, economic development, or other plans and investments. This may include, but is not limited to:

- identifying funding opportunities that align with transportation goals and advance mobility access, climate resilience, equitable community development, healthy communities in support of regional or statewide plans
- supporting predevelopment planning and scoping of projects that coordinate transportation with other land use, housing, and infrastructure development
- building organizational capacity and strengthened relationships between key stakeholders that deepen regional engagement and collaboration, position partners for future funding opportunities, and/or support inclusive planning processes
- fund planning and technical assistance activities that reform local land use and zoning policies to align transportation infrastructure investment with equitable community development;

- establishing pooled resources or innovative funding tools that increase community investments in transportation, housing, environment, and health;
- supporting regional economic and workforce development that promotes local hiring, access to transit, and jobs in high quality industries
- designing and implementing activities to deepen and expand meaningful public involvement, especially to populations that are under-represented in traditional planning processes and/or are experience disproportionate transportation, environmental, or social burden
- activities to support grant writing, project management, and compliance with grant administration requirements
- peer-learning, networking, and knowledge sharing on strategies, types of tools, and lessons learned with other communities in the applicant's State or region.

DOT recognizes that many States, Indian Tribes, MPOs, and other regional government and non-governmental entities are already undertaking, or would like to undertake this important work, but require additional resources in order to amplify their impact and more comprehensively provide support to local communities. The TCP–R is intended to fund these State, Tribal, and regional organizations to scale up support to enable communities to develop, fund, and deliver critical community-driven projects. Applicants must commit to providing support to communities within their jurisdiction over a three-year period to plan, develop, and deliver transportation projects that interface with housing, climate, safety, economic development, public health, and other sectors that align with TCP goals. The first two years of the period of performance should be dedicated to providing targeted support to selected communities, as well as peer learning and exchange activities between these selected communities and others within their region. During the third year, TCP–R Capacity Builders will be expected to focus on program evaluation, reporting, transition activities, and developing resources for long-term capacity building. See section B for more information.

2. Changes From FY 2022 Thriving Communities Program

This FY 2023 NOFO updated and revised some key aspects of the program. These include the following:

- Extension of the period of performance to three years, with the first two years focused on deep-dive individual community support, peer learning, and collaboration and the third year focused on evaluation, reporting, community transitioning, and resource sharing.
- The inclusion of a separate Regional Pilot Program.
- Reductions to the maximum award amounts from up to $6 million to up to $5 million per National Capacity Builder and increases the number of communities served by each Capacity Builder from 10–15 to 15–20.
- Revisions to the merit rating criteria, including how applicants should respond to each criterion.
- Changes to the requirements for targeted support to supported communities, including a new requirement to subgrant at least 20 percent of the budget to community recipients.
- Option to renew FY 2023 selected Capacity Builder cooperative agreements for a second round of funding for FY 2024 (*i.e.,* re-select Capacity Builders for a second three-year period of performance), subject to authorization and available funding.

3. Coordination Across the Federal Government

The TCP is one of several technical assistance programs administered through DOT's Build America Bureau. Participation in technical assistance programs is voluntary and does not obligate the awardee or recipients to apply for DOT grants or credit programs in the future, nor does participation offer preferential treatment to future applications or a guarantee of Federal funding.

The US Department of Housing and Urban Development (HUD) received $2.5 million from the FY 2023 appropriations bill to coordinate with DOT's TCP. HUD will separately provide funding to technical assistance providers to help jurisdictions consider housing and community development needs as part of transportation infrastructure plans (for example, identifying land that is near planned transportation projects and suitable for housing development). HUD's technical assistance will enable more communities to thoughtfully plan and boost location-efficient housing supply. Applicants interested in HUD's Thriving Communities Technical Assistance NOFO should visit *https://www.huduser.gov/portal/nofos/thriving-communities.html.*

The TCP will coordinate with and leverage other Federal place-based technical assistance and capacity building initiatives being coordinated through the Federal Thriving Communities Network [*https://www.transportation.gov/federal-interagency-thriving-communities-network*] to provide comprehensive support to selected recipient communities. This may include, but is not limited to USDA's Rural Partners Network, the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization, the Economic Development Administration's Build Back Better Regional Challenge, the General Service Administration's Center for Urban Development, and the Environmental Protection Agency's Environmental Justice Thriving Communities Technical Assistance Centers.

B. Federal Award Information

Under the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), Congress provided DOT with $25,000,000 for the Thriving Communities Program, to be obligated by September 30, 2025. DOT will also utilize up to $1 million in funds remaining from the FY 2022 TCP as part of this NOFO, for a total of up to $22 million available. If DOT identifies additional funding after the release of this NOFO, DOT may elect to award such additional funding to Capacity Builders selected under this NOFO, as permitted by law. Of the funds provided, DOT anticipates awarding at least three separate cooperative agreements to TCP–N Capacity Builders; and potentially as many as five, depending upon the needs of the selected communities informed by the LOI process and the number of TCP-Rs awarded. DOT anticipates awarding at least four separate cooperative agreements through the TCP–R. Cooperative agreements will be managed through substantial involvement by the Office of Technical Assistance in DOT's Build America Bureau (see Federal Award Administration Information in section F of this NOFO).

DOT will determine the amount of funds to be awarded but anticipates a range of $4,000,000 to $5,000,000 for each TCP–N cooperative agreement; and a range of $1,000,000 to $2,000,000 for each TCP–R cooperative agreement. Multiple cooperative agreements are expected, with an aggregate total of approximately $22,000,000. Awards are at 100 percent Federal share. Final decisions on the amount of funding per award and number of cooperative agreements will depend upon applications received in response to the NOFO as well as the demand from community applicants expressed

through Letters of Interest. DOT may elect to award any unobligated funding through future NOFOs, if necessary.

1. Period of Performance

a. National Capacity Builders Period of Performance

The period of performance for the FY 2023 TCP–N will be three years (36 months) from the date of execution in DOT's electronic grants management system, unless the period of performance is extended before expiration. The first two years of the period of performance must be dedicated to providing targeted, deep-dive support to assigned communities in accordance with the scopes of work co-designed with communities. TCP–N Capacity Builders will also be expected to conduct Community of Practice activities during the first two years of the period of performance. During the third year of the period of performance, TCP–N Capacity Builders will shift focus to evaluation, reporting, resource development, and transitioning communities to self-sustaining capacity building. The third year of the period of performance must include:

- Strategic, targeted community of practice communications (outlined in the workplan)
- Transition plan for awardees, which could include:
  - Stewarding existing cohort into sub-groups or other longer-term capacity building models (based on geography or areas of interest), if applicable
  - Connecting communities to other technical assistance resources or networks
  - Bridging new partnerships that can leverage future funding (*e.g.,* conferences/workshops/meetings with philanthropy, regional or State partners, etc.)
- Elevating project wins and learnings via social media, blogs, etc. (in partnership with DOT)
- Developing publicly available educational tools and resources (*e.g.,* toolkits, web-based portals)
- Participating in a Federal convening with new TCP awardees (for FY 2024, subject to program authorization and appropriation) or other Federal technical assistance networks
- A final report from Capacity Builders summarizing the goals, impacts, process, and lessons learned from engagement with each individual community and for the cohort as a whole.

If funding is appropriated for an FY 2024 TCP, and there is no change in the TCP's authorization, DOT may elect not to issue a new NOFO for the FY 2024 program; rather, it may select National Capacity Builders from the FY 2023 awardees, provided that DOT determines that awardees have demonstrated an appropriate level of performance and that awardees have sufficient capacity to and agree to provide support to a new cohort of communities. In this case, the Capacity Builders would be asked to demonstrate capacity and propose a detailed plan and budget to support additional communities. DOT would then establish a new cooperative agreement with existing Capacity Builders for an additional three-year period of performance with FY 2024 funds. If FY 2023 Capacity Builders have not demonstrated an appropriate level of performance, DOT may select new Capacity Builders for FY 2024 from other Highly Recommended applicants from FY 2023.

Subsequent year funding and additional funding from DOT will depend upon priorities established by the Secretary of Transportation, future authorizations and appropriations, and the Thriving Communities' annual performance reviews.

b. Thriving Communities Regional Pilot Program Period of Performance

For the FY 2023 TCP–R Program, the period of performance will be three years (36 months) from the date of execution in DOT's electronic grants management system. The first two years of the period of performance must be dedicated to providing support to the communities identified in the application, in accordance with the activities described in the application. The third year of the period of performance will be focused on program evaluation and reporting, transition activities for communities, and collecting and sharing lessons learned and best practices from the first two years of support, including sharing information with communities outside those who received targeted support in the first two years to scale impact of the program.

The third year of the period of performance must include:

- Strategic, targeted community of practice communications (outlined in the workplan)
- Transition plan for awardees, which could include:
  - Stewarding existing cohort into sub-groups or other longer-term capacity building models (based on geography or areas of interest), if applicable
  - Connecting communities to other technical assistance resources or networks
  - Bridging new partnerships that can leverage future funding (*e.g.,* conferences/workshops/meeting with philanthropy, regional or State partners, etc.)
- Elevating project wins and learnings via social media, blogs, etc. (in partnership with DOT)
- Developing publicly available educational tools and resources (*e.g.,* toolkits, web-based portals)
- Participating in a Federal convening with new TCP awardees (for FY 2024, subject to program authorization and appropriation) or other Federal technical assistance networks
- Final reporting and program evaluation.

If funding is appropriated for an FY 2024 TCP, and there is no change in the TCP's authorization, DOT may elect not to issue a new NOFO for the FY 2024 program; rather, it may select Regional Capacity Builders from the list of Highly Recommended, but not selected, applicants from FY 2023. In this case, DOT would contact Highly Recommended applicants to request confirmation that applicants are still interested in participating in the program and have the capacity to do so before selecting them for participation in the FY 2024 program.

Subsequent year funding and additional funding from DOT will depend upon priorities established by the Secretary of Transportation, future authorizations and appropriations, and the Thriving Communities' annual performance reviews.

C. Eligibility Information

1. Eligible Applicants

For both the TCP–N and TCP–R, those applying to provide technical assistance, planning, and capacity building can apply individually or as part of a team of eligible applicants. DOT seeks Capacity Builders that have technical knowledge across a diverse set of issues and skills; therefore, the lead applicant is strongly encouraged to partner with other eligible organizations to create Capacity Building teams that represent a range of technical skills, geographic connections and capacity building approaches. If applying as part of a team, the lead applicant must be clearly identified and submit the application on behalf of the team. The cooperative agreement will be between DOT and the lead organization, which is the primary recipient of DOT TCP funds. The recipient may make contracts or subawards [1] to other team

[1] Refer to 2 CFR 200.1 (Definitions) [*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/*

Continued

members, but the recipient is responsible for compliance with Federal requirements, including 2 CFR parts 200 and 1201.

For the TCP–N Capacity Builders, eligible lead applicants are non-profit organizations, philanthropic entities, and other technical assistance providers, including but not limited to for-profit organizations and academic institutions, with a demonstrated capacity to develop and provide technical assistance, planning, and capacity building to a range of communities located across multiple States and regions (*i.e.,* applicants must demonstrate capacity to provide support at a national level, not just within specific regions or geographies).

For the TCP–R, eligible lead applicants are State governments and their agencies; local governments and their agencies; Indian Tribes; regional, Tribal, or statewide planning non-profit organizations; and governmental planning, economic development, or transportation organizations working at the regional or metropolitan level involved with transportation issues.

Where applicable, each lead applicant and co-applicant must provide documentation that supports each lead applicant's or co-applicant's organizational status as an eligible entity. Refer to section D.2(b) of this NOFO for more information on organizational documentation requirements.

2. Cost Sharing and Matching

No cost sharing or matching is required as a condition of eligibility under this competition. DOT will fund up to 100 percent of eligible project costs. However, TCP–N and TCP–R applicants that demonstrate an ability to leverage other funding, including from philanthropy, and other Federal funding sources (*e.g.,* formula funds, State or local resources and in-kind contributions of staff, volunteer time, facilities, or other resources) to amplify program impact and support Thriving Communities Program goals and objectives in the long-term will be prioritized.

3. Eligible Project Costs

Eligible costs include those that the Capacity Builders undertake to directly assist in the development of technical assistance, planning, or capacity building for communities to carry out eligible projects and plans for which the award has been granted. Eligible costs also include subgrants to build community capacity, including staff and benefits plus other overhead costs such as rent, utilities, and office equipment, hiring of new staff and fellows, building IT systems for application processes and reporting, and website development for education and training.

For both TCP–N and TCP–R applicants, DOT will give preference to applications with the highest percentage of identified targeted support budgeted for community recipients and their partners. ''Targeted support'' means activities that directly enable the community to advance efforts identified in their scope of work. This may include, for instance, direct subgrants for the community to allocate internally; funding to provide community stipends or pay for staffing, apprenticeship, or fellowship positions located within the selected communities; access to mapping, design and engineering, modeling, civic participation or other data analytic or community engagement software tools; no-cost consulting services; Capacity Builder staff time dedicated to activities to advance individual communities' scopes of work, including travel; or other types of direct support. Activities to support the overall Community of Practice (*e.g.,* trainings, convenings, or webinars that support all or multiple communities within the cohort) and overall program administration and grant management activities are not considered targeted support.

For both TCP–N and TCP–R applicants, no more than 25 percent of the proposed budget may be allotted to program administration and grant management activities (*e.g.,* workplan development, invoicing, team meetings, evaluation report), and at least 20 percent of the proposed budget must be allocated for subgrants to communities and their partners. All applicants are expected to plan for at least one visit to each assigned community per year for the first two years of the period of performance.

Consistent with the provisions in 2 CFR 200.400, the Recipient may not earn or keep any profit resulting from funds awarded under this NOFO. Recipients may not allocate profit fees in their proposed or final budget.

Eligible activity costs must comply with the cost principles set forth in 2 CFR subpart E (*i.e.,* 2 CFR 200.403 and 200.405). DOT reserves the right to make cost eligibility determinations on a case-by-case basis.

D. Application and Submission Information

Applications must include the materials listed in section D.2 of this NOFO to be considered for funding.

1. Address To Request Application Package

Applications will only be accepted electronically through *www.grants.gov* (*Grants.gov*) under Opportunity Number DOT–TCP–FY23–01. Potential applicants may also request paper copies of materials at:

Telephone: 202–366–7738.

Mail: U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–412, Washington, DC 20590.

2. Content and Form of Application Submission

This section describes the DOT and Federal grant assistance forms and other documents required for a complete application for both the TCP–N and TCP–R Programs under this NOFO. An application checklist can be found in appendix A of this NOFO.

Sharing of Application Information— The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

a. Required Forms

All applicants must submit the following required forms:

- Application for Federal Assistance (SF–424)
- Budget Information for Non-Construction Programs (SF–424A)
- Disclosure of Lobbying Activities (SF–LLL)

All relevant forms must be signed electronically by the applicant's Authorized Organizational Representative (AOR); please see section D.6 of this NOFO for information on AOR requirements. The preferred electronic file format for attachments is Adobe portable document format (PDF); however, DOT will accept electronic files in Microsoft Word or Microsoft Excel formats. DOT will not accept paper, facsimile, or email transmissions of applications. All documentation and data submitted should be current and applicable as of the date submitted. Applicants may contact the appropriate contact listed in section G for technical assistance before submitting an application.

b. Organizational Documentation

Each lead applicant and co-applicant must provide documentation that

part-200/subpart-A/subject-group-ECFR2a6a0087862fd2c/section-200.1] and 2 CFR 200.331 (Subrecipient and contractor determinations) [*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR031321e29ac5bbd/section-200.331*] for more information. Refer also to the TCP Fact Sheet on Subcontracting and Subwards posted on the program website.

supports each lead applicant's or co-applicant's organizational status as an eligible entity where applicable (section C.1 of this NOFO).

- States, Indian Tribes, cities, or other political subdivisions of States, and institutions of higher education that are 100% publicly controlled are not required to submit organizational documentation.
- Nonprofit organizations must submit documentation that demonstrates their status as nonprofit organizations. This must include articles of incorporation, bylaws, certificate of good standing, and a copy of the most recent (not older than 18 months) IRS Form 990 (Return of Organization Exempt from Income Tax) (without attachments or schedules).
- Other entities, including institutions of higher education that are not 100% publicly controlled, must provide documentation that demonstrates their organization type.

c. Organization Descriptions

A one-page organization or company profile must be provided for each member of the Capacity Building Team. These may be publicly shared as part of the organization introductions. Profiles should include the organization name, its role on the team, number of employees; location of office or its geographic scope; whether it is a certified disadvantaged business enterprise (*e.g.,* 8(a) business), as defined by the Small Business Administration (SBA), a small business as defined by the SBA, a Historically Black College or University, a Minority Serving Institution, a HUBZone, or woman owned or service-disabled veteran-owned small businesses; [2] a brief summary of the type of services it provides; and involvement of team members that represent the types of communities and stakeholders to be served. Key staff members of each organization should be shown.

A template is provided for the fulfillment of this requirement. DOT recommends, but does not require, the use of the template.

d. Indirect Costs (if Applicable)

If indirect costs are included in the budget, the applicant must include documentation to support the indirect cost rate they are using (unless claiming the 10 percent de minimis indirect cost rate, discussed below). The applicant must submit a copy of its current, approved, and negotiated indirect cost rate agreement (NICRA). If the applicant does not have a current or pending NICRA, it may propose indirect costs in its budget; however, the applicant must prepare and submit an allocation plan and rate proposal for approval within ninety days from the award start date (unless claiming the 10 percent de minimis indirect cost rate, discussed below). *See* 2 CFR part 200 apps. III, IV, V, VI, VII for guidance. The allocation plan and the rate proposal shall be submitted to DOT. The applicant should include a statement in its Budget Narrative that it does not have a current or pending NICRA and will submit an allocation plan and rate proposal to DOT or the applicant's cognizant Federal agency for approval.

In accordance with 2 CFR 200.414(f), an applicant that does not have a current negotiated (including provisional) rate, may elect to charge a de minimis rate of 10 percent of modified total direct costs (subject to the exceptions of § 200.414(f)). No documentation is required to justify the 10 percent de minimis indirect cost rate; however, an applicant electing to charge a de minimis rate of 10 percent must include a statement in its Budget Narrative that it does not have a current negotiated (including provisional) rate and is electing to charge the de minimis rate.

If the applicant is a State or local unit of government or an Indian Tribe that receives less than $35 million in direct Federal funding per year it may submit any of the following:

- a Certificate of Indirect Costs from the Department of the Interior (DOI) or DOT;
- an acknowledgment received from the Department of Interior (on behalf of DOT) and a Certificate of Indirect Costs in the form prescribed at 2 CFR part 200, app. VII; or
- a NICRA.

e. Executive Summary

The Executive Summary will not be evaluated as part of application review. If the applicant is selected for funding, the Executive Summary may be used in a public announcement or on DOT's website.

TCP–N Capacity Builders

Applicants are required to submit an Executive Summary of no more than 500 words that must:

- Clearly indicate the application is to be considered as a Thriving Communities National Capacity Builder.
- Clearly identify which specific Community of Practice the applicant is seeking to be considered to support (the applicant should select only one Community of Practice). DOT reserves the right to assign a Capacity Builder to a different Community of Practice, with confirmation from the Capacity Builder, if it determines the Capacity Builder has the skills and experience necessary to serve communities in that Community of Practice.
- Provide a clear, concise, and descriptive summary of the proposed approach to technical assistance and capacity building, including identifying the types of targeted support that will be provided with DOT resources and how this support is anticipated to build local capacity and advance Thriving Communities Program goals within the Community of Practice it seeks to support.
- Briefly discuss the strengths that its team provides in areas of technical depth, diversity and capacity building approach to underserved and disadvantaged communities.
- Identify the amount of funding the applicant is requesting.

In addition, but separate from the 500-word limit, list all proposed Capacity Builder team organizations and indicate whether the organizations are designated as any of the following:

- a disadvantaged business (*e.g.,* 8(a) business) as defined by the U.S. Small Business Administration (SBA);
- a small business as defined by the SBA;
- a Historically Black College or University;
- other Minority Serving Institution;
- a HUBZone as defined by the SBA; or
- A woman-owned or service-disabled veteran-owned small business as defined by the SBA.

TCP–R Capacity Builders

Applicants are required to submit an Executive Summary of no more than 500 words that must:

- Clearly indicate the application is to be considered as a Thriving Communities Regional Pilot Capacity Builder.
- Clearly identify the communities to be supported, anticipated technical assistance and capacity building needs, and how they intersect with plans for State or regional housing, economic development, public health, climate and other community development goals.
- List all proposed members of the TCP–R applicant team.
- Provide a clear and concise descriptive summary of the proposed approach to supporting selected communities, including identifying the types of targeted support that will be provided with DOT resources that cannot be met with existing resources,

[2] Additional DOT guidance on small business contracting can be found at *https://www.transportation.gov/sites/dot.gov/files/2021-03/508_OSDBU%20Contracting_03102021.pdf.*

and how this support is anticipated to build local capacity and advance Thriving Communities Program goals.

- Briefly discuss the strengths that the applicant provides in areas of technical depth, diversity and capacity building to underserved and disadvantaged communities within its service area (*i.e.,* the State, region, Tribal, or MPO boundaries).

f. Narrative Responses Addressing Merit Rating Criteria Sub-Factors

As detailed in NOFO section E, ''Application Review Information,'' any applicant that does not submit a narrative response that addresses each of the 10 Merit Rating Criteria Sub-Factors within the page limits described below will not be eligible for review. See NOFO section E for more detail on the Merit Rating Criteria Sub-Factors. Your narrative responses for the two Priority sub-factors must be less than 3-pages each, and your narrative responses for all other sub-factors must be less than 1-page each (for a total limit of 14 pages across all ten sub-factors). Any additional pages will not be considered during the merit rating review. All page limits are single-sided 8.5x11-inch pages, with a minimum 12-point font and 1-inch margins.

g. Letters of Commitment From Communities (for TCP–R Applicants Only)

For each community that TCP–R applicants proposed to support, applicants must submit a Letter of Commitment signed by the community's top elected official or equivalent. Letters should clearly demonstrate that the community is aware of and receptive to receiving support through TCP over a two-year period. The Letter of Commitment should demonstrate alignment with the applicant's described support activities. Letters of Commitment can be submitted as PDF or Word document attachments.

h. Staffing Plan

All applications must include a Staffing Plan listing all position types proposed to be charged to the project for each Capacity Builder partner organization, whether as Federal or non-Federal costs. The Staffing Plan must include the position titles, hourly rates, and percentage of time dedicated to the project. The sum of all salaries charged to the project must equal the amount on the ''Personnel'' budget line item on Form SF–424A. The Staffing Plan should provide a description of the capacities each position type will contribute and how these positions will contribute to advancing the technical assistance and capacity building approach.

Given that additional technical assistance and capacity building needs may arise in response to the specific needs of selected communities receiving support, refinements can be made to the proposed staffing structure with DOT approval. Applicants are required to include strategic hiring plan that may be utilized to supplement or hire contingent staff that may work directly with recipients and their community partners to ensure continuity of services.

Proposals should identify key project staff to advance the identified technical assistance and capacity building approach. The proposal should include a one-page resume for each key project staff member. This should include a short summary of the individual's relative areas of expertise; years of experience; employment and education history; and brief snapshot of related project history noting work with disadvantaged communities, comprehensive economic or community development, and/or capacity building. Replacement of key staff are subject to DOT approval. At least one key staff member must be identified per Capacity Builder partner organization.

Resumes should be compiled and uploaded together as one PDF file. Mid-level or junior staff may be shown without identification or resumes. Key staff are defined as project managers, subject matter experts, and individuals who have specialized knowledge key to delivery of technical assistance.

i. Budget Proposal

Application submissions must include a completed SF–424A, Budget Information—Non-Construction Programs, form. In preparing the SF–424A, applicants should break down budget costs into the appropriate object class categories in section B of the form. A detailed budget narrative must accompany the SF–424A. The purpose of the narrative is to explain and justify the proposed project expenditures. For clarity and consistency, applicants should discuss each expense by object class in the order that they appear on the SF–424A. The narrative must include the dollar amounts of each object class category and include detailed descriptions of how the dollar amounts were derived. Include an explanation for each calculation and provide a narrative that supports each budget category listed on the SF–424A. The costs provided in the narrative must clearly equal total costs identified on the SF–424A form and match the total listed on line 15. Applicants may use the Budget Template as a starting point for their Budget Proposals and are encouraged to customize the template to fit their individual needs and provide an appropriate amount of detail. The Budget Proposal *must* include tables that organize and summarize the information presented in the narrative. The narrative, not including the table in the Budget Template, should not exceed three pages in length.

The budget must clearly show total program administration and grant management costs, which are not to exceed 25 percent of the overall budget; and identify those costs associated with targeted support. TCP–R applicants are encouraged to indicate in their budgets activities and funds allocated to meaningful public involvement activities.

All applicants must allocate at least 20 percent of their budget for sub-granting to communities to facilitate long-term capacity building and to compensate local community partners who are serving as technical assistance, planning, and capacity builders.

All applicants are expected to clearly delineate in the budget the support costs for the first two years of deep-dive targeted community support and peer learning support to the Community of Practice, and the third year solely focused on Community of Practice management and overall program reporting, knowledge sharing, evaluation, and transition planning.

The narrative for following class objectives must address:

Personnel Costs: Explain *lead applicant* personnel costs by listing each staff member who will be supported from funds, name (if possible), position title, percentage of full-time equivalency, and annual salary.

Fringe Benefits: List the components that comprise the fringe benefit rate, for example health insurance, taxes, unemployment insurance, life insurance, retirement plans, and tuition reimbursement. The fringe benefits should be directly proportional to that portion of *lead applicant* personnel costs that are allocated for the project.

Travel: Provide a narrative that explains the destination, estimated costs and type of transportation. Include the number of travelers and related lodging and subsistence (per diem costs) for each trip. Include a brief description of the travel involved, its purpose, and explanation of how the proposed travel is necessary for successful completion of the project. If travel details are unknown, then the basis for proposed costs should be explained (*i.e.,* historical information)—do not ''pull

numbers out of the air'' or list a lump sum estimate. Travel costs can be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or a combination of the two if applied consistently and results in reasonable charges. Applicants are expected to budget for at least one site visit per community each year for the first two years of the period of performance.

Equipment—''Equipment'' is nonexpendable, tangible personal property with a unit cost of $5,000 or more having a useful life of more than 1 year. Items that do not meet the ''equipment'' definition can be included under supplies. List each piece of equipment to be purchased and provide description of how it will be used in the project. The budget narrative should explain why the equipment is necessary for successful completion of the project. General use equipment (*i.e.,* computers, faxes, etc.) must be used 100% for the proposed project if charged directly to the Thriving Communities Program.

Supplies: List the supplies that the project will use to implement the proposed project. Please note, items such as laptops, tablets, and desktop computers are classified as a supply if the value is under the $5,000 equipment threshold.

Contractual: Provide a list of all contracts anticipated for the project. The contracts will be for services rendered by *co-applicants, contractors,* and *consultants.* Provide the purpose of each contract for services that you intend on awarding and award how the costs were estimated. Applicants should not provide line-item details on proposed contracts, instead provide the basis for your cost estimate for the contract. *For co-applicant and consultant* services, identify each consultant, the cost for each consultant, the services they will perform, anticipated hours or days, and travel costs. The recipient is responsible for ensuring that it has in place an established and adequate procurement system with fully developed written procedures for awarding and monitoring all contracts.

Other—Provide a list of all subawards anticipated for the project. Provide a clear explanation as to the purpose of subaward and justification. The actual number and costs of subawards may not be known until each of the individualized community assessments are completed. Applicant should provide an explanation on the basis for the cost estimate in this section. The recipient is responsible for ensuring it has in place an established and adequate grants management system with fully developed written procedures for awarding, reporting, and monitoring all subawards.

Grant Funds, Sources and Uses of Project Funds—Project budgets should show how different funding sources will share in each activity and present those data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to leverage Funding sources should be grouped into three categories: non-Federal, Thriving Communities Program, and other Federal with specific amounts from each funding source.

For TCP–N Capacity Builders

DOT is interested in the opportunities for broader outreach and shared learning that can be supported through the dissemination of materials developed by TCP–N Capacity Builders, and by the lessons learned through the technical assistance engagement to inform future program design and impact. This will include quarterly virtual meetings with representatives of the Capacity Builders to be organized and conducted by DOT; and an annual in-person 1.5-day TCP convening that will include participation by Capacity Builders (estimate 4 people) and recipient communities including community partners (estimate 3 people per community). Capacity Builders should allocate a portion of their budget to support this involvement for themselves and the recipient communities. For the purpose of budget estimation, assume meetings are held in Washington, DC at average-priced travel periods.

DOT invites, but does not require, applicants to propose how they could provide targeted support to additional communities beyond those selected by DOT, within the budget provided or through leveraging other funding or associated technical assistance efforts that the applicant or its team members may also be supporting. If doing so, applicants must include information demonstrating these existing relationships and submit Letters of Commitment from other entities providing additional funding.

DOT will reimburse labor and direct costs incurred by the Capacity Builder team, including subcontractors. Capacity Builders should maintain a system for recording all project costs. Invoices must be transmitted to DOT monthly.

The Capacity Builder must notify DOT in writing when 50% of the project budget is expended. Further work must stop, and DOT must be notified in writing when 90% of the project budget is expended. Aggregate payment shall not exceed the cap shown in the cooperative agreement. Costs incurred over the cap shown in the cooperative agreement will not be reimbursed.

For TCP–R Capacity Builders

DOT is interested in the opportunities for broader outreach and shared learning that can be supported through the peer learning and knowledge sharing by regional organizations and their partners with other jurisdictions and organizations within the State, Tribe, or service area, including lessons learned through the pilot that can inform future program design and impact. This will include quarterly virtual meetings with TCP–R Capacity Builders to be organized and conducted by DOT, the potential to participate in one or more State or regional convenings, and potentially participation in the annual in-person 1.5-day TCP convening by the TCP–R capacity builder (estimate 2 people). TCP–R Capacity Builders should allocate a portion of their budget to support this involvement, but event specifics and their associated costs will be finalized in cooperative agreements and workplans. For the purpose of budget estimation, assume the annual convening is held in Washington, DC at average-priced travel periods.

DOT will reimburse labor and direct costs incurred by the TCP–R Capacity Builders. TCP–R Capacity Builders should maintain a system for recording all project costs. Invoices may be transmitted to DOT monthly.

DOT invites, but does not require, applicants to propose how they could leverage other funding or associated technical assistance efforts to support additional communities and/or support TCP goals in the long-term. If doing so, applicants must include information demonstrating these existing relationships and submit Letters of Commitment from other entities providing additional funding.

The TCP–R Capacity Builder must notify DOT in writing when 50% of the project budget is expended. Further, work must stop, and DOT must be notified in writing when 90% of the project budget is expended. Aggregate payment shall not exceed the cap shown in the cooperative agreement. Costs incurred over the cap shown in the cooperative agreement will not be reimbursed.

3. Unique Entity Identifier and System for Award Management (SAM)

To enable the use of a universal identifier and to enhance the quality of

information available to the public as required by the Federal Funding Accountability and Transparency Act of 2006, all applicants are required to: (i) be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in the application; (iii) make certain certifications; and (iv) continue to maintain an active SAM registration with current information at all times during which they have an active Federal award or an application or plan under consideration by a Federal awarding agency. DOT may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the DOT is ready to make an award, DOT may determine that the applicant is not qualified to receive an award and use that determination as a basis for making an award to another applicant. Award recipients will be subject to reporting requirements as identified in OMB guidance published at 2 CFR parts 25 and 170.

4. Submission Dates and Times

The deadline for the receipt of an application is 4:59 p.m. Eastern Time on November 28, 2023. Applications received after this deadline may not be reviewed or considered for funding. Applications will only be accepted electronically through *Grants.gov.* Applicants are advised to carefully read the submission information provided in section D of this NOFO. The *Grants.gov* system records the date and time that an application is received.

DOT strongly suggests that applicants start early, review instructions, and test systems well in advance of the application deadline. Applications should be submitted in advance of the deadline, and progress can be saved in the *Grants.gov* system. Applicants should save and print written proof of an electronic submission.

If technical issues arise that present difficulties for submission, applicants should notify DOT. DOT must receive communication via telephone, voicemail, or email regarding such technical difficulty by 4:59 p.m. Eastern Time on November 28, 2023; any correspondence regarding technical difficulties received after this deadline will not be considered as a reason to accept a late application. No extensions to the deadline will be considered. In cases of documented technical difficulty, the applicant is expected to submit the application immediately upon resolution of technical difficulties, or a subsequent deadline delivered in writing by DOT. In addition, please note the following:

- DOT will not accept any unsolicited changes, additions, revisions, or deletions to applications after the submission deadline.
- Throughout the review and selection process, DOT reserves the right to seek clarification from applicants whose applications are being reviewed and considered.
- Applicants may be asked to clarify objectives and work plans and modify budgets or other specifics as necessary to comply with Federal requirements and provide supplemental information required by the agency before award.
- See section E of this NOFO for application review and selection information.

5. Funding Restrictions

For funding restrictions that may affect an applicant's ability to develop an application and budget consistent with program requirements, see section C of this notice. DOT will not reimburse costs incurred before the cooperative agreement has been signed by DOT and the lead applicant.

The maximum dollar amount of allocable indirect costs for which DOT will reimburse a recipient will be the lesser of the (i) line-item amount for the Federal share of indirect costs contained in the DOT approved budget for the award, or (ii) Federal share of the total allocable indirect costs of the award based on either (a) the indirect cost rate approved by DOT (or applicable cognizant Federal agency), provided that the cost rate is current at the time the costs were incurred and provided that the rate is approved on or before the award end date, or (b) other acceptable documentation as indicated below.

6. Other Submission Requirements

The complete application must be submitted electronically via *Grants.gov.* To find this funding opportunity, search for DOT–TCP–FY23–01 via the Funding Opportunity Number field. The most up-to-date instructions for application submission can be found at *https://www.grants.gov/web/grants/applicants/applyfor-grants.html.* In the event of system problems or the applicant experiences technical difficulties, contact *grants.gov* technical support via telephone at 1–800–518–4726 or email at *support@grants.gov.*

Early Registration and Application Submission

In order to submit an application via *Grants.gov,* applicants must register with *SAM.gov* and *Grants.gov.* Registration can take between three to five business days or as long as four weeks. To avoid delays, DOT strongly recommends that applicants start early and not wait until the approaching deadline date before logging in, registering, reviewing the application instructions, and applying.

AOR Requirement

Applicants must register as organizations, not as individuals. As part of the registration process, you will register at least one AOR for your organization. AORs registered at *Grants.gov* are the only officials with the authority to submit applications; please ensure that your organization's application is submitted by an AOR. Note that a given organization may designate multiple individuals as AORs for *Grants.gov* purposes. DOT may not accept late submissions caused by registration issues with *Grants.gov, SAM.gov,* or other systems.

Field Limitations and Special Characters

Please be advised of the following notice with respect to form field limitations and special characters: *https://www.grants.gov/web/grants/applicants/submitting-utf8-special-characters.html.*

Successful Submission Verification

It is your responsibility as an applicant to verify that your submission was timely received and validated successfully at *grants.gov.* Applicants should use the ''Track My Application'' function (*https://www.grants.gov/web/grants/applicants/track-my-application.html*). For a successful submission, the application must be received and validated by *Grants.gov,* and an agency tracking number must be assigned. If the date and time your application is validated and timestamped by *Grants.gov* is later than 4:59 p.m. eastern time on the application deadline set forth in this NOFO, your application is late. Once validation is complete, the status will change to ''Validated'' or ''Rejected with Errors.'' If the status is ''Rejected with Errors,'' your application has not been received successfully. For more detailed information about why an application may be rejected, please consult with resources such as ''Encountering Error Messages'' (*https://www.grants.gov/web/grants/applicants/encounteringerror-messages.html*) and ''Frequently Asked Questions by Applicants'' (*https://www.grants.gov/web/grants/applicants/applicant-faqs.html*).

DOT requests that applicants kindly refrain from submitting multiple copies

of the same application package. Applicants should save and print both the confirmation screen provided on the *Grants.gov* website after the applicant has submitted an application and the confirmation email when the application has been successfully received and validated in the system. If an applicant receives an email from *Grants.gov* indicating that the application was received and subsequently validated but does not receive an email from *Grants.gov* indicating that DOT has retrieved the application package within 72 hours of that email, the applicant may contact the email address listed in section G of this announcement to inquire if DOT is in receipt of the applicant's submission.

Grants.gov System Issues

If you experience a systems issue (*i.e.,* a technical problem or glitch with the website) that you believe threatens your ability to complete a submission in a timely manner, please (i) print any error message received; (ii) contact the *Grants.gov* Support Center at (800) 518–4726 for assistance; and (iii) contact DOT using the contact information in section G of this NOFO in advance of the deadline. Ensure that you obtain a case number regarding your communications with *Grants.gov.* Please note that problems with an applicant's internet access, computer system or equipment are not considered systems issues. Similarly, an applicant's failure to, *e.g.,* (i) complete the required registration, (ii) ensure that a registered AOR submits the application, or (iii) notice receipt of an email message from *Grants.gov* are not considered systems issues. A *Grants.gov* systems issue is an issue occurring in connection with the operations of *Grants.gov* itself, such as the temporary loss of service by due to unexpected volume of traffic or failure of information technology systems, both of which are highly unlikely. In the event of a confirmed systems issue, DOT reserves the right to accept an application in an alternate format.

Applicants can visit the *Grants.gov* Support Center [*https://www.grants.gov/web/grants/support.html*] for assistance in navigating *Grants.gov* and for a list of useful resources, including Frequently Asked Questions by Applicants [*https://www.grants.gov/web/grants/applicants/applicant-faqs.html*]. If you do not find an answer to your question there, contact *Grants.gov* by email at *support@grants.gov* or telephone at (800) 518–4726. The *Grants.gov* Contact Center is open 24 hours a day, seven days a week, except on Federal holidays.

E. Application Review Information

DOT will review applications in accordance with the requirements of this NOFO. DOT will consider whether the application is clear, concise, and well-organized. Throughout the review and selection process, DOT, at its sole discretion, may seek clarification, including but not limited to written clarifications and corrected or missing documents, from applicants whose applications are being reviewed and considered and require that applicants provide such clarifications or corrections to continue to be considered for an award under this NOFO. DOT will provide applicants a reasonable amount of time to provide any additional documentation. An applicant's failure to provide complete and accurate supporting documentation in a timely manner when requested by DOT may result in the removal of that application from consideration. DOT may ask applicants to clarify application materials, objectives, and work plans, or modify budgets or other specifics as necessary to comply with Federal requirements.

1. Merit Criteria/Rating Factors

The table below describes the four Rating Factors and the sub-factors for each. The descriptions of each individual Rating Factor notes where the requirements of the factor differ between the TCP–N and TCP–R programs. Further, some Rating Factors contain a Priority Sub-Factor, which are sub-factors that have been determined to be of higher priority than the others and are denoted with an asterisk in the table below. The table and language below also describe Additional Considerations and Priority Considerations, which the Senior Review Team considers when making its recommendations for selection.

TCP RATING FACTORS

Rating Factor 1: Approach to Technical Assistance and Capacity Building	
A	Technical Assistance Approach.*
B	Capacity Building Approach.
C	Community of Practice Management Approach.
Rating Factor 2: Teaming Arrangement	
A	Role of Partner Organizations.
B	Staffing Plan and Demonstrated Staff Expertise.
Rating Factor 3: Proven Success	
A	Experience Supportive of Technical Assistance Approach.*
B	Experience Supportive of Capacity Building Approach.
C	Experience Supportive of Community of Practice Management Approach.
Rating Factor 4: Program Management and Evaluation	
A	Schedule of Milestones and Deliverables.
B	Program Evaluation and Assessment.
Additional Considerations	
A	Soundness of Proposed Budget.
Priority Considerations	
A	Experience with Priority Geographies.
B	Diversity of Capacity Builder Teams.
C	Leveraging of Additional Funding Sources.

* Priority rating factor.

Each application will be assigned an overall score of ''Highly Recommended,'' ''Recommended,'' or ''Not Recommended'' based on the ratings for each of the four Rating Factors. See section E.2 below for more details.

a. Rating Factor 1: Soundness of Approach to Targeted Community Support and Capacity Building

i. Technical Assistance Approach (Priority Sub-Factor)

For TCP–N Applicants

Applicants must describe their proposed approach to providing customized support to 15–20 individual communities at a national scale over a two-year period for each of the following three key phases of transportation decision-making: Project Planning and Scoping; Project Development and Design; and Project Delivery. Selected Capacity Builders will be expected to provide technical assistance support to communities who may be in any of the three phases; therefore, DOT will evaluate the strength of the applicant's described approach to providing support in each of the three phases. These three phases are described in section H.1 of this NOFO.

In their narratives, applicants must describe their approach to:

- Co-designing an individualized scope of work with communities and their partners, including assessing existing technical capacity and assets.

- Providing technical assistance support specific to the three transportation decision-making phases.
- Incorporating meaningful and innovative public engagement strategies, including but not limited to engagement with non-English speakers, people with disabilities, and other under-represented groups bridging racial, cultural, and economic barriers that affect community participation; and strategies to tailor public involvement to unique community requirements and preferences.
- Building community wealth through transportation investments, innovative financing and leveraged funding approaches that address the unique challenges of under-resourced, low-tax base and credit-challenged communities.
- Supporting workforce development, hiring and labor practices benefitting local economically disadvantaged communities.
- Strategically planning onsite engagement with individual communities, including at least one visit to each community per year for the first two years of the period of performance.

For TCP–R Applicants

TCP–R applicants must identify and describe the communities that they have selected to support over two years of targeted support. As noted in section D.2(g) of this NOFO, applicants must submit Letters of Commitment from each community proposed for support in the application. Applicants must describe in detail how and why they selected these communities, addressing the following:

- The number of communities or projects the applicant intends to support with the requested funding amount.
- Metrics and methods for verifying disadvantaged status or transportation burden/disparity that the applicant used to select communities, including the use of tools such as CEJST and ETC Explorer.

In their narratives, applicants must also describe their proposed approach to providing support to these communities based on their individual needs, including:

1. the types of local projects and capacity building needs that will be supported through TCP funding and how this support will build longer term capacity and meet critical technical assistance needs that are not currently being supported through other resources.

2. how the proposed support will advance transportation projects that intersect with goals related to State or regional housing, economic development, public health, climate and other community development goals and help to advance implementation of related State, Tribal and/or regional plans.

3. how the work supported through the pilot may be scaled or leveraged to support additional communities within the applicant's service area (*i.e.,* the larger metropolitan region, State, Territory or Tribe).

4. approach to incorporating meaningful and innovative public engagement strategies, including but not limited to engagement with non-English speakers, people with disabilities, and other under-represented groups; bridging racial, cultural, and economic barriers that affect community participation; and strategies to tailor public involvement to unique community requirements and preferences. DOT will give preference to applications with robust meaningful public engagement approaches. Refer to DOT's Promising Practices for Meaningful Public Involvement in Transportation Decision-Making [*https://www.transportation.gov/priorities/equity/promising-practices-meaningful-public-involvement-transportation-decision-making*] for a non-exhaustive list of public involvement tools and techniques.

5. approach to building community wealth through transportation investments, innovative financing and leveraged funding approaches that address the unique challenges of under-resourced, low-tax base and credit-challenged communities.

For this rating criteria, DOT will evaluate applicants based on the communities they propose to support, including their methods for selecting communities and the description of community need and how well they align with TCP goals. DOT will also evaluate the strength of the proposed approach to providing technical assistance support to these communities.

ii. Capacity Building Approach

For TCP–N Applicants

Applicants must describe how they will build lasting capacity for TCP recipients and their community partners through activities undertaken during the period of TCP support. Capacity building should focus on ways to improve the long-term ability of a community to design and undertake necessary technical, financial, business, and data analyses; meet Federal oversight and project management requirements; undertake statewide and metropolitan long-range planning and programming activities; and implement other activities that broadly support project planning, development, and delivery. This includes developing long-term community capacity to sustain partnerships and engage non-governmental partners, leadership and workforce development, and program evaluation.

Capacity building approaches should include an element of responsiveness to the needs of individual communities and adaptability over the period of performance. Applicants may propose different areas where they anticipate capacity needs to be the greatest, and strategies they envision deploying to meet these needs through individualized deep-dive support. They should also describe the process they will use to adapt capacity building approaches, as needed.

Applicants must address the following in their capacity building narrative:

- Approach to supplementing local staffing and workforce development capacity
- Approach to developing systems or structures that improve lasting compliance with Federal grant management, including but not limited to title VI of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and procurement requirements
- Approach to sub-granting to local technical assistance and capacity building partners who bring local expertise and capacity
- Approach to building organizational capacity to strengthen relationships between key stakeholders that deepens regional engagement and collaboration, positions partners for future funding opportunities, and/or supports inclusive planning processes
- Approach to evaluating and establishing emerging transportation and planning technologies, data systems, and software

As part of the capacity building narrative, applicants must also describe their planned activities for the third year of the period of performance to transition communities for sustained learning and capacity building. Refer to section B of this NOFO for more information on required activities for the third year of the period of performance.

DOT will evaluate applicants based on the strength of their proposed approach, considering long-term impacts and relationship building and the adaptability of the approach.

For TCP–R Applicants

Applicants must describe how they will build lasting capacity within supported communities to continue advancing transformative infrastructure projects. Capacity building should focus on ways to ensure that the projects or planning efforts supported by the TCP–R achieve results in the long-term, including how the proposed support will inform and potentially catalyze systems change improvements to advance community-driven projects in long-range plans, transportation improvement programs, and other formal processes used to inform and prioritize State, Tribal, and/or regional investments and funding decisions. Emphasis should be on ensuring that the project or plan moves forward within its current phase of development, and that the community continues to move the project forward, including once TCP support concludes.

Capacity building approaches should include an element of responsiveness to the needs of individual communities and adaptability over the period of performance. Applicants may propose different areas where they anticipate capacity needs to be the greatest, and strategies they envision deploying to meet these needs. They should also describe the process they will use to adapt capacity building approaches, as needed.

Applicants must address the following in their capacity building narrative:

- Approach to empowering communities to access planning, scoping, and funding resources in the long-term
- Approach to supporting local community partnerships and expanding collaboration
- Approach to developing systems or structures that improve lasting compliance with Federal grant management, including but not limited to title VI of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and procurement requirements
- Approach to evaluating and establishing emerging transportation and planning technologies, data systems, and software
- Approach to sub-granting to local technical assistance and capacity building partners who bring local expertise and capacity

As part of the capacity building narrative, applicants must also describe their planned activities for the third year of the period of performance to transition communities for sustained learning and capacity building. Refer to section B of this NOFO for more information on required activities for the third year of the period of performance.

DOT will evaluate applicants based on the strength of their proposed approach, considering long-term impacts and relationship building and the adaptability of the approach.

iii. Community of Practice Management Approach

For TCP–N Applicants

Selected Capacity Builders will be expected not only to provide individualized deep-dive support to their assigned communities but also to facilitate peer learning, networking, and knowledge sharing across communities facing similar challenges and building similar capacities. Applicants must describe an approach to managing communities of practice, building and sustaining cross-sector collaboration, and strategies for encouraging member engagement, and facilitating learning and capacity building across the communities within their assigned Community of Practice over the first two years of the period of performance. Applicants should also address how they will share knowledge to communities beyond the selected cohort during the third year of the period of performance to amplify program impact and learnings.

DOT will evaluate applicants based on the strength of their Community of Management approach and its ability to achieve TCP peer learning and networking goals.

For TCP–R Applicants

Applicants will not select a Community of Practice but are required to describe peer-learning, networking, and knowledge sharing activities that the applicant will facilitate among communities within the lead applicant's State or region. Applicants will describe strategies for engaging regional partners, building and sustaining cross-sector collaboration, and examples of tools used to prioritize community-based goals and objectives. The emphasis of these activities should be on addressing the unique State, Tribal, or regional challenges that are shared among participating communities.

Applicants should also address how they will share knowledge to communities within their jurisdiction that were not recipients of direct support provided by the TCP–R Capacity Builder, particularly during the third year of the period of performance. This kind of knowledge sharing should emphasize how support provided to communities during the support phase of the TCP–R Capacity Builder's work can serve as models for other communities.

DOT will evaluate applicants based on the strength of their peer learning approach and its ability to achieve TCP peer learning and networking goals.

b. Rating Factor 2: Staffing and Teaming Arrangement

i. Role of Partner Organizations

For All Program Applicants

DOT seeks Capacity Builders that have technical knowledge across a diverse set of issues and skills; therefore, the lead applicant is strongly encouraged to partner with other eligible organizations to form a diverse Capacity Builder team.

Applicants must describe the role of each partner organization on the Capacity Builder team, including the skills, knowledge, and expertise each organization brings to the team and how those skills and experience will be applied in the team's approach to technical assistance and capacity building. This description should align with the specific steps and activities described in the approach to technical assistance and capacity building. DOT will evaluate applicants based on the strength of their partnerships, including the diversity of skills, knowledge, and expertise the partner organizations bring and how well they align with the applicant's proposed approach. For TCP–R, DOT will evaluate the team's ability to address the specific needs of the proposed communities.

ii. Demonstrated Staff Expertise

For All Program Applicants

As noted in section D.2(h) of this NOFO, all applicants must submit a Staffing Plan and resumes as part of their applications. Applicants must submit an accompanying narrative that describes how the staff listed and their relevant areas of expertise will contribute to the goals of TCP and to meeting individual community needs. DOT will evaluate Staffing Plans based on their ability to demonstrate how individual team members represent the different areas of expertise needed to develop and implement a well-structured, feasible, and scalable technical assistance, planning, and capacity building plan.

c. Rating Factor 3: Proven Success

i. Experience Supportive of Technical Assistance Approach (Priority Sub-Factor)

For All Applicants

Applicants must demonstrate prior experience and successes related to the tasks and activities described in the technical assistance approach, clearly identifying which organization(s) have undertaken the activities described. DOT will evaluate applicants based on their descriptions of past experience and success undertaking activities proposed in the technical assistance approach.

Narratives should include information on the following:

- Examples of conducting the activities described in the technical assistance approach for each of the three transportation phases, including outcomes and impacts
- Experience executing projects that address local community mobility, access, climate and community development goals, in accordance with regional or statewide plans
- Experience supporting disadvantaged, rural, and Tribal communities on equity-related issues such as civil rights compliance, equitable development, inclusive community engagement
- Experience supporting innovative, inclusive, and meaningful public engagement activities, including experience engaging with communities with Limited English Proficiency
- Experience and evidence of the team's knowledge of Federal funding and technical assistance programs and the transportation planning processes relevant to the Community of Practice being supported that will support its role as a community navigator that connects communities to existing technical assistance resources available through DOT and other Federal agencies
- Experience and evidence of the team's knowledge and experience with applicable Federal statutes such as NEPA, title VI, ADA, and others
- Experience supporting workforce development, hiring and labor practices benefitting local economically disadvantaged communities, including specific examples

ii. Experience Supportive of Capacity Building Approach

For All Applicants

Applicants must demonstrate prior experience and successes related to the tasks and activities described in the capacity building approach, clearly identifying which organization(s) have undertaken the activities described. DOT will evaluate applicants based on their descriptions of past experience and success undertaking activities proposed in the capacity building approach.

Narratives should include information on the following:

- Examples of conducting the activities described in the capacity building approach, including outcomes and impacts
- Demonstration of experience applying strategies to nurture small and disadvantaged business participation and development, including capacity building initiatives and facilitating supportive services within disadvantaged business enterprise community marketplaces
- Experience with community wealth building and economic development practices, including community ownership models, apprenticeship, and business entrepreneurial programs

iii. Experience Supportive of Community of Practice Management Approach

For TCP–N Applicants

Applicants must demonstrate prior experience and successes related to the tasks and activities described in the Community of Practice Management approach, clearly identifying which organization(s) have undertaken the activities described. DOT will evaluate applicants based on their descriptions of past experience and success undertaking activities proposed in the community of practice management approach.

Narratives should include information on the following:

- Examples of conducting the activities described in the Community of Practice approach, including outcomes and impacts
- Specific examples of experiences relevant to the chosen Community of Practice cohort (Main Streets, Complete Neighborhoods, or Networked Communities)
- Demonstration of having conducted convenings to facilitate peer learning among communities

For TCP–R Applicants

Applicants must demonstrate prior experience and successes related to the tasks and activities described in the peer learning approach, clearly identifying which organization(s) have undertaken the activities described. DOT will evaluate applicants based on their descriptions of past experience and success undertaking activities proposed in the peer learning approach.

Narratives should include information on the following:

- Examples of conducting the activities described in the peer learning approach, including outcomes and impacts
- Demonstration of having conducted convenings to facilitate peer learning among communities; and/or support regional collaboratives

d. Rating Factor 4: Program Management and Evaluation

i. Schedule of Milestones and Deliverables

For All Program Applicants

Applications must include a proposed set of tasks and schedule detailing the expected start and end date of tasks and major deliverables described in the proposed approach. Applicants must clearly delineate and describe tasks and deliverables expected in the first two years of targeted community support, including peer learning support, and the third year of peer learning, evaluation, reporting, and transition activities. Applications should incorporate preparation of the final report and presentation into the project timeline and period of performance. The proposed task organization and schedule will serve as a starting point for cooperative agreement negotiations with the selected teams.

DOT will evaluate applicants based on the feasibility of the schedule; level of detail; alignment with proposed technical assistance, planning, and capacity building support; and alignment with accomplishing TCP goals within the period of performance.

ii. Program Evaluation and Assessment

For All Program Applicants

Applicants must include specific performance metrics under each of the specific work tasks describing how they will track, analyze, and report on the results and outcomes of the technical assistance, planning, and capacity building they are providing to individual communities and to the Communities of Practice/network of peer communities they are supporting. Performance metrics may be qualitative and/or quantitative and should be described in terms of well-defined goals that align with the goals of TCP.

DOT will evaluate the strength, clarity, and meaningfulness of proposed metrics and methodologies.

A list of potential metrics is bulleted below each TCP goal below:

1. Facilitate the Planning and Development of Transportation and Community Revitalization Activities Supported by DOT

- New projects that increase mobility, reduce pollution from transportation sources, expand affordable transportation options, facilitate efficient land use, preserve or expand jobs, and improve housing conditions
- Enhanced access to health care, education, and food security, or improved health outcomes

2. Build Capacity and Provide Support to Disadvantaged and/or Transportation Burdened Communities

- Short- and long-term capacity increases (*e.g.,* increased staff, strategic hires)
- Sustained participation of key stakeholders that have historically been excluded from planning and decision making processes
- Leveraging relationships with other entities to advance community priorities

3. Increase the Level of Federal Investments in Transportation Infrastructure

- Number of successful grant or funding applications for projects supported through this program
- Implementation of new transportation infrastructure projects

4. Center and Advance Community-Driven Priorities

- Development of community-defined impact metrics to evaluate local equity outcomes
- Demonstrate positive benefits for disadvantaged communities
- Establishment of resident steering or advisory committees

e. Priority Considerations

DOT will prioritize Capacity Builders based on the below priority considerations. Priority considerations will be evaluated and documented in the Merit Review phase but will not factor into Merit Review scores. The documentation will be shared with the SRT for final recommendations.

i. Experience With Priority Geographies

For All Program Applicants

To receive priority consideration under this factor, applicants must clearly demonstrate their experience with supporting communities facing transportation burden and disparity, including but not limited to:

- Communities identified as disadvantaged in the transportation category in the CEJST tool
- Communities identified as transportation insecure in the ETC tool

Applicants should provide this information in their Experience Supportive of Technical Assistance Approach and Experience Supportive of Capacity Building Approach narratives.

ii. Diversity of Capacity Builder Teams

For TCP–N Program Applicants

Applicant Capacity Builder Teams include one or more partner organization that can be classified as:

- a disadvantaged business (*e.g.,* 8(a) business) as defined by the U.S. Small Business Administration (SBA);
- a small business as defined by the SBA;
- a Historically Black College or University;
- other Minority Serving Institution;
- a HUBZone as defined by SBA [*https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program*]; or
- a woman-owned or service-disabled veteran-owned small business as defined by SBA.

Applicants should identify this information in their Executive Summary and in each Organization Description attachment.

The diversity of the Capacity Builder teams is not a priority consideration for the TCP–R program.

iii. Leveraging of Additional Funding Sources

For All Program Applicants

Applicants that demonstrate an ability to leverage other funding and resources to provide support to additional communities, supported by Letters of Commitment, will be prioritized. This may include leveraging other funding, including from philanthropy, other Federal funding sources (*e.g.,* formula funds, State or local resources and in-kind contributions of staff, volunteer time, facilities or other resources) to amplify program impact and support Thriving Communities Program goals and objectives in the long-term. Applicants should identify this information in their Budget Proposals.

f. Additional Considerations

i. Soundness of Proposed Budget

Proposed budgets will not receive merit ratings, but will be evaluated for soundness and strength, with reviewers providing comments on the following factors for consideration by the Senior Review Team:

- Does the proposed budget seem reasonable, feasible, and well-planned relevant to the activities proposed?
- Does the proposed budget allocate at least 20% of funding for sub-granting to community organizations? Are these allocations clearly described and reasonable?
- Does the budget clearly delineate between targeted support provided during the first two years of the period of performance and activities undertaken in the third year?
- DOT will prioritize applicants offering the highest percentages of targeted support. How much of the budget is devoted to targeted support?
- Does the proposed budget seem to provide high service value relevant to the funding requested?
- Do reviewers have any concerns or foresee any risks with the proposed budget? Examples of concerns/risks include, but are not limited to: a budget line-item for profit; excessive employee salaries; a total budget request in excess of what this NOFO offers; excessive sub-contracting to consultants that are not on the applicant team; and excessive allocation to third-year budgets.
- *For TCP–R applicants only:* DOT will view favorably applicants that propose robust meaningful public engagement activities. Does the applicant allocate a reasonable amount of budget for public engagement activities in comparison to described approach?

DOT acknowledges that TCP–N applicants do not have details on specific communities or the exact number of communities they would support if selected at the time of application. If selected, applicants' proposed budgets will be negotiated and finalized with DOT as part of the cooperative agreement process.

2. Review and Selection Process

a. Review for Eligibility and Completeness

For each application, DOT staff will assess whether the applicant is eligible and submitted all the information requested for a complete application. The following elements are required for a complete application:

- Required forms listed in section D.2(a)
- Organizational documentation (see section D.2(b))
- Organizational descriptions (see section D.2(c))
- Executive Summary (see section D.2(e))
- Narrative Responses (see section D.2(f))
- Letters of Commitment (TCP–R applicants only) (see section D.2(g))

- Staffing Plan (see section D.2(h))
- Budget Proposal (see section D.2(i)))

Applications that do not have all the necessary components for a complete application will be referred to an Evaluation Management Oversight Team, which will contact the applicant if it is determined they are an eligible applicant and request the missing information with a response time of 5 business days. Applicants that do not supply required information in this timeframe will be disqualified. For the Executive Summary and Narrative Responses, DOT will contact applicants only if these sections have been omitted entirely; applications that lack substance for either of these items will not be disqualified but are likely to receive low Merit Ratings.

Applicants will be disqualified if:

- Application does not include any one of the required components listed above and does not respond within 5 business days with complete application component(s).
- Lead applicant is not an eligible organization (as described in section C.1).
- Activities proposed do not align with the purpose and goals of the TCP.
- Application is submitted after the deadline (unless application is late due to legitimate technical issue(s) documented in advance of the application deadline and DOT is notified of the technical issue prior to the deadline in section D.4).
- Application is submitted via any method other than grants.gov (unless there is a confirmed systems issue and DOT exercises its right to accept the application in an alternate format).

Applicants who are determined to be ineligible will be notified in writing, and all determinations will be documented.

b. Evaluation Criteria Review

First-level Review Teams, comprised of staff from DOT, inter-agency Federal staff, and contractor staff, will evaluate all eligible and complete applications received by the deadline for an Evaluation Review against the evaluation criteria in section E.1 of this NOFO.

Ratings will be determined by each reviewer on an individual basis, and a compilation of ratings will be produced. The First-level Review Team will conduct a panel discussion, revise scores as appropriate, and prepare an overall project rating based on majority opinion of the review team.

The First-level Review Team will consider the quality and completeness of each rating sub-factor, which will result in a rating of 'High,' 'Medium,' or 'Low,' for each sub-factor.

Each Rating Factor will receive an overall rating of 'High,' 'Medium,' or 'Low,' based on ratings of the Sub-Factors A, B, and/or C.

For Rating Factors 1 and 3:

- Rating Factor will receive a 'High' rating when:
  - Priority Sub-Factor A is rated 'High;' *AND,*
  - Of the remaining two sub-factors (B and C), at least one is rated 'High,' and neither is rated 'Low'
- Rating Factor will receive a 'Medium' rating when:
  - The Rating Factor does not meet the criteria for a 'High' rating; *AND,*
  - Priority Sub-Factor A is rated at least 'Medium;' *AND,*
  - Of the remaining two sub-factors (B and C), at least one is rated 'Medium' or higher
- Rating Factor will receive a 'Low' rating when:
  - The Rating Factor does not meet the criteria for a 'High' or 'Medium' rating; *OR,*
  - Priority Sub-Factor A is rated 'Low'

For Rating Factors 2 and 4:

- Rating Factor will receive a 'High' rating when both sub-factors (A and B) are rated 'High'
- Rating Factor will receive a 'Medium' rating when:
  - either both sub-factors are rated 'Medium;' OR
  - one sub-factor is rated 'Medium' and another is rated 'High'
- Rating Factor will receive a 'Low' rating when at least one sub-factor is rated 'Low'

Rating scale	High	Medium	Low
Description	The application is substantively and comprehensively responsive to the criterion. It makes a strong case about advancing the program goals as described in the criterion descriptions..	The application is moderately responsive to the criterion. It makes a moderate case about advancing the program goals as described in the criterion descriptions.	The application is minimally responsive to the criterion. It makes a weak case about advancing the program goals as described in the criterion descriptions. Proposal may be counter to the criterion or does not contain sufficient information. It does not advance or may negatively impact criterion goals

Based on the criteria ratings, an overall application merit rating of 'Highly Recommended,' 'Recommended,' or 'Not Recommended' will be assigned using the following methodology. The ratings on the individual merit criteria translate to the following overall application rating for merit criteria:

Overall merit rating	Individual rating factors
Highly Recommended	• At least three Rating Factors are 'High'. • No Rating Factor is rated 'Low'.
Recommended	• Application received fewer than three 'High' ratings, and; • No more than one Rating Factor is rated 'Low',
Not Recommended	• Application received at least two 'Low' ratings.

After completing the merit review, among applications of similar merit, DOT will prioritize applicants that:

- demonstrate an ability to leverage other funding sources
- demonstrate experience working with priority geographies
- devote the highest percentage of their proposed budgets to targeted community support
- have diverse Capacity Builder teams (for TCP–N applicants only)
- describe robust meaningful public involvement approaches (for TCP–R applicants only)

c. Leadership Selection Process

Applications that receive an overall application rating of Highly Recommended will be advanced to a Senior Review Team (SRT), which will include senior DOT and HUD leadership, to recommend applicants to the Under Secretary of Transportation for Policy (Under Secretary) for final selection. Final selection will be made with consideration to:

- Geographic, team member, and organizational diversity
- Applicant's demonstrated ability to leverage other funding sources to support additional communities and advance TCP goals in the long term
- Experience working with priority geographies
- Soundness of overall proposed budgets
- Applicants that devote the highest percentage of their proposed budgets to targeted community support
- For TCP–N applicants, ability to meet anticipated technical assistance needs of communities selected by DOT
- For the TCP–R, applicants with robust meaningful public engagement approaches

The SRT at its sole discretion may elect to review and select for cooperative agreements proposals rated as Recommended if the proposal fulfills technical assistance needs that would not otherwise be met by applications rated as Highly Recommended.

d. Under Secretary of Transportation for Policy Selection Phase

The SRT will present a list of applications for recommended consideration to the Under Secretary for final selection. The SRT may advise the Under Secretary on any application on the list, including options for reduced awards. The Under Secretary will make final selections based on applications that best address program requirements and are most deserving of funding.

3. Risk Assessment

Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.206. DOT must review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS), the designated integrity and performance system accessible through SAM. An applicant may review information in FAPIIS and comment on any information about itself that a Federal awarding agency previously entered. DOT will consider comments by the applicant, in addition to the 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.

F. Federal Award Administration

1. Federal Award Notice

This NOFO will remain open until November 28, 2023.Following the evaluation process, DOT will notify successful applicants of their selection for funding. DOT will also notify other applicants, whose applications were received by the deadline, but have not been chosen for award. The DOT will offer a written or telephonic debrief to provide an explanation of, and guidance regarding, the reasons why the application was not approved.

Final Award. After DOT has made selections, DOT will finalize specific terms of the cooperative agreement and budget in consultation with the selected lead applicant. If DOT and the selected applicant do not finalize the terms and conditions of the cooperative agreement in a timely manner, or the selected applicant fails to provide requested information, an award will not be made to that applicant. In this case, DOT may select another eligible applicant.

DOT will reimburse labor and direct costs incurred by the Capacity Builder team, including subcontractors. Capacity Builders should maintain a system for recording all project costs. Invoices may be transmitted to DOT monthly. Aggregate payment will not exceed the cap shown in the cooperative agreement.

Adjustments to Funding. To ensure the fair distribution of funds and enable the purposes or requirements of a specific program to be met, DOT reserves the right to fund less than the amount requested in an application.

DOT Involvement. As the Federal awarding agency, DOT will maintain substantial involvement and oversight throughout the three-year period of performance of the executed cooperative agreements. This includes, but may not be limited to:

- Assigning communities selected to receive support through the TCP with specific Capacity Builder teams and finalizing work plans for cohort specific Communities of Practice
- Review of deliverables including individualized community deep dive work plans and technical assistance assessment
- Collecting and reviewing quarterly performance reports and final reports
- Convening regular meetings or Capacity Builder calls to review project activities, schedule, and progress toward the scope of work
- Identifying relevant Federal technical assistance programs to be aligned with TCP efforts in specific communities and assigning Federal agency staff to serve as liaisons with capacity builders, technical assistance recipients and their community partners
- Reviewing and approving changes in key personnel or scope changes
- Oversight of ongoing compliance with applicable Federal regulations
- Budget oversight, including collecting and reviewing and reimbursing monthly invoices for incurred costs and receiving notification when budgets are 50% and 90% expended
- Conducting quarterly meetings with Capacity Builders and involvement with an annual TCP convening with Capacity Builders and community partners

2. Administrative and National Policy Requirements

Administrative Budget

DOT requires that a selected applicant participates in negotiations to determine an administrative budget. The administrative budget must clearly identify the labor, associated indirect costs, travel, and material and supply costs associated with your management of the award. The administrative budget must track the different sources of funding and associate administrative costs to each source. Should DOT not be able to successfully conclude negotiations with a selected applicant within a period determined by DOT, an award will not be made.

Performance under the grant program will be governed by and in compliance with the following requirements as applicable to the type of organization of the recipient and any applicable sub-recipients:

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by DOT at 2 CFR part 1201.

Other terms and conditions as well as performance requirements will be addressed in further communications with the recipient. The full terms and conditions may vary and are subject to discussions and negotiations.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States

statutory, regulatory, and public policy requirements, including without limitation, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; the conditions of performance, non-discrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Bureau determines that a recipient has failed to comply with applicable Federal requirements, the Bureau may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Additionally, Executive Order 13858 directs the Executive Branch Departments and agencies to maximize the use of goods, products, and materials produced in the United States through the terms and conditions of Federal financial assistance awards. If selected for an award, grant recipients must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials, as applicable.

Administration Priorities

Civil Rights and Title VI: As a condition of a grant award, grant recipients should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including title VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR 21), the Americans with Disabilities Act of 1990 (ADA), and section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This should include a signed agreement of standard Title VI/Non-Discrimination Assurances, identified as an attachment in an executed cooperative agreement. DOT's and the applicable Operating Administrations' Office of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

Performance and Program Evaluation: As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation and/or use information available through other reporting. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

Recipients and subrecipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 115–435 (2019) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.'' 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, part 6 section 290).

For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation. (2 CFR part 200).

Performance and Program Evaluation

Each cooperative agreement lead organization must submit quarterly progress reports to monitor progress and ensure accountability and financial transparency in the grant program. Each Capacity Builder must collect and report to the Bureau performance information on the technical assistance and advisory services being provided. The specific performance information and reporting period will be determined on an individual basis and communicated at the kickoff meeting of the cooperative agreement. It is anticipated that the Bureau and the Capacity Builder will hold regular, informal meetings or calls to review project activities, schedule, and progress toward the scope of work.

If funding is appropriated for an FY 2024 TCP, and there is no change in the TCP's authorization, DOT may elect not to issue a new NOFO for the FY 2024 TCP–N program; rather, it may select National Capacity Builders from the FY 2023 awardees, provided that DOT determines that awardees have demonstrated an appropriate level of performance and that awardees have sufficient capacity to and agree to provide support to a new cohort of communities. For the purposes of this program, an appropriate level of performance is determined based on the community recipients' overall satisfaction with technical assistance and capacity building support and with the responsiveness by the Capacity Builder to the needs of the community. Community recipients of technical assistance may be contacted to assess their level of satisfaction with Capacity Builder performance.

Additionally, it will be determined based on the Capacity Builder's successful advancement of goals and objectives related to:

1. Project Management
2. Technical Assistance, Planning, and Capacity Building Services to assigned TCP Communities
3. Meaningful Public Engagement to assigned TCP Communities
4. Establishing and Managing a National or Regional Community of Practice
5. Program Evaluation and Performance Metrics Assessment Plan
6. Project Budget

Remedies for Noncompliance

Pursuant to 2 CFR 200.340 [*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR86b76dde0e1e9dc/section-200.340*], a Federal award may be terminated in whole or in part if the grantee fails to comply with the terms and conditions of the award or if DOT determines the award no longer effectuates the program goals or agency priorities.

3. Reporting

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000

for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance review required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

If you have questions or need additional information about this NOFO, you may contact *ThrivingCommunities@dot.gov*. Prospective applicants may visit the following website for more information: *https://www.transportation.gov/grants/thriving-communities.*

H. Other Supporting Information

1. Definitions

Areas of Persistent Poverty: An area of persistent poverty is a county with 20 percent or more of the population living in poverty over the 30 years preceding the date of enactment of the Infrastructure Investment and Jobs Act, November 15, 2021, as measured by the 1990 and 2000 decennial census and the most recent Small Area Income and Poverty Estimates. Alternatively, data to support eligibility may also be from any census tract with a poverty rate of at least 20 percent as measured by the 2013–2017, 5-year data series available from the American Community Survey of the Census Bureau.

Authorized Organization Representative (AOR): The person authorized to submit applications on behalf of the organization via *Grants.gov*. The AOR is authorized by the E-Biz point of contact in the System for Award Management. The AOR is listed on the SF- 424.

Capacity Building: Activities designed to improve the ability of an organization to design and implement the necessary technical, financial, business, data analysis, and management skills of grantees to access Federal funding, meet Federal requirements, undertake statewide and metropolitan long-range planning and programming activities, and implement other activities that broadly support project development and delivery. This includes developing long-term community capacity to sustain partnerships and engage non-governmental partners, leadership and workforce development, and program evaluation.

Community-Based Organizations: The term ''community-based organization'' means a public or private nonprofit organization of demonstrated effectiveness that—(A) is representative of a community or significant segments of a community; and (B) provides educational or related services to individuals in the community.

Disadvantaged Business: According to the Small Business Administration, a Disadvantaged business must be 51% owned or controlled by one or more disadvantaged persons, and the firm must also be small according to SBA's size standards. A full definition can be found on SBA's website [*https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business*].

Disadvantaged Community: (1) Any Tribal land or any Territory or possession of the United States and (2) those census tracts (a) experiencing disproportionate effects (as defined by Executive Order 12898); (b) that contain areas of persistent poverty as defined in 49 U.S.C. 6702(a)(1); (c) that are historically disadvantaged as defined by CEQ's Climate & Economic Justice Screening Tool [*https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5*] and DOT's USDOT Equitable Transportation Community (ETC) Explorer [*https://experience.arcgis.com/experience/0920984aa80a4362b8778d779b090723/page/ETC-Explorer---Homepage/*] mapping tool for Historically Disadvantaged Communities; or (d) other federally designated community development zones.

Equitable Development: Equitable development is a development approach for meeting the needs of all communities, including underserved communities through policies and programs that reduce disparities while fostering livable places that are healthy and vibrant for all.

Grants.gov: The website serving as the Federal Government's central portal for searching and applying for Federal financial assistance throughout the Federal Government. Registration on *Grants.gov* is required for submission of applications to prospective agencies unless otherwise specified in this NOFO.

Historically Disadvantaged Community: Any Tribal land or any Territory or possession of the United States, or certain census tracts census experiencing disadvantage when its overall disadvantaged index score places it in the 65% (or higher) of all US census tracts in the USDOT Equitable Transportation Community (ETC) Explorer [*https://experience.arcgis.com/experience/0920984aa80a4362b8778d779b090723/page/ETC-Explorer---Homepage/*].

Indian Tribe: For the purposes of this NOFO, Indian Tribes include federally recognized Tribal Governments (as defined by the Bureau of Indian Affairs) [*https://www.federalregister.gov/documents/2023/01/12/2023-00504/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of*].

Location-Efficient Housing: Housing that benefits from being located in communities near work, schools, services, and amenities and has accessibility to public transportation networks.

Meaningful Public Involvement: A process that proactively seeks full representation from the community, considers public comments and feedback, and incorporates that feedback into a project, program, or plan when possible. The impact of community contributions encourages early and continuous public involvement and brings diverse viewpoints and values into the decision-making process. This process enables the community and agencies to make better-informed decisions through collaborative efforts.

Place-Making: A multi-faceted and collaborative approach to the planning, design, and management of the public realm to re-activate or co-create active, accessible and inviting public spaces that promote the well-being of people.

Planning: Efforts that support inclusive public participation and community engagement in developing and implementing a range of activities to identify, assess, and evaluate community needs, including but not limited to environmental reviews, data and mapping visualization, market and mobility studies, health and safety impacts, and climate vulnerability assessments. Planning assistance may involve developing or designing for a program or project that aligns with the goals of the DOT Strategic Plan [*https://www.transportation.gov/dot-strategicplan*].

Project Planning and Scoping: Technical assistance in this phase will support communities in efforts to identify projects that address a problem in the community and complete planning activities to move these projects toward development and implementation. Examples of areas of technical assistance in this phase

include, but are not limited to environmental planning, transportation planning (*e.g.,* corridor studies, pre-engineering studies), visioning and goal setting, feasibility studies, and other planning and scoping activities.

Project Development and Design: Technical assistance in this phase will support communities that have completed planning and scoping activities for one or more projects and who need assistance with completing relevant analyses and identifying and securing funding for project delivery. Specific types of technical assistance that could be provided for communities in this phase include, but are not limited to environmental analysis (*e.g.,* NEPA); equity analysis; mapping and data analysis; title VI, ADA, and other regulatory compliance; benefit-cost analysis; grant/funding identification and planning; grant writing; and other pre-construction activities.

Project Delivery: Technical assistance in this phase will support communities that have received funding for one or more projects and who need assistance administering funding to successfully deliver projects. Examples of technical assistance activities that could support communities in this phase include but are not limited to project and grant management; value engineering; right-of-way acquisition; coordination with housing and community development, including anti-displacement strategies; data and technology deployment; and other project delivery activities.

Regional Planning Organization: For the purposes of this NOFO, regional planning organizations serve metropolitan areas over 50,000 population, and can include public agencies that fall within one of the eligible entities to receive support under this TCP NOFO that promote and implement policy-driven, regional planning solutions. These may include MPOs, regional transportation commissions, councils of government, regional transportation agencies, and regional planning councils. Non-profit regional planning organizations are eligible only to provide support through the TCP–R.

Rural Area: Under this NOFO, communities are in rural areas if:

- The community is not located in a 2020 Census Bureau designated urban area, or
- The community is located in a 2020 Census Bureau designated urban area with a population of 50,000 or less.

A community is not in a rural area if located in a 2020 Census Bureau designated urban area that has a population of more than 50,000 people. Applicants may use TigerWeb [*https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_main.html*] to determine if their community located in a 2020 Urban Area. A list of urban areas with corresponding populations for the 2020 Census is available in the **Federal Register** [*https://www.federalregister.gov/documents/2022/12/29/2022-28286/2020-census-qualifying-urban-areas-and-final-criteria-clarifications*].

Statewide Transportation Improvement Program (STIP): A statewide prioritized listing/program of transportation projects covering a period of 4 years that is consistent with the long-range statewide transportation plan, metropolitan transportation plan, and TIPs, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Technical Assistance: Programs, processes, and resources that provide targeted support, knowledge or expertise to a community, region, organization, or other beneficiary to help them access and utilize Federal funding to develop, analyze, design, and deliver transportation plans and projects.

Transportation Improvement Program (TIP): A prioritized listing/program of transportation projects covering a period of 4 years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

Issued in Washington, DC, on September 12, 2023.

Christopher Coes,

Assistant Secretary for Transportation Policy, Department of Transportation.

Appendix A. Full Application Checklist

Before you submit your application to DOT, please ensure that the following elements are included in your submission.

	Requirement	Location in NOFO
☐	SF–424—Application for Federal Assistance *(submitted as an attachment)*	D.2(a).
☐	SF–424A—Budget Information for Non-Construction Programs *(submitted as an attachment)*	D.2(a).
☐	SF–LLL—Disclosure of Lobbying Activities *(submitted as an attachment)*	D.2(a).
☐	Organizational Documentation *(submitted as an attachment, no page limit)*	D.2(b).
☐	Organization Descriptions *(one page each for the lead and co-applicants)*	D.2(c).
☐	Indirect Cost Documentation *(if applicable, submitted as an attachment, no page limit)*	D.2(d).
☐	Executive Summary *(500 words or less)*	D.2(e).
☐	Letters of Commitment *(TCP–R applicants only)*	D.2(g).
☐	Staffing Plan *(including key staff resumes)*	D.2(h).
☐	Budget Proposal *(template required, maximum 3 pages* (excluding tables)) (include Letters of Commitment as attachments, if applicable).*	D.2(i).
☐	Technical Assistance Approach Narrative *(maximum 3 pages)*	E.1(a)(i).
☐	Capacity Building Approach Narrative *(maximum 1 page)*	E.1(a)(ii).
☐	Community of Practice Management Approach Narrative *(maximum 1 page)*	E.1(a)(iii).
☐	Role of Partner Organizations Narrative *(maximum 1 page)*	E.1(b)(i).
☐	Demonstrated Staff Expertise Narrative *(maximum 1 page)*	E.1(b)(ii).
☐	Experience Supportive of Technical Assistance Approach Narrative *(maximum 3 pages)*	E.1(c)(i).
☐	Experience Supportive of Capacity Building Approach Narrative *(maximum 1 page)*	E.1(c)(ii).
☐	Experience Supportive of Community of Practice Management Approach Narrative *(maximum 1 page)*	E.1(c)(iii).
☐	Schedule of Milestones and Deliverables Narrative *(maximum 1 page)*	E.1(d)(i).
☐	Program Evaluation and Assessment Narrative *(maximum 1 page)*	E.1(d)(ii).

* All page limits are single-sided 8.5 x 11-inch pages, with a minimum 12-point font and 1-inch margins.

[FR Doc. 2023–19984 Filed 9–14–23; 8:45 am]
BILLING CODE 4910–9P–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2023–0116]

Senior Executive Service Performance Review Board Membership

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

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT published the names of the persons selected to serve on Departmental PRBs.

FOR FURTHER INFORMATION CONTACT: Anne B. Audet, Director, Departmental Office of Human Resource Management (202) 366–2478.

SUPPLEMENTARY INFORMATION: The persons named below may be selected to serve on one or more Departmental PRBs.

(Authority: 5 U.S.C. 4314(c)(4))

Issued in Washington, DC, on September 8, 2023.

Anne B. Audet,

Director, Departmental Office of Human Resource Management.

Department of Transportation

Federal Highway Administration

ALONZI, ACHILLE
ARNOLD, ROBERT E
BAKER, SHANA V
BENJAMIN, RANDALL KEITH II
BEZIO, BRIAN R
BIONDI, EMILY CHRISTINE
BRIGGS, VALERIE ANNETTE
BURROWS, SHAY K
CHIN, ARTHUR ANDREW
CHRISTIAN, JAMES C
CRONIN, BRIAN P
CUNNINGHAM, JOSHUA BLAKE
CURTIS, STEPHANIE
EVANS, MONIQUE REDWINE
FINFROCK, ARLAN E JR
FLEURY, NICOLLE M
FOUCH, BRIAN J
GIGLIOTTI, DANA
HARTMANN, JOSEPH L
HUGHES, CAITLIN GWYNNE
JENSEN, GARY ALAN
KALLA, HARI
KEHRLI, MARK R
KNOPP, MARTIN C
LEWIS, DAVID A
MAMMANO, VINCENT P
MARQUIS, RICHARD J
MCLAURY, KEVIN L
NEHME, JEAN ANTOINE
NESBITT, MICHAEL D
OSBORN, PETER W
PETTY, KENNETH II
REGAL, GERALDINE K
RICHARDSON, CHRISTOPHER STEVEN
RICO, IRENE
RITTER, ROBERT G
ROGERS, ANDREW CHARLES
RUSNAK, ALLISON B
SCHAFTLEIN, SHARI M
SHAFFER, RHONDA C
SHEPHERD, GLORIA MORGAN
SOSA, MAYELA
STEPHANOS, PETER J
THORNTON, NICHOLAS R
TURNER, DERRELL E
WALKER, CHERYL J
WILNER, MARCUS D
WINTER, DAVID R
WRIGHT, LESLIE JANICE

Federal Motor Carrier Safety Administration

ADAMS, EARL STANLEY JR
FROMM, CHARLES J
HERNANDEZ, SCOTT
HUG, CARRIE A
KEANE, THOMAS P
KELLY, TAFT D
KREEB, ROBERT M
LAWLESS, SUE
LENFERT, WINSOME A
LIBERANTE, WENDY LOUISE
LIBERATORE, THOMAS JOSEPH
MINOR, LARRY W
NEMONS, PATRICK D
PIDUGU, PAVANKUMAR
RIDDLE, KENNETH H.
RUBAN, DARRELL L
SCHREIBMAN, JACK L
SENTEF, JOSEPH
STEELE, GEORGIA SHARLENE

Federal Railroad Administration

ALEXY, JOHN KARL
ALLAHYAR, MARYAM
DYER, WILLIAM PATRICK
FULTZ, ALLISON ISHIHARA
GARLAND, JAMES JASON
GLUCK, STUART MURRAY
HAYWARD-WILLIAMS, CAROLYN R
JORTLAND, BRETT ANDREW
KING, CHARLES PAT
KOUL, NEERAJ
LESTINGI, MICHAEL W.
LONG, MICHAEL T
LONGLEY, MICHAEL M
MITCHELL, JENNIFER LOUISE
NISSENBAUM, PAUL
OSTERHUES, MARLYS A
PATTERSON, MARK A
RENNERT, JAMIE P.
REYES-ALICEA, REBECCA
RIGGS, TAMELA LYNN

Federal Transit Administration

AHMAD, MOKHTEE
ALLEN, REGINALD E
BROOKINS, KELLEY
BUTLER, PETER S
DALTON-KUMINS, SELENE FAER
DELORENZO, JOSEPH P
GARCIA CREWS, THERESA
GOODMAN, STEPHEN C
IYER, SUBASH SUBRAMANIAN
JAMES, FELICIA LANISE
KOHLER, THERESA JANE
LEARY, MARY A
LYSSY, GAIL C
NIFOSI, DANA C.
PFISTER, JAMIE DURHAM
ROBINSON, BRUCE A
TAYLOR, YVETTE G
TELLIS, RAYMOND S
TERWILLIGER, CINDY E
VANTERPOOL, VERONICA MARIA
WELBES, MATTHEW J

Maritime Administration

BALLARD, JOHN R
BECKETT, COREY ANDREW
DAVIS, DELIA P
DUNLAP, SUSAN LYNN
HARRINGTON, DOUGLAS M
HELLER, DAVID M
KAMMERER, GREGORY LOUIS
KUMAR, SHASHI N
NUNAN, JOANNA MARIE
PAAPE, WILLIAM
TOKARSKI, KEVIN M
WHERRY REESE FLACK, TAMEKIA ADEL

National Highway Traffic Safety Administration

BAUMANN, ROLAND T III
BLINCOE, LAWRENCE J
CARLSON, ANN ELIZABETH
CHEN, CHOU-LIN
CLAYTON, SEAN METRICE
DANIELSON, JACK H.
DOHERTY, JANE H
DOLAS, RAJEEV K
DONALDSON, K JOHN
HATIPOGLU, CEM
HINES, DAVID M
JOHNSON, TIM J
KOLODZIEJ, KERRY E
MARSHALL, JOHN W
MATHEKE, OTTO G III
POSTEN, RAYMOND R
SAUERS, BARBARA F
SHULMAN, SOPHIE MIKHAL
SOMMERS, TERRENCE
SRINIVASAN, NANDA N
SUMMERS, LORI K
VALLESE, JULIETTE M.

Office of the Secretary of Transportation

ABRAHAM, JULIE
ALBRIGHT, JACK G
AUDET, ANNE H
AUGUSTINE, JOHN E
AYLWARD, ANNE D
BAKER, SARAH ELIZABETH
BARTLETT, MAEVE VALLELY
BOHNERT, ROGER V
BROWN, ALVIN
CALLENDER, DUANE A

CARLILE, SAESHA LYNN
CARLSON, TERENCE W
CASTRO, BRIAN MATTHEW
COGGINS, COLLEEN P
COHEN, DANIEL
CONNORS, SUSAN M
DOUGHERTY, BARBARA KAYE
FARAJIAN, MORTEZA
FISCHER, KARA LYNN
FLEMING, GREGG G
FUNK, JENNIFER S
GEIER, PAUL M
GOLDSTEIN, SCOTT ROSS
HALLE, BENJAMIN GABLER
HALLE, MICHAEL MACKAY
HAMPSHIRE, ROBERT CORNELIUS
HOMAN, TODD M
HOWARD, JENNIFER MARGUERITE
HU, PATRICIA S.
HUYNH, JULI C
IRVINE, PETER D
JACKSON, RONALD A
JARRIN, JOSEPH HUMPHREY
KALETA, JUDITH S
KING, DANIEL E.
LANG, JAMES M.
LAWRENCE, CHRISTINE A
LEFEVRE, MARIA S.
LOHRENZ, MAURA C
MARCHESE, APRIL LYNN
MARION, IRENE BIANCA
MARTIN, HAROLD W III
MCCARTNEY, ERIN P
MCNAMARA, PHILIP ADAM
MIDDLETON, GARY LEE
MIMS, AUGUSTUS B III
MORGAN, DANIEL S.
O'BERRY, DONNA
ORNDORFF, ANDREW R
PAIEWONSKY, LUISA M
POPKIN, STEPHEN M
REAMY, LYNDA TRAN
REDUS, TYRA LATRICE
RIBEIRO, LICERIO G JR
SCHACHTER, CORDELL
SCHMITT, ROLF R
SHEIKH IBRAHIM, FIRAS
SHEPARD, DESHAWN MONIQUE
SHIKANY, ANN MARIE
SIMPSON, JOAN
SMITH, WILLIE H
SPRAGUE, MARY G.
SUSSMAN, SABRINA SANAM
SWITZER, MARCUS JEREMY
SYED, MOHSIN RAZA
SZAKAL, KEITH J
SZATMARY, RONALD ALLEN JR
TAYLOR, BENJAMIN J
TIMOTHY, DARREN P
URE, DEVIN L.
WALKER, JONATHAN B
WASHINGTON, KEITH E
WORKIE, BLANE A
ZIFF, LAURA M

Pipeline and Hazardous Materials Safety Administration

BROWN, TRISTAN HILTON
CHAUDHRY, ANIL
CHAVEZ, RICHARD M.
DAUGHERTY, LINDA
DAVIS, CAREY THOMAS
FARLEY, AUDREY L.
GATTI, JONATHAN D
HARR, TRICIA M
MAYBERRY, ALAN K
MCMILLAN, HOWARD W
QUADE, WILLIAM A III
SCHOONOVER, WILLIAM S
TAHAMTANI, MASSOUD
TSAGANOS, VASILIKI B

Great Lakes St. Lawrence Seaway Development Corporation

FISHER, ANTHONY JR
O'MALLEY, KEVIN P
SCHARF, JEFFREY W

[FR Doc. 2023–19977 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2023–0137]

Advisory Committee on Transportation Equity (ACTE); Notice of Public Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: DOT OST announces a meeting of ACTE, which will take place via videoconference.

DATES: The meeting will be held Friday, September 22, 2023, from 2:30 to 4:30 p.m. eastern time. Requests for accommodations because of a disability must be received by Friday, September 15. Requests to submit questions must be received no later than Friday, September 15.

ADDRESSES: The meeting will be held via videoconference. Those members of the public who would like to participate virtually should go to *https://www.transportation.gov/civil-rights/acte/meetinginfo* to access the meeting, a detailed agenda for the entire meeting, meeting minutes, and additional information on ACTE and its activities.

FOR FURTHER INFORMATION CONTACT: Sandra Norman, Senior Advisor, Departmental Office of Civil Rights and Warner Dixon, Special Assistant for Civil Rights, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 934–2380, *ACTE@dot.gov.* Any ACTE-related request or submissions should be sent via email to the points of contact listed above.

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 1009(a)(2) of the Federal Advisory Committee Act (FACA). 41 CFR 102–3.150(b) provides ''In exceptional circumstances, the agency may give less than 15 calendar days' notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.'' Consequently, this notice is being published less than 15 days from the meeting date due to the immediate need to establish the framework and work flows of the FACA and to identify items and measures for action in light of the increased infrastructure planning needs and funding opportunities created in BIL is Public Law 117–58 *https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf* and and IRA Public Law 117–169 *https://www.govinfo.gov/content/pkg/PLAW-117publ169/pdf/PLAW-117publ169.pdf*).

Background

Purpose of the Committee

ACTE was established to provide independent advice and recommendations to the Secretary of Transportation about comprehensive, interdisciplinary issues related to civil rights and transportation equity in the planning, design, research, policy, and advocacy contexts from a variety of transportation equity practitioners and community leaders. Specifically, the Committee will provide advice and recommendations to inform the Department's efforts to:

Implement the Agency's Equity Action Plan and Strategic Plan, helping to institutionalize equity into Agency programs, policies, regulations, and activities:

Strengthen and establish partnerships with overburdened and underserved communities who have been historically underrepresented in the Department's outreach and engagement, including those in rural and urban areas:

Empower communities to have a meaningful voice in local and regional transportation decisions; and ensure the compliance of Federal funding recipients with civil rights laws and nondiscrimination programs, policies, regulations, and activities.

Meeting Agenda

The agenda for the meeting will consist of:

An inauguration of the ACTE members
An overview of the ACTE charter
An overview of the role and impact of ACTE members
Remarks from Secretary Buttigieg
An overview of ACTE focus areas
A discussion on collaborative approaches and transparency

Concluding remarks
Meeting Participation

Advance registration is required. Please register at *https://www.transportation.gov/civil-rights/acte/meetinginfo* by the deadline referenced in the **DATES** section. The meeting will be open to the public for its entirety. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Questions from the public will be answered during the public comment period only at the discretion of the ACTE chair, vice chair, and designated Federal officer. Members of the public may submit written comments and questions to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section on the topics to be considered during the meeting by the deadline referenced in the **DATES** section.

Dated: September 11, 2023.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2023–19972 Filed 9–14–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons (SDN) List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date.

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Enforcement, Compliance & Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 12, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. AJROUCH, Ali Ismail (a.k.a. AJROUCH, Ali; a.k.a. AJROUSH, Aly Ismail), Lebanon; DOB 02 Nov 1971; POB Kfar Houne, Jezzine, South, Lebanon; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: BLACK DIAMOND SARL).

Designated pursuant to section 1(a)(iii)(B) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (collectively, E.O. 13224, as amended), for owning or controlling, directly or indirectly, BLACK DIAMOND SARL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. HELBAWI, Mahdy Akil (a.k.a. AKIL, Madhy; a.k.a. AKIL, Mahdi Amer; a.k.a. AQIL, Mahdi Amer; a.k.a. AQIL, Mahdi Amir), Colombia; DOB 30 Oct 1987; POB Maicao, Colombia; nationality Lebanon; citizen Colombia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Cedula No. 1126038243 (Colombia); Passport LR0159572 (Lebanon) expires 14 Nov 2021; alt. Passport PE092928 (Colombia); National ID No. 000050624602 (Lebanon); Identification Number 3664441 (Lebanon) (individual) [SDGT] (Linked To: RADA, Amer Mohamed Akil).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AMER MOHAMED AKIL RADA, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. RADA, Amer Mohamed Akil (a.k.a. AQEEL, Amer Muhammad), Lebanon; DOB 07 Sep 1964; alt. DOB 10 Dec 1967; nationality Lebanon; alt. nationality Colombia; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Cedula No. 67121004582 (Colombia); Identification Number V–28426454 (Venezuela) (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. RADA, Samer Akil (a.k.a. RADA, Samer Mohamed Akil; a.k.a. REDA, Samer Mohamed Akil), Carabobo, Venezuela; DOB 10 Apr 1981; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number 179029472 (Colombia) (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Entities

1. BCI TECHNOLOGIES C.A., Avenue Don Julio Centeno, Centro Comercial Los Jarales, local N1–11, Valencia, Carabobo State, Venezuela; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Other information technology and computer service activities [SDGT] (Linked To: RADA, Samer Akil).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, SAMER AKIL RADA, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. BLACK DIAMOND SARL, Beirut, Baabda, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 09 Mar 2016; Commercial Registry Number 2044841 (Lebanon) [SDGT] (Linked To: ZANGA S.A.S.).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ZANGA S.A.S., a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. ZANGA S.A.S., Carrera 49 C #102–57 104, Barranquilla, Colombia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Mar 2015; NIT # 9008900295 (Colombia); Identification Number 1700344853100000 (Colombia) [SDGT] (Linked To: HELBAWI, Mahdy Akil).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, MAHDY AKIL HELBAWI, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: September 12, 2023.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–20038 Filed 9–14–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Agency Information Collection Activity: Accelerated Payment Verification of Completion Letter

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 14, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0636'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0636'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 107–103 and Public Law 110–181; 10 U.S.C. 16131a and 38 CFR 21.7154(d)(1).

Title: Accelerated Payment Verification of Completion Letter, VA Form 22–0840.

OMB Control Number: 2900–0636.

Type of Review: Extension of a currently approved collection.

Abstract: Eligible Veterans, Service members, and beneficiaries electing to receive an accelerated payment for educational assistance payments must certify they received such payment and how the payment was used, and the data collected from the VA Form 22–0840 is used to determine the entitlement to the accelerated payment.

Affected Public: Individuals and Households.

Estimated Annual Burden: 1 hour.

Estimated Average Burden Time per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 10.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–20043 Filed 9–14–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Financial Services Center (FSC), Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the VA is modifying the system of records entitled, ''Corporate Travel and Charge Cards—VA'' (131VA047). This system is used for operating, auditing and managing the charge card program involving commercial purchases authorized by VA employees. It is an end-to-end travel management service that includes all aspects of official Federal business travel including travel planning, authorization, reservations, ticketing, fulfillment, expense reimbursement and travel management reporting. These records will include permanent change of station moves that have been approved for relocation entitlements. The system serves as a repository that captures all required documentation that would assist with providing instructions to obtain a government passport, visa and country clearance, as applicable, as well as timely approval routing, as outlined in VA travel policy for VA employees traveling in an official capacity to a foreign country.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to Corporate Travel and Charge Cards—VA (131VA047). Comments received will be available at *www.regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: For Charge Cards: Lori Thomas, Chief Charge Card Service Division, 512–460–5189 or *Lori.Thomas2@va.gov.*

For iMove: Adrian Quesada, Division Chief of Permanent Change of Station (PCS) Division, 512–460–5204 or *Adrian.Quesada@va.gov.* For Temporary Travel: Gary McWilson, Chief, TDY Travel Service Division, 512–460–5111 or *Gary.McWilson@*

va.gov. For Foreign Travel Portal (FTP): Jessie Murphy, Division Chief of Travel Logistics and Conference (TLCD) Division, Financial Services Center, Department of Veterans Affairs, 1615 Woodward Street, Austin, TX 78772, 202–461–6294, 202–815–9397 or *Jessie.Murphy@va.gov.*

SUPPLEMENTARY INFORMATION: VA is modifying the systems of records by revising the following sections: System Name, System Location, Authority for Maintenance of the System, Categories of Individuals Covered by the System, Categories of Records in the System, Record Source Categories, Policies and Practices for Storage of Records, Policies and Practices for Retrieval of Records, Policies and Practices for Retention and Disposal of Records, Record Access Procedures, Contesting Records Procedures and Notification Procedures and History.

System Name will be removed and now include: ''Corporate Travel and Charge Cards—VA''

The System Location will include: ''Records are located at the Financial Services Center in Austin, Texas.''

Categories of Individuals Covered by the System will include: ''The users will cover current and former VA employees and VA employees' spouses and children.''

The Categories of Records in the System will include: ''Employee information to include name, social security number, tax identification number, home address (prior/new), phone numbers (work, home and cell), title, salary information (grade/rank), retirement plan, W–2 tax information and employee email address. Family information will include names of family members (spouse/children), birth dates of family members (spouse, children) and salary information of spouse (if available).

Policies and Practices for Storage of Records will now include: ''Records are maintained electronically on computer storage devices such as servers and cloud storage. The computer storage devices are located at the FSC-Austin; iMove backups will be maintained at a disaster recovery site designated by Microsoft Azure Government. Computer records are maintained in a secure password protected environment.''

Record Source Categories will now include: ''employee submitted information and VA's HRSmart system''.

Police and Practices for Retrieval of Records will now include: ''Records in this system are retrieved by name, social security number or other assigned identifier.''

Policies and Practices for Retention and Disposal of Records will now include ''Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, Records Control Schedule 1.1, Item 10.''

Contesting Records Procedures will now include ''Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

Record Access Procedures will now include: ''Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.''

Notification Procedures will now include: ''Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.''

VA is republishing this system of records notice in its entirety.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on August 7, 2023 for publication.

Dated: September 12, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Corporate Travel and Charge Cards—VA (131VA047).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are located in the Financial Services Center (FSC), Austin, TX.

iMove: Backup, recovery and archived digital media is stored by Amazon Web Services.

SYSTEM MANAGER(S):

For Charge Cards: Lori Thomas, Chief Charge Card Service Division, 512–460–5189 or *Lori.Thomas2@va.gov.*

For iMove: Adrian Quesada, Division Chief of Permanent Change of Station (PCS) Division, 512–460–5204 or *Adrian.Quesada@va.gov.*

For Temporary Travel: Gary McWilson, Chief, TDY Travel Service Division, 512–460–5111 or *Gary.McWilson@va.gov.*

For Foreign Travel Portal: Jessie Murphy, Division Chief of Travel Logistics and Conference (TLCD) Division, Financial Services Center, Department of Veterans Affairs, 1615 Woodward Street, Austin, TX 78772, 202–461–6294, 202–815–9397 or *Jessie.Murphy@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

48 CFR 13; 31 U.S.C. 3511; VA Financial Policy, vol. XIV; Federal Acquisition Regulation (FAR) part 13; 48 CFR part 13; and Public Law 93–579 section 7(b).

PURPOSE(S) OF THE SYSTEM:

The purposes of this system are operating, auditing and managing the purchase card program involving commercial purchases by authorized VA employees; processing and managing official VA relocation obligations and payments to maintain records on current VA employees who are relocating to another office location within VA and have been approved for relocation entitlements; record relocation disbursements in order to compute and record taxes and W–2s; establish a comprehensive beginning-to-end foreign travel service system containing required information to facilitate issuance of a Government passport, visa, and country clearance, as applicable, while also ensuring the processing and reporting of foreign travel is centralized, auditable and complies with all applicable rules and regulations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current VA employees who have their own Government assigned charge card, or who have had a charge card. Records cover current and former VA employees and VA employees' spouses and children.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, work addresses, work telephone numbers, information needed for identification verification, charge card applications, charge card statements, terms and

conditions for use of the charge card and monthly reports from contractor(s) showing charges to individual account numbers, balances and other types of account analysis. Records encompass the following employee Information: name; social security number; tax identification number; home address both prior and current; phone numbers including work, home and cell; title; salary information including grade and/or rank; retirement plan; W–2 tax information; and employee email address. Records also encompass the following family information: names of family members including spouses and children; birth dates of family members including spouse and children; and salary information of spouse, if available. This information is entered based on a questionnaire that the employee submits.

RECORD SOURCE CATEGORIES:

Record sources include transactional data from the contracting bank, employee submitted information and VA's HRSmart system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation, for VA:* To appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm involving.

3. *Data breach response and remediation, for another Federal agency:* To another Federal agency or Federal entity, when VA determines that the information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* To a Federal, State, local, Territorial, Tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal, or regulatory in nature, or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates such a violation or potential violation of law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *Department of Justice for Litigation or Administrative Proceeding:* To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* To contractors, grantees, experts, consultants, students and others performing or working on a contract, service, grant, cooperative agreement or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *Office of Personnel Management (OPM):* To OPM in connection with the application or effect of civil service laws, rules, regulations or OPM guidelines in particular situations.

8. *Equal Employment Opportunity Commission (EEOC):* To the EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *Federal Labor Relations Authority (FLRA):* To the FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *Merit Systems Protection Board (MSPB):* To the MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *Nation Archives and Records Administration (NARA):* To NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. *Federal Agencies, Courts, Litigants, for Litigation or Administrative Proceedings:* To another Federal agency, court or party in litigation before a court or in an administrative proceeding conducted by a Federal Agency when the government is a party to the judicial or administrative proceeding.

13. *Law Enforcement for Locating Fugitive:* To any Federal, State, local, Territorial, Tribal or foreign law enforcement agency in order to identify, locate or report a known fugitive felon, in compliance with 38 U.S.C. 5313B(d).

14. *Office of Management and Budget (OMB):* To the OMB for the performance of its statutory responsibilities for evaluating Federal programs.

15. *Treasury, to Report Earnings as Income:* To the Department of the Treasury to report calendar year earnings of $600 or more for income tax reporting purposes.

16. ***Federal Register**, for Rulemaking:* To make available for public review comments submitted in response to VA's solicitation of public comments as part of the agency's notice and rulemaking activities under the Administrative Procedure Act (APA), provided that the disclosure is limited to information necessary to comply with the requirements of the APA, if VA determines that release of personally identifiable information, such as an individual's telephone number, is integral to the public's understanding of the comment submitted.

17. *Unions:* To officials of labor organizations recognized under 5 U.S.C. 71 provided that the disclosure is limited to information identified in 5 U.S.C. 7114(b)(4) that is relevant and necessary to their duties of exclusive representation concerning personnel

policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained electronically on computer storage devices such as servers and cloud storage. The computer storage devices are located at the FSC-Austin; iMove backups will be maintained at a disaster recovery site designated by Microsoft Azure Government. Computer records are maintained in a secure password protected environment.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records may be retrieved using various combinations of name or charge card number of the individual on whom the records are maintained. Electronic file records are retrieved by name and/or travel authorization number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedule 1.1, Item number 10.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to these records is restricted to authorized VA employees or contractors, on a ''need to know'' basis. Offices where these records are maintained are locked after working hours and are protected from outside access by the Federal Protective Service, other security officers and alarm systems. Access to computerized records is restricted to authorized VA employees or contractors, by means of unique user identification and passwords.

Security controls used to protect personal sensitive data are commensurate with those required for an information system rated moderate for confidentiality, integrity, and availability, as prescribed in NIST Special Publication, 800–53, ''Recommended Security Controls for Federal Information Systems,'' Revision 4. Administrative controls include the policies and procedures governing the agency program and systems operated within, background investigations for privileged users, and rules of behavior. Technical controls include role-based, user access controls and data encryption.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

70 FR 7320 (February 11, 2005); 74 FR 14618 (March 31, 2009); 80 FR 54370 (September 9, 2015); 86 FR 52550 (September 21, 2021).

[FR Doc. 2023–20052 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0829]

Agency Information Collection Activity Under OMB Review: Income and Asset Statement in Support of Claim for Pension or Parents' Dependency and Indemnity Compensation (DIC)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0829'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: U.S. Code: 38 U.S.C. 1503; U.S. Code: 38 U.S.C. 1541; U.S. Code: 38 U.S.C. 1543; U.S. Code: 38 U.S.C. 1315.

Title: VA Form 21P–0969, Income and Asset Statement in Support of Claim for Pension or Parents' Dependency and Indemnity Compensation (DIC).

OMB Control Number: 2900–0829.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a), 38 CFR 1502, 38 CFR 1503 provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. VA Form 21P–0969, Income and Asset Statement in Support of Claim for Pension or Parents' Dependency and Indemnity Compensation (DIC), is the prescribed form for Veterans Pension applications.

The following updates were made:

- Reorganized the layout to group instructions first, then questions.
- Income and asset types reorganized for easier completion by claimants and faster processing.
- Income and Asset information has been expanded.
- Updated instructions.
- New standardization data points; to include optical character recognition boxes. This is a non-substantive change.
- Date range added to better aid in processing and allows for claimants to report historical information.
- Specific options provided for specific questions to reduce ambiguity.
- Questions regarding trusts and annuities expanded to reduce development.
- Signature blocks added to allow for standalone submissions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published at 88 FR 43171 on July 6, 2023, pages 43171–43172.

Affected Public: Individuals and households.

Estimated Annual Burden: 22,917 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time, or as needed.

Estimated Number of Respondents: 55,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–20001 Filed 9–14–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), Veterans Health Administration (VHA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the VA is modifying the system of records entitled, ''Customer Relationship Management System (CRMS)-VA'' (155VA10NB). This system is used for historical reference, quality assurance, training, and statistical reporting.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Customer Relationship Management System (CRMS)-VA'' (155VA10NB). Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone 704–245–2492 (*Note:* this is not a toll-free number) or *Stephania.griffin@va.gov.*

SUPPLEMENTARY INFORMATION: VA is amending the system of records by revising the System Number; System Location; System Manager; Purpose of the System; Categories of Records in the System; Records Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Retention and Disposal of Records; and Administrative Technical and Physical Safeguards. VA is republishing the system notice in its entirety.

The System Number is being updated from 155VA10NB to 155VA10 to reflect the current VHA organizational routing symbol.

The System Location and the Administrative, Technical and Physical Safeguards sections are being updated to replace Health Resource Center with VHA Member Services. The System Location will also be updated to include, ''Information from these records or copies of these records may be maintained at VA Enterprise Cloud Data Centers/Amazon Web Services, 1915 Terry Avenue, Seattle, WA 98101.''

The System Manager is updated to replace Chief Business Officer (10NB), with Deputy Under Secretary for Health and Operations, VHA Member Services. Also, Director, Health Resource Center is replaced with Director, VHA Member Services.

The Purpose of the System is being modified to include, ''tracking and managing inbound and outbound customer contacts across channels (*e.g.,* telephone, email, mail, chat), and maintaining customer support history. These records are used by Member Services Call Center agents to provide customer support to Veterans and their family members by allowing agents to resolve inbound calls and achieve first-call resolution as well as provide an efficient desktop, workflow, contact history and knowledge management capabilities. These records are also used to answer Veteran questions about VA and their care and enhance VA's ability to provide timely, valid responses to Veteran inquiries about benefits, eligibility and other matters.''

The Categories of Records in the System is being updated to include name and Social Security Number.

The Record Source Categories is being modified to include, ''VA information systems, including but not limited to, Health Data Repository, Veterans Experience Integration Solution, VA Profile, Consolidated Copayment Processing Center System, and Master Person Index.''

Routine Use number 8 is being removed, which states, ''Disclosure may be made to those officers and employees of the agency that maintains the record who have a need for the record in the performance of their duties.'' Routine use number 8 will now be replaced with a new routine use to state, ''To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.''

Policies and Practices for Storage of Records is being updated to remove the VA Office of Information Technology (OIT) approved location.

Policies and Practices for Retention and Disposal of Records is being updated to remove, ''Electronic Service Records are purged when they are no longer needed for current operation.'' This section is updated to state, ''CRMS records will be maintained and disposed of in accordance with the schedule approved by the Archivist of the United States, Records Control Schedule (RCS) 10–1, 1925.1, Destroy 1 year after resolved, or when no longer needed for business use, whichever is appropriate.''

Administrative, Technical and Physical Safeguards is being updated to include number 6, ''VA Enterprise Cloud data storage conforms to security protocols as stipulated in VA Directives 6500 and 6517. Access control standards are stipulated in specific agreements with cloud vendors to restrict and monitor access.''

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the

undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on August 7, 2023 for publication.

Dated: September 12, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME:

''Customer Relationship Management System (CRMS)-VA'' (155VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records and magnetic media are maintained at the Veterans Health Administration (VHA) Member Services, Topeka, Kansas facility or at another Office of Information Technology (OIT) approved location. Magnetic media are also stored at an OIT approved location for contingency back-up purposes. In addition, information from these records or copies of these records may be maintained at the Department of Veterans Affairs (VA) Enterprise Cloud Data Centers/Amazon Web Services, 1915 Terry Avenue, Seattle, WA 98101.

SYSTEM MANAGER(S):

Official responsible for policies and procedures: Deputy Under Secretary for Health and Operations, VHA Member Services, VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420. Telephone number 202–461–4239 (this is not a toll-free number). Official maintaining the system: Director, VHA Member Services, 3401 SW 21st Street Bldg. 9, Topeka, Kansas 66604.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501(a), 1705, 1710, 1722, 1722(a), 1781 and 5 U.S.C. 552(a).

PURPOSE(S) OF THE SYSTEM:

The purpose of these records is used for historical reference, quality assurance, training, statistical reporting, tracking and managing inbound and outbound customer contacts across channels (*e.g.,* telephone, email, mail, chat), and maintaining customer support history. These records are used by Member Services Call Center agents to provide customer support to Veterans and their family members by allowing agents to resolve inbound calls and achieve first-call resolution as well as provide an efficient desktop, workflow, contact history and knowledge management capabilities. These records are also used to answer Veteran questions about VA and their care and enhance VA's ability to provide timely, valid responses to Veteran inquiries about benefits, eligibility and other matters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information on Veterans, Veteran's family members, members of the general public, VA customers, and VA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include name, Social Security Number, address, date of birth, military identification number and other unique identifiers from individuals contacting VHA concerning: 1. Veteran health benefits eligibility and health care appointment request; 2. Veteran medical claims processing and payments; 3. Co-payments charged for medical care and prescriptions; 4. General administrative pharmacy inquiries; 5. General human resources management, (*e.g.,* employee benefits, recruitment/job applicants, etc.); and 6. Other information related to Veterans, Veteran's family members, members of the general public, VA customers, and VA employees.

RECORD SOURCE CATEGORIES:

Information in this system of records may be provided by Veterans, Veteran's family members, members of the general public, VA customers, VA employees, and VA information systems, including but not limited to, Health Data Repository, Veterans Experience Integration Solution, VA Profile, Consolidated Copayment Processing Center System, and Master Person Index.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information of VHA or any of its business associates, and 38 U.S.C. 7332; *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in both 38 U.S.C. 7332 and CFR parts 160 and 164 permitting disclosure.

1. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *National Archives and Records Administration (NARA):* To the NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

3. *Department of Justice (DoJ), Litigation, Administrative Proceeding:* To the DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her official capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

4. Contractors: To contractors, grantees, experts, consultants, students and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

5. *Law Enforcement:* To a Federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

6. *Federal Agencies, Fraud and Abuse:* To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. *Data Breach Response and Remediation, for VA:* To appropriate agencies, entities and persons when (1)

VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

8. *Data Breach Response and Remediation, for Another Federal Agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. *Unions:* To unions identified in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

10. *Merit Systems Protection Board (MSPB):* To the MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as otherwise authorized by law.

11. *Equal Employment Opportunity Commission (EEOC):* To the EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

12. *Federal Labor Relations Authority (FLRA):* To the FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name, Social Security Number or other assigned identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

CRMS records will be maintained and disposed of in accordance with the schedule approved by the Archivist of the United States, Records Control Schedule (RCS) 10–1, 1925.1, Destroy one year after resolved, or when no longer needed for business use, whichever is appropriate.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. All entrance doors to the VHA Member Services Topeka, KS and Waco, TX locations require an electronic pass card to gain entry. Hours of entry to the facility are controlled based on position held and special needs. Visitors to the VHA Member Services are required to sign-in at a specified location and are escorted the entire time they are in the building or they are issued a temporary visitors badge. At the end of the visit, visitors are required to turn in their badge. The building is equipped with an intrusion alarm system which is activated when any of the doors are forced open or held ajar for a specified length of time. During business hours, the security system is monitored by the VA police and Member Services staff. After business hours, the security system is monitored by the VA telephone operator(s) and VA police. The VA police conduct visual security checks of the outside perimeter of the building.

2. Access to the building is generally restricted to Member Services staff and VA police, specified custodial personnel, engineering personnel, and canteen service personnel.

3. Access to computer rooms is restricted to authorized VA OIT personnel and requires entry of a personal identification number (PIN) with the pass card swipe. PINs must be changed periodically. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including the Health Eligibility Center in Atlanta, GA; Health Administration Center in Denver, CO; Consolidated Patient Accounting Center in Ashville, NC; and VA health care facilities.

4. All Member Services employees receive information security and privacy awareness training and sign the Rules of Behavior; training is provided to all employees on an annual basis. The Member Services Information System Security Officer performs an annual information security audit and periodic reviews to ensure the security of the system.

5. For contingency purposes, database backups on magnetic media are stored off-site at an approved VA OIT location.

6. VA Enterprise Cloud data storage conforms to security protocols as stipulated in VA Directives 6500 and 6517. Access control standards are stipulated in specific agreements with cloud vendors to restrict and monitor access.

RECORD ACCESS PROCEDURE:

Individuals seeking information on the existence and content of a related record in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above or inquire in person at the VA health care facility they normally receive their care. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURE:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

73 FR 72123 (November 26, 2008), 80 FR 11531 (March 3, 2015).

[FR Doc. 2023–20044 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA), National Cemetery Administration (NCA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that VA is modifying the system of records in its inventory titled, ''Veterans and Dependents National Cemetery Interment Records-VA'' (42VA41). This system contains information related to Veterans and their dependents who have been interred in an NCA cemetery, state cemetery or tribal cemetery.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Veterans and Dependents National Cemetery Interment Records-VA'' (42VA41). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Cindy Merritt, NCA Privacy Officer (43E), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 321–200–7477 (this is not a toll-free number), *cindy.merritt@va.gov*.

SUPPLEMENTARY INFORMATION: VA is amending the system of records by revising the Purpose of the System; Categories of Individuals Covered by the System; Categories of Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; Policies and Practices for Retrieval of Records; Policies and Practices for Retention and Disposal of Records; Administrative, Technical, and Physical Safeguards; Record Access Procedures; Contesting Record Procedures; and Notification Procedures. VA is republishing the system notice in its entirety.

The system of records will now include a Purpose section. The Purpose will state ''The purposes for which the records are used include: provision of VA burial and memorial benefits; provision of information about VA burial and memorial benefits, including specific claims; determination of eligibility for burial in a VA national cemetery; disclosure of military service information upon request from VA-funded state and tribal Veterans cemeteries; coordination of committal services and interments upon request of families, funeral homes, and others of eligible decedents at VA national cemeteries; investigations of potential bars to benefits for otherwise eligible individuals; providing a repository for military, personal, and administrative information that is collected, retrieved, and disclosed to authorized individuals related to burials in a VA national cemetery. Information contained in this system of records may also be used as an aggregate, non-personally identifiable set to track, evaluate, and report on local and national benefits initiatives, such as cemetery development and emerging burial needs.''

Categories of Individuals Covered by the System is being amended to remove current language and include ''The records contain information on Veterans, dependents and family members of Veterans, Service members, family members of Service members, Reservists and Retirees (Active Duty, Reserves or National Guard), other VA customers such as attorneys, agents, Veterans Service Organizations, funeral directors, coroners, Missing in America Project (MIAP) volunteers), State and local governmental administrators, and VA authorized users permitted by VA to access VA IT systems.

Categories of Records in the System is being amended to remove current language and include ''Records may contain demographics and personal identifiers such as names, mailing addresses, email addresses, phone numbers, social security numbers, VA claim numbers, military service numbers, date of birth, place of birth, date of death, gender, marital records, health records and health related information. Records may also contain socioeconomic characteristics such as education and training, military employment information, as well as military service information such as dates of active duty, dates of active duty for training, military service numbers, branch of service including Reserves or National Guard service, locations of service for National Guard, dates of entry, enlistment, or discharge, type and character of discharge, rank, awards, decorations and other military history and information.

Record Source Categories is being amended to remove current language and include ''Information in this system of records is provided by Veterans, Veteran beneficiaries, Veteran dependents, members of the Armed Forces of the United States, including Reserves and National Guard, and their beneficiaries, other individuals such as funeral home directors, coroners, medical examiners initiating eligibility determinations on behalf of claimants, VA employees, other VA authorized users (*e.g.,* Department of Defense, State and Tribal government employees), other VA IT systems and databases, VA claims records and official military records IT systems.

VA is proposing the following routine use disclosures of information to be maintained in the system: Congress; Data Breach Response and Remediation, for VA; Data Breach Response and Remediation for Another Federal Agency; Law Enforcement; Department of Justice (DoJ), for Litigation of Administrative Proceeding; Contractors; Office of Personnel Management (OPM); Equal Employment Opportunity Commission (EEOC); Federal Labor Relations Authority (FLRA); Merit Systems Protection Board (MSPB); National Archives and Records Administration (NARA); Funeral Homes for Arrangements; Federal Agencies for Research; Federal Agencies for Computer Matches; Federal Agencies, Courts, Litigants for Litigation or Administrative Proceedings; Former Employee or Contractor, Representative, for EEOC; Former Employee or Contractor, Representative for MSPB, Office of Special Counsel (OSC); and Governmental Agencies, Health Organizations for Claimants' Benefits.

Policies and Practices for Storage of Records is being amended to remove current language and include ''Records in this system are maintained in paper, electronic and microfilm formats.''

Policies and Practices for Retrieval of Records is being amended to remove current language and include ''Records are retrieved by name only; name and one or more numbers (*i.e.,* military service number or social security number); name and one or more criteria (*e.g.,* date of birth or dates of service); VA claim number; or other VA or NCA assigned identifier.''

Records in this system are retained in accordance with records retention standards approved by the Archivist of the United States, National Cemetery Records, N1–15–99–4. Permanent records are electronically stored and retained in VA IT systems.

The Administrative, Technical, and Physical Safeguard section is being amended to include ''Information in this proposed system of records will be protected from unauthorized access

through administrative, physical, and technical safeguards. Access to the hard copy and computerized information will be restricted to VA employees and VA contractors by means of PIV card and PIN, and/or passwords. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA requires information security training for all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

Record Access Procedures is being amended to remove current language and include ''Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.''

Contesting Records Procedures is being amended to remove current language and include ''Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.'' The Notification Procedures in the System is amended to remove the current language and include ''Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.''

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on August 7, 2023 for publication.

Dated: September 12, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Veterans and Dependents National Cemetery Interment Records-VA (42VA41).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the National Cemetery Administration (41), VA Central Office, Washington, DC 20420.

SYSTEM MANAGER(S):

Lisa Pozzebon, Executive Director of Cemetery Operations (41A), National Cemetery Administration, VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420, telephone 202–461–0265, *ncaprivacy@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 2402.

PURPOSE(S) OF THE SYSTEM:

The purposes for which the records are used include: provision of VA burial and memorial benefits; provision of information about VA burial and memorial benefits, including specific claims; determination of eligibility for burial in a VA national cemetery; disclosure of military service information upon request from VA-funded state and tribal Veterans' cemeteries; coordination of committal services and interments upon request of families, funeral homes, and others of eligible decedents at VA national cemeteries; investigation of potential bars to benefits for an otherwise eligible individual; providing a repository for military, personal, and administrative information that is collected, retrieved, and disclosed to authorized individuals related to burials in a VA national cemetery. Information contained in this system of records may also be used as an aggregate, non-personally identifiable set to track, evaluate, and report on local and national benefits initiatives, such as cemetery development and emerging burial needs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain information on Veterans, dependents and family members of Veterans; Service members; family members of Service members; Reservists and Retirees (Active Duty, Reserves or National Guard); other VA customers such as attorneys, agents, Veterans Service Organizations, funeral directors, coroners, Missing in America Project (MIAP) volunteers); State and local governmental administrators, and VA authorized users permitted by VA to access VA IT systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain demographics and personal identifiers such as names, mailing addresses, email addresses, phone numbers, social security numbers, VA claim numbers, military service numbers, date of birth, place of birth, date of death, gender, marital records, health records and health related information. Records may also contain socioeconomic characteristics such as education and training, military employment information, as well as military service information such as dates of active duty, dates of active duty for training, military service numbers, branch of service including Reserves or National Guard service, locations of service for National Guard, dates of entry, enlistment, or discharge, type and character of discharge, rank, awards, decorations and other military history and information.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by Veterans; Veteran beneficiaries; Veteran dependents; members of the Armed Forces of the United States, including Reserves and National Guard, and their beneficiaries; other individuals such as funeral home directors, coroners, medical examiners initiating eligibility determinations on behalf of claimants; VA employees; other VA authorized users (*e.g.,* Department of Defense, State and Tribal government employees); other VA IT systems and databases; VA claims records; and official military records IT systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Congress: To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. Data Breach Response and Remediation for VA: To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as

a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. Data Breach Response and Remediation for Another Federal Agency: To another Federal agency or Federal entity when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement: To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. Department of Justice (DoJ) for Litigation or Administrative Proceeding: To the DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof:

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components, is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. Contractors: To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. Office of Personnel Management (OPM): To OPM in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. Equal Employment Opportunity Commission (EEOC): To the EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. Federal Labor Relations Authority (FLRA): To the FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. Merit Systems Protection Board (MSPB): To the MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. National Archives and Records Administration (NARA): To NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. Funeral Homes for Arrangements: To funeral directors or representatives of funeral homes for them to make necessary arrangements prior to and in anticipation of a veteran's impending death.

13. Federal Agencies for Research: To a federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that federal agency upon the written request of that agency.

14. Federal Agencies for Computer Matches: To other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of Veterans receiving VA benefits or medical care under title 38.

15. Federal Agencies, Courts, Litigants for Litigation or Administrative Proceedings: To another federal agency, court, or party in litigation before a court or in an administrative proceeding conducted by a federal agency when the government is a party to the judicial or administrative proceeding.

16. Former Employee or Contractor, Representative for EEOC: To a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with investigations by EEOC pertaining to alleged or possible discrimination practices, examinations of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

17. Former Employee or Contractor, Representative, for MSPB, Office of the Special Counsel (OSC): To a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in proceedings before the MSPB or the OSC in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as otherwise authorized by law.

18. Governmental Agencies, Health Organizations for Claimants' Benefits: VA to federal, state, and local government agencies and national health organizations as reasonably necessary to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and assure that they are receiving all benefits to which they are entitled.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in paper, electronic and microfilm formats.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name only; name and one or more numbers (*i.e.,* military service number or social security number); name and one or more criteria (*e.g.,* date of birth or dates of service); VA claim number; or other VA or NCA assigned identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained in accordance with records retention standards approved by the Archivist of the United States, NCA Records Control Schedule, N1–15–99–4. Permanent records are electronically stored and retained in VA IT systems.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to the hard copy and computerized information is restricted to authorized VA employees and VA contractors by means of physical barriers, PIV card and PIN, and/or passwords. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA requires information security training for all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The SORN was published prior to 1995.

[FR Doc. 2023–20046 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Financial Services Center (FSC), Department of Veterans Affairs (VA).

ACTION: Notice of a new system of records.

SUMMARY: The systems included on this notice are systems used by VA Payroll for processing and reporting on information related to payroll actions for VA employees. The Privacy Act of 1974 requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA), Financial Services Center (FSC) is creating a new system of records entitled ''Payroll Processing and Reporting—VA'' System of Records Notice'' (208VA0478C).

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Payroll Processing and Reporting—VA'', 208VA0478C. Comments received will be available at *www.regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Jonathan Lindow, Financial Services Center, Department of Veterans Affairs, 1615 Woodward Street, Austin, TX 78772, (512) 981–4871, or *Jonathan.Lindow@va.gov*.

SUPPLEMENTARY INFORMATION: Kronos webTA (Time and Attendance) is an automated, centralized, web-based time and attendance system developed to replace the legacy Enhanced Time and Attendance (ETA) system. Kronos webTA provides a modern take on quick and accurate transmission of data, allows for rapid creation of reports, and establishes a flexible foundation for future enhancements. The system allows employees to see ''day to day'' information like hours worked, leave balances, and a transparent approval workflow for timesheet certifications, and leave and premium pay request.

Defense Civilian Pay System (DCPS) is the primary interface of VA Payroll personnel with the Defense Finance and Accounting Service (DFAS). DCPS provides the ability to update an employee's payroll information and view payroll reports.

Nationwide Payroll (SQL) is primarily used for Retirement & Contingency Pay Audits and Retirement & Contingency Leave Audits. We use the system to validate retirement codes & contributions, OASDI wages, TSP GB & GM, and retirement corrections. It serves as a research tool and provides invaluable Individual Retirement Record, and Military Service Deposit.

Office of Financial Management Resources Portal (OFMR) application maintains payroll data for all VA employees, current and separated. It has the capability to create custom reports and export to excel format. It is used to search payroll data by SSN and VA EIN for current and separated VA employees going back to 1999 and forward. It is also used for audit purposes and serves as a repository for payroll data. We can gather historical data as needed from one application. It is used daily by the FSC Payroll Support Division.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on August 7, 2023 for publication.

Dated: September 12, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Payroll Processing and Reporting—VA'' (208VA0478C).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system of record is located in the Financial Services Center, Austin, TX.

SYSTEM MANAGER(S):

Jonathan Lindow, Financial Services Center, Department of Veterans Affairs, 1615 Woodward Street, Austin, TX 78772, (512) 981–4871, or *Jonathan.Lindow@va.gov.*

Elaine Walter, Financial Services Center, Department of Veterans Affairs, 7600 Metropolis Dr., Austin, TX 78744, (512) 516–3263, *elaine.walter@va.gov.*

Wayne Mobley, Financial Services Center, Department of Veterans Affairs, 7600 Metropolis Dr., Austin, TX 78744, (512) 516–3263, *wayne.mobley@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

CFR part 4501, Office of Personnel Management.

PURPOSE(S) OF THE SYSTEM:

To maintain a system(s) for managing payroll related information including, but not limited to time and attendance, salary, deductions, and other personal information like addresses and beneficiaries. Systems and application that are listed above contains SSN, EIN, Retirement codes and contributions, OASDI Wages, TSP, and Military Service Deposits. The primary function of OFMR is a tool that we used to respond to customer service inquiries and data request. Projects include but are not limited to, Public Law 111–163, Post Quimby and Adams cases, Premium Pay for Periods of Leave, Clothing Allowance and Environmental Differential Leave (EDP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by these systems are current and past VA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Information like Name, Social Security Number, Addresses, Telephone number, Employee Type, Employee Status, Occupational Series, and other ''Non-PII'' information. Payroll Information including Time and Attendance, Leave Record, Salary, Deductions, Beneficiaries, Insurance and Retirement Information.

RECORD SOURCE CATEGORIES:

Record source are from users of the three systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* VA may disclose information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation, for VA:* VA may disclose information to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remediation, for another Federal agency:* VA may disclose information to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* VA may disclose information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701 Confidential nature of claims.

5. *DoJ for Litigation or Administrative Proceeding:* VA may disclose information to the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

6. *Contractors:* VA may disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *OPM:* VA may disclose information to the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. *EEOC:* VA may disclose information to the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *FLRA:* VA may disclose information to the Federal Labor Relations Authority (FLRA) in connection with: the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *MSPB:* VA may disclose information to the Merit Systems Protection Board (MSPB) and the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *NARA:* VA may disclose information to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. Treasury, for Withholding VA may disclose information concerning an individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, to the Department of the Treasury for the collection of Title 38 benefit overpayments, overdue indebtedness, or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

13. Treasury, to Report Waived Debt as Income VA may disclose information

concerning an individual's indebtedness that is waived under 38 U.S.C. 3102, compromised under 4 CFR part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, to the Department of the Treasury as a report of income under 26 U.S.C. 61(a)(12).

14. Treasury, to Report Earnings as Income VA may disclose information to the Department of the Treasury to report calendar year earnings of $600 or more for income tax reporting purposes.

15. Treasury, for Payment or Reimbursement VA may disclose information to the Department of the Treasury to facilitate payments to physicians, clinics, and pharmacies for reimbursement of services rendered or to veterans for reimbursement of authorized expenses, as well as to collect, by set off or otherwise, debts owed the United States.

16. Unions VA may disclose information identified in 5 U.S.C. 7114(b)(4) to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The systems on this SORN retains data readily available for a period of 6 years.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records may be retrieved using various combinations of name, social security number, employee identification number, ticket number, or by employee user ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with General Records Schedule 1.1, Item #10, records are destroyed 6 years after final payment or cancellation, but longer retention is authorized for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to these records is restricted to authorized VA employees or contractors, on a ''need to know'' basis. Offices where these records are maintained are locked after working hours and are protected from outside access by the Federal Protective Service, other security officers, and alarm systems. Access to computerized records is restricted to authorized VA employees or contractors, by means of unique user identification and passwords.

RECORD ACCESS PROCEDURES:

Individuals seeking information concerning the existence of a record must submit a written request to the current or the last VA payroll office that the employee worked. Such requests must contain a reasonable description of the records requested. In addition, identification of the individual requesting the information will be required in the written request and will consist of the requester's name, signature, and address, as a minimum.

CONTESTING RECORD PROCEDURES:

Individuals contesting accuracy of the record should contact their current or their last VA Payroll Office.

NOTIFICATION PROCEDURES:

Payroll Field Support Branch *vafscpayrolltier1@va.gov*.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

There is no category of records in this system that has been identified as exempt from any section of the Privacy Act.

HISTORY:

Not applicable.

[FR Doc. 2023–20051 Filed 9–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0161]

Agency Information Collection Activity Under OMB Review: Medical Expense Report

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0161'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: U.S. Code: 38 U.S.C. 1503; U.S. Code: 38 U.S.C. 1541; U.S. Code: 38 U.S.C. 1543; U.S. Code: 38 U.S.C. 1315.

Title: VA Form 21P–8416, Medical Expense Report.

OMB Control Number: 2900–0161.

Type of Review: Revision of a currently approved collection.

Abstract: VBA would be unable to properly administer needs-based benefits without this collection of information. The information is collected on an ad hoc basis, and, therefore, cannot be collected less frequently. The form is designed to collect the minimum amount of information which will allow VBA to properly administer the program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 43013 on July 5, 2023, page 43013.

Affected Public: Individuals and households.

Estimated Annual Burden: 50,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time, or as needed.

Estimated Number of Respondents: 100,000.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt) Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–19969 Filed 9–14–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that VA is modifying the system of records entitled, ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially

Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA'' (55VA26). This system is used to identify potential liability to the Federal Government for exposure to loans guaranteed by VA; to maintain data to accurately provide information pursuant to annual congressional reporting obligations; to conduct oversight over the loan process and review loans issued by lenders for compliance to credit underwriting policies; and to allow for the review of eligibility and entitlements for Veteran applicants as well as compliance to policies by the program participants (which would include lenders, servicers, appraisers, builders, staff appraiser reviewer (SARs), underwriters, compliance inspectors, and other requesters. VA is republishing the system notice in its entirety.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to Loan Guaranty Home, Condominium, Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA (55VA26). Comments received will be available at *regulations.gov* for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Robert Colin Deaso, 202–632–8796, Assistant Director, PMDI, Loan Guaranty Service (26), VA Central Office, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: VA is modifying the system of records by making revisions to the following sections: System Location; Authority for Maintenance of the System; Purpose; Categories of Individuals Covered by the System; Categories of Records in the System; Record Source Categories; Policies and Practices for Storage of Records; Policies and Practices for Retrieval of Records; Policies and Practices for Retention and Disposal of Records; Record Access Procedures; Contesting Record Procedures; Notification Procedures; and History. The Routine Uses of Records Maintained in the System section is also being updated. Specifically, the first 11 routine uses are standard across most VA Systems of Records and were either modified and/or added. The routine uses are otherwise the same or minorly edited for consistency and clarity.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on August 7, 2023 for publication.

SYSTEM NAME AND NUMBER:

Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA (55VA26).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained in the VA information systems, VA Central Office, Regional Offices, Regional Loan Centers, VA offices and VA data processing centers having jurisdiction over the geographic area in which the property securing a VA-guaranteed, insured, or direct loan or on which a specially adapted housing grant has been issued is located. Records may be temporarily transferred between fields stations or to the VA Central Office for necessary appeals, reviews, or quality control reviews. Address locations are listed in VA Appendix I.

SYSTEM MANAGER(S):

R. Colin Deaso, Assistant Director, PMDI, Loan Guaranty Service (26), VA Central Office, Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501; 38 U.S.C. Ch. 21; 38 U.S.C. Ch. 37.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to identify potential liability to the Federal Government for exposure to loans guaranteed by VA; to maintain data to accurately provide information pursuant to annual congressional reporting obligations; to conduct oversight over the loan process and review loans issued by lenders for compliance to credit underwriting policies; and to allow for the review of eligibility and entitlements for Veteran applicants as well as compliance to policies by the program participants (which would include lenders, servicers, appraisers, builders, staff appraiser reviewer (SARs), underwriters, compliance inspectors, and other requesters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system:

(1) Disabled Veterans who have applied for and received specially adapted housing assistance under title 38 U.S.C. Ch. 21;

(2) Veterans, their spouses or unmarried surviving spouses who have applied for and received VA housing credit assistance under title 38 U.S.C. Ch. 37;

(3) Person(s) applying to purchase VA owned properties (vendee loans);

(4) Transferee owners of properties encumbered by a VA-guaranteed, insured, direct or vendee loan (*e.g.,* individuals who have assumed a VA-guaranteed loan and those who have purchased property directly from VA); and

(5) Individuals other than those identified above who may have applied for loan guaranty benefits from VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) may include the following:

(1) Military service information from a Veteran's discharge certificate (DD Form 214, 215) which specifies name, service number, date of birth, rank, period of service, length of service, branch of service, pay grade, and other information relating to a Veteran's military service (*e.g.,* character of service, assigned separation reason code, whether a Veteran is out of the service);

(2) Medical records containing specific information regarding a Veteran's physical disability (*e.g.,* blindness, paraplegic condition, loss of

limbs) which is used to determine eligibility and need for specially adapted housing;

(3) Adjudication records relating to: (a) Medical determinations by VA that a Veteran is eligible and needs specially adapted housing; or (b) VA determinations for Veterans who have received an Other than Honorable discharge might be eligible for VA credit assistance benefits;

(4) Applications for certificates of eligibility (these applications generally contain information from a Veteran's military service records except for character of discharge);

(5) Applications for FHA Veterans' low-down payment loans (these applications generally contain information from a Veteran's military service records including whether or not a Veteran is in the service);

(6) Applications for a guaranteed or direct loan, applications for release of liability, applications for substitutions of VA entitlement and applications for specially adapted housing (these applications generally contain information relating to employment, income, credit, personal data; *e.g.,* social security number, marital status, number and identity of dependents; assets and liabilities at financial institutions, profitability data concerning business of self-employed individuals, information relating to an individual Veteran's loan account and payment history on a VA-guaranteed, direct, or vendee loan on an acquired property, medical information when specially adapted housing is sought, and information regarding whether a Veteran owes a debt to the United States) and may be accompanied by other supporting documents which contain the above information;

(7) Applications for the purchase of a VA acquired property (*e.g.,* vendee loans—these applications generally contain personal and business information on a prospective purchaser such as social security number, credit, income, employment history, payment history, business references, personal information and other financial obligations and may be accompanied by other supporting documents which contain the above information);

(8) Loan instruments including deeds, notes, installment sales contracts, and mortgages;

(9) Property management information, *e.g.,* condition and value of property, inspection reports, notices of value, correspondence and other information regarding the condition of the property (occupied, vandalized), and a legal description of the property, including geographic identifying information including, but not limited to, latitude and longitude coordinates, and FIPS or Block ID codes;

(10) Information regarding VA loan servicing activities regarding default, repossession and foreclosure procedures, assumable loans, payment of taxes and insurance, filing of judgments (liens) with State or local authorities and other related matters in connection with active and/or foreclosed loans; and

(11) Information regarding the status of a loan (*i.e.,* approved, pending, or rejected by VA).

RECORD SOURCE CATEGORIES:

The VA records in this system are obtained from the applicant; lenders; brokers and builder/sellers; an applicant's credit sources; depository institutions and employers; hazard insurance companies; taxing authorities; title companies; fee personnel; other VA records; other Federal, State and local agencies; and other parties of interest involving VA-guaranteed, insured, vendee or direct loans or specially adapted housing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Congress

To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. Data Breach Response and Remediation, for VA

To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records, (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. Data Breach Response and Remediation, for Another Federal Agency

To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. Law Enforcement

To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. DoJ, Litigation, Administrative Proceeding

To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. Contractors

To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. OPM

To the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. EEOC

To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. FLRA

To the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. MSPB

To the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. NARA

To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. Credit Underwriting

To credit reporting agencies, companies extending credit, depository institutions, utility companies, investors, insurance companies, governmental agencies, lenders, and employers to enable such parties to provide VA with information regarding income, credit, assets and liabilities information on applicants, mortgagors, or obligors and to provide VA with information regarding the status of obligations, payment records, employment histories, assets for closing fees and other assets and liabilities.

13. Asset Verification

To a prospective mortgagee proposing to make a guaranteed loan on the Veteran applicant's behalf, provided that VA discloses Information on the application for a guaranteed or direct loan, and on the certificate of reasonable value and information verifying an applicant's employment and/or amount of deposit in a financial institution.

14. Commitment Denial

To a prospective lender regarding the status (*i.e.,* approved, pending, or rejected) of an application for VA loan benefits or for a loan account and the reasons for rejection. When VA has rejected a loan application, the information disclosed may include information from another VA record such as a debt which the Veteran owes to the United States or information from a claims file relating to a Veteran's ability to discharge an obligation.

15. Commitment Status

To a seller, a spouse of a seller, or the spouse of the Veteran-applicant who is an actual party in interest to the guaranteed, insured or direct loan transaction in order to inform such party of the status of the loan application, provided that only the fact that the loan has been approved, rejected, or is pending may be disclosed. However, a statement of the reason for rejection of the loan may also be provided to the spouse of the Veteran-applicant if the spouse is a joint applicant for the loan or would be jointly liable on the loan.

16. Acquired Properties

To a broker aiding in the sale of a VA-acquired property in order for the broker to assist the prospective purchaser in completing his or her application, provided that the information disclosed is about the application for a VA-acquired property (vendee loan) concerning a prospective purchaser. Such information may include an explanation of specific loan document discrepancies or specific information on income or credit.

17. Loan Status

To persons or organizations extending credit or providing services or other benefits to the obligor, or persons or organizations considering the extension of credit, services or other benefits to the potential obligor provided the name, address, or other information necessary to identify the obligor is given beforehand by the requester, and that information disclosed is about the status (*i.e.,* the payment record), of a guaranteed, insured, direct, or VA-acquired property (vendee) loan account(s).

18. Hazard Insurance, Real Estate Taxing Authorities

To hazard insurance companies and real estate taxing authorities to obtain billings and to authorize payments of such obligations as they become due from the direct and vendee (portfolio) loan escrow accounts, provided that disclosed information is the name and address of an obligor (*e.g.,* an individual who has obtained a VA-guaranteed loan or purchased a VA property), and the account number (insurance, tax number).

19. Substitution of Entitlement Release of Liability

To parties presently liable on a VA loan, loan guaranty or loan insurance agreement, provided that disclosed information is about Information as to the acceptability or nonacceptability of a prospective purchaser preparing to assume liability to VA under a mortgage contract or of a prospective purchaser preparing to substitute loan guaranty entitlement for the party presently obligated. In addition, the acceptability or nonacceptability of a transferee owner may be disclosed to parties presently liable on a VA loan, loan guaranty or loan insurance agreement, for the purpose of releasing the original Veteran borrower, or a Veteran who substituted loan guaranty entitlement for the original Veteran borrower, from liability. The reason(s) for nonacceptability of the prospective loan assumer or transferee or of a purchaser/transferee (*e.g.,* poor credit history, insufficient income and/or debts owed the U.S.) may also be disclosed to parties presently liable on a VA loan, loan guaranty or loan insurance agreement in order to inform the parties presently liable of the reasons for the nonacceptability.

20. Delinquent Loan

To prior owners remaining contingently liable for indebtedness to permit prior owners to take necessary action(s) to protect their interest where loan liquidation is indicated and to prevent a possible debt to the Government which may be placed against the prior owner, provided that disclosure is of the default status of a delinquent loan account (*e.g.,* amount of payments in arrears, number of months in arrears, what efforts VA has taken to service the loan, condition of the property, repayment schedule, and total amount of debt).

21. Liquidate Defaulted Loans

To the U.S. Department of Justice or United States Attorneys in order for the Department of Justice of U.S. Attorneys to liquidate a defaulted loan by judicial process and take title on the foreclosed property in accordance with State law. Any information in this system may also be disclosed to the Department of Justice or U.S. Attorneys in order for the foregoing parties to prosecute or defend litigation involving or pertaining to the United States. Any relevant information in this system may also be disclosed to other Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733, and other similar claims statutes.

22. Loan Data

To the General Accounting Office (GAO) to enable the GAO to pursue necessary collection activities and obtain a judgment against the obligor(s), provided that disclosed information is loan account information (*e.g.,* loan account number, property condition, legal description of property, date loan issued, amount of loan and amount in arrears), current credit reports containing name and address of an

obligor and the cause and date(s) of default may be disclosed.

23. Vendee Loan Data

To active investors purchasing or considering the purchase of VA direct or vendee loans from VA or from a previous investor, provided that information disclosed is from a direct or vendee loan account record. Such information will be furnished to active prospective investors to provide a basis for their submitting an offer to purchase loans and to actual investors in order that they may establish loan accounts on purchased loans. Such information may also be disclosed to financial advisors to assist VA in developing strategies for marketing these loans, and to investment bankers, bond rating agencies, other government agencies, private mortgage insurance companies, bonding companies, master servicers, and others involved in the marketing or sale of vendee loans, including legal counsel, accountants and auditors for such entities.

24. Federal Employee Obligations

To a debtor's Federal employing agency or commanding officer so that the debtor-employee may be counseled by his or her federal employer or commanding officer and to assist in the collection of unpaid financial obligations owed the U.S., provided that information is about the nature and amount of a financial obligation. This purpose is consistent with 5 U.S.C. 5514, 4 CFR 102.5, and section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469).

25. Guardians Ad Litem, for Representation

To a fiduciary or guardian ad litem in relation to his or her representation of a claimant in any legal proceeding as relevant and necessary to fulfill the duties of the fiduciary or guardian ad litem.

26. Locate Contact Information for Debt Collection

To other Federal agencies, State probate courts, State driver's license bureaus, and State automobile title and license bureaus in order for VA to obtain current name, address, locator and credit report assistance in the collection of unpaid financial obligations owed to the United States. This purpose is consistent with the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 31 U.S.C. 951–953 and 4 CFR parts 101–105), and the disclosure is authorized by 38 U.S.C. 3301(b)(6).

27. Disclose Contact for Debt Collection

To fee attorneys, fee appraisers, management brokers, process servers, subordinate lien holders, title companies, abstractors and VA attorneys for the purposes of loan approval or loan termination of direct or vendee loans by judicial or nonjudicial means; to obtain possession of VA property in cases of default or foreclosure to issue and post Demands for Possession or Notices to Quit; to file judgments (liens) in accordance with State and local law and to carry out all other necessary VA program responsibilities. VA fee attorneys may disclose record information contained therein to title insurance companies and title agents, for Trustee's sale advertisements, and to subordinate lien holders.

28. Obligor's Personal Information

To appropriate State and local authorities in order to conform to State and local law requirements and to assist VA and State and local authorities in identifying VA judgment debtors on State and local judgment records, provided that disclosure is limited to an obligor's social security number and other information regarding the filing of judgments (liens).

29. Veteran's Competency

To a lender or prospective lender extending credit or proposing to extend credit on behalf of a Veteran in order for VA to protect Veterans that are unable to manage their finances from entering into unsound financial transactions which might deplete the resources of the Veteran and to protect the interests of the Government giving credit assistance to a Veteran, provided that information disclosed is relating to the adjudication of incompetency of a Veteran either by a court of competent jurisdiction or by VA.

30. Fraudulently Obtained Benefits

To any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States, provided that information disclosed is concerning the Veteran's indebtedness to the United States by virtue of a person's participation in a benefits program administered by VA, including personal information obtained from other Federal agencies through computer matching programs. Purposes of these disclosures may be (a) to assist VA in collection of title 38 benefit overpayments, overdue indebtedness, and/or costs of services provided individuals not entitled to such services, and (b) to initiate legal actions for prosecuting individuals who willfully or fraudulently obtained title 38 benefits without entitlement.

31. Consumer Reporting Agencies

To a consumer reporting agency for purposes of reporting delinquencies, defaults and indebtedness and assisting in the collection of such indebtedness, provided that information disclosed is the name and address of an obligor, as well as other information that is reasonably necessary to identify the person, including personal information obtained from other Federal agencies through computer or other matching programs, and any information concerning such person's delinquency or default on a loan made or guaranteed by VA.

32. VA Inquiry to Other Federal Agencies

To a federal agency in order for VA to obtain information relevant to the making, insuring, or guaranteeing of a loan under 38 U.S.C. Chapter 37, except for the name and address of a Veteran. The name and address of a Veteran may be disclosed to a federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

33. Federal Debt Notice to IRS

To the Department of Treasury, Internal Revenue Service, for the collection of 38 U.S.C. benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund. Examples of information of information that can be disclosed are the name of a Veteran, other beneficiary, or other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA.

34. Abandonment or Foreclosure of Property

To the Department of the Treasury, Internal Revenue Service, where required by law, including the borrower's name, address, social security or taxpayer identification number, amount of interest paid, and information relating to any abandonment or foreclosure of a property.

35. VA Acquired Properties

To prospective purchasers and their representatives in order to assist VA in the timely disposal of its acquired properties. Such information may include: the name of the purchaser and purchaser's sales agent; price and terms of the successful offeror's, along with the reason(s) for selecting such offer over any other competing offer; loan number; property address; property survey; title limitations/policy; termite inspections; existing warranties; repairs made by VA and items still requiring repair; and dues payable to and services

provided by homeowner or condominium associations.

36. Closing Fees

To the lender or holder of a VA, guaranteed loan, or their attorneys, in support of a decision by VA to reject a claim under guaranty, demand reimbursement for a claim previously paid, or in the course of settlement negotiations. When a demand for reimbursement will be made against a party other than the lender or holder, such as the real estate broker, fee appraiser or seller of the property, the information may be disclosed to the party and its attorneys.

37. VA Data Provided to HUD

To the Department of Housing and Urban Development (HUD) for inclusion in its Credit Alert Interactive Voice Response System (CAIVRS), all participating agencies, and lenders who participate in those agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. Information disclosed under this routine use includes VA guaranteed and portfolio loans which fall under one of the following categories:

(a) The accounts are not current;

(b) There has been a foreclosure; or

(c) The Department has paid a claim.

These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

38. Vendors

To any individual, organization, or other entity with whom VA has a contract or agreement under which that entity will perform services to assist VA in the administration of the Loan Guaranty Program, provided that information disclosed is relevant loan guaranty record information. The information that may be disclosed under this routine use is limited to that which is necessary to permit the contractor to perform the services required under the contract or agreement.

39. Prior Loan Information

To an active VA lender, lender's agent, mortgage broker, or other program participant in response to a request from that individual or entity if that information is necessary in connection with the origination of a VA-guaranteed Interest Rate Reduction Refinancing Loan (IRRRL). In order to obtain information under this routine use, the party requesting the information must establish the fact that it is a participant in the VA home loan program through the use of a VA lender identification number. The requester must also provide the Veteran's name and social security number and the month and year of the loan being refinanced or the 12-digit VA loan number.

40. Servicemembers Loan Status

To a service member's commanding officer or designee if VA determines that sharing this information is necessary in order to reach a service member who has otherwise not responded to VA to attempt to assist in curing a default or resolving a foreclosure or eviction of a VA-guaranteed or direct loan.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

VA-guaranteed, insured, direct and vendee loan records information are maintained at LGY Regional Loan Centers and VA LGY Central Office. Loan records may be located in individual folders on paper documents.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name and VA loan file number. Automated records are indexed for statistical purposes by a file number, field station and county code number and lender identification number. However, an individual loan record in automated format may only be retrieved by name or loan number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, Records Control Schedule VB–1, Part II, 2–23; 2–3; 2–24.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to VA working spaces and record file storage areas is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service or other VA security personnel. Loan and property security instruments are stored in separate fire-resistant locked files. VA employee loan file records and other files which, in the opinion of VA, are, or may become, sensitive are stored in separate locked files. Access to electronic VA information is managed through identity and access manager controls. Information in the system may be accessed from authorized terminals in the VA network. Terminal locations include VA Central Office and regional offices. Access to terminals is by authorization controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violations logs, information logs and control of password and badge readers and audible alarms. Electronic keyboard locks are activated on security errors. Also, beginning in 1986, sensitive files were established using the social security numbers of the VA Veterans Benefits Administration employees and other prominent individuals to prevent indiscriminate access to their automated records.

Access to programs is controlled at three levels: Programming, auditing, and operations. Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices.

LGY operates at VA's FedRAMP authorized Amazon Web Services (AWS) GovCloud data centers. AWS data centers are highly restricted for both physical and logical access. Physical access controls are inherited from AWS to all GovCloud customers. VA's AWS environment is logically restricted to support VA operations only. Further, LGY's AWS environment is logically restricted to LGY authorized operations personnel whose duties require management of LGY systems.

LGY follows VA's data security requirements to protect VA, LGY, and Veteran's data at rest. LGY's servers utilize FIPS 140–2 compliant encryption methods to protect the confidentiality of data at rest at the operating system (OS) level and for data storage. VA authorized baselines are used to build LGY servers and are configured with FIPS mode enabled by default. Similarly, LGY virtual storage devices such as AWS Elastic Block Store Volumes (EBS) and S3 are encrypted by default using Amazon Key Management Service (KMS) for protection of data at rest. These methods ensure that LGY data is protected in real-time as it's stored within the LGY security boundary. The S3 environment stores the LGY electronic data indefinitely till LGY Central Office provides disposition requirements.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort. However, some of the records in this system are exempt from the record access requirements under 5 U.S.C.

552a(k). To the extent that records in this system of records are not subject to exemption, the records are subject to access procedures.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. However, some of the records in this system are exempt from the record contesting requirements under 5 U.S.C. 552a(k). To the extent that records in this system of records are not subject to exemption, the records are subject to contesting procedures.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Department of Veterans Affairs has exempted this system of records from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2).

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4)(G), (H) and (I)
5 U.S.C. 552a(f)

Reasons for exemptions: The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Loan Guaranty Service to prevent subjects of internal audit investigations for potential fraud and abuse in the VA Loan Guaranty Program from frustrating the investigatory process, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information and to avoid endangering these sources.

HISTORY:

67 FR 72721 (December 6, 2002); 77 FR 74282 (December 13, 2012); and 79 FR 3922 (January 23, 2014).

Dated: September 12, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2023–20055 Filed 9–14–23; 8:45 am]

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FEDERAL REGISTER

Vol. 88 Friday,
No. 178 September 15, 2023

Part II

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2023; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 23–159, 22–301; FCC 23–66; FR ID 168489]

Assessment and Collection of Regulatory Fees for Fiscal Year 2023

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) revises its Schedule of Regulatory Fees to recover $390,192,000 that Congress has required the Commission to collect for its fiscal year (FY) 2023. Sections 9 and 9A of the Communications Act of 1934, as amended (Act or Communications Act), provides for the annual assessment and collection of regulatory fees by the Commission.

DATES: Effective September 15, 2023, except for 47 CFR 1.1166, which is effective October 16, 2023, and 47 CFR 1.1914, which is delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for 47 CFR 1.1914 after review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act. To avoid penalties and interest, regulatory fees should be paid by the due date of September 20, 2023.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, in MD Docket Nos. 23–159 and 22–301; FCC 23–66, adopted on August 10, 2023 and released on August 10, 2023. The full text of this document is available for public inspection by downloading the text from the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-23-66A1.pdf.*

Synopsis

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

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

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The non-substantive modifications to an information collection related to 47 CFR 1.1166 effected in this document were approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, on August 17, 2023.

C. Congressional Review Act

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

II. Introduction

4. In this item, the Commission takes action to address longstanding concerns to better ensure that our assessment and collection of our annual regulatory fees is more closely aligned with the burden of the work being performed by Commission employees for each regulatory fee category. Specifically, we adopt the proposals in our Fiscal Year (FY) 2023 Regulatory Fee Notice of Proposed Rulemaking (*FY 2023 NPRM*) (88 FR 36154, June 1, 2023) and reallocate almost nineteen percent of our indirect full time equivalents (FTEs) as direct to one of the Commission's four core licensing bureaus, following a high-level, comprehensive staff analysis of the time utilized in the oversight and regulation of certain segments of the telecommunications industry. Our decisions in this Report and Order reflect our conclusion that we can determine, with reasonable accuracy for this fiscal year, that certain FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau that were previously considered to be indirect are devoted to work that is sufficiently linked to the oversight and regulation of regulatory fee payors in a core bureau such that the FTE burden of that work should be allocated as direct to that bureau for regulatory fee purposes. Consistent with our long-standing regulatory fee methodology, we implement these reallocations and we adopt a schedule of regulatory fees, as set forth in Appendices B and C, in order to collect $390,192,000 in congressionally required regulatory fees for FY 2023 by the end of September.

5. Additionally, in the Report and Order, we (i) adopt our proposal regarding the calculation of television and radio broadcaster regulatory fees, including the modification of the existing grid by adding a new tier for AM and FM radio stations; (ii) continue to consider operations for on-orbit servicing (OOS) and rendezvous and proximity operations (RPO) on a mission-by-mission basis for regulatory fee purposes, and apply the regulatory fee for ''Space Stations (Geostationary Orbit)'' to OOS and RPO spacecraft operating near the geostationary orbit (GSO) arc, unless it is determined that the OOS or RPO spacecraft is operating as part of an existing GSO system and therefore should not be assessed a separate regulatory fee; (iii) confirm that orbital transfer vehicles (OTVs) are responsible for regulatory fees under the current regulatory fee scheme; (iv) continue two of the temporary measures that were implemented in FYs 2020 through 2022 to assist regulatory fee payors that were experiencing financial hardship related to the COVID–19 pandemic to request waiver, reduction, deferral and/or installment payment of regulatory fees, and continue a third such measure in modified form; (v) decline to permit regulatory fee payors to prepay their regulatory fees in installments before the annual regulatory fee payment deadline; and (vi) make certain technical corrections to 47 CFR 1.1914 and 1.1166.

A. Methodology for Assessing Regulatory Fees and FTE Allocation

6. Consistent with our statutory mandate and our regulatory fee methodology, we start our regulatory fee assessment with the FTE counts and then adjust fees to reflect other factors related to the benefits provided to the payor of the fee by the Commission's activities. In section 9 of the Act Congress prescribes that regulatory fee payors bear the FTE burden associated with their oversight and regulation by the relevant core bureau(s). Insofar as the non-auctions FTE time in the four core bureaus continues to focus on the oversight and regulation of fee payors in the industry segment regulated by each of those bureaus, we will continue to apportion regulatory fees across fee categories based on the number of non-auction direct FTEs in each core bureau and take into account factors that are ''reasonably related to the benefits provided to the payor of the fee by the

Commission's activities.'' After we determine the number of direct FTEs for each core bureau, we use these numbers to start our calculations of the percentage of the total amount of regulatory fees to be collected for a given fiscal year from each fee category.

7. We then allocate appropriated amounts to be recovered proportionally based on the number of direct FTEs within each core bureau. Those proportions are then subdivided within each core bureau into fee categories among the regulatory fee payors served by the core bureau. Finally, within each regulatory fee category, we divide the amount to be collected by a unit that allocates the regulatee's proportionate share based on an objective measure. As a general matter, there is no additional calculation to attribute indirect costs. Instead, the proportional allocation of the whole S&E appropriation based on the number of direct FTEs effectively attributes all indirect costs among the core bureaus so that the Commission can recover its entire appropriation each year.

8. As the Commission has explained, ''[g]iven the Act's requirement that fees must 'reflect' FTEs before adjusting fees to take into account other factors, we find FTE counts by far the most administrable starting point for regulatory fee allocations.'' Regulatory fees must cover the entire S&E appropriation, even those portions of the appropriation that supports work on issues for which we do not have regulatory fee categories. Therefore, we continue to find that, consistent with section 9 of the Act, regulatory fees are not based on a precise allocation of specific employees with certain work assignments each year and instead are based on a higher-level approach. While some commenters continue to take issue with some of the Commission's determinations of whether certain FTEs should be considered to be indirect or direct and also advocate that the Commission should adopt new fee categories, no commenter has offered an alternative methodology for the Commission to recover our annual appropriation. Instead, we agree with commenters that argue that the record supports the adoption of regulatory fees consistent with the Commission's long standing regulatory fee framework. Accordingly, we find no basis to adjust our general methodology for assessing regulatory fees. We find that the Commission's general methodology for establishing regulatory fees has been, and continues to be, appropriate and consistent with section 9 of the Act. Thus, for FY 2023, our fee methodology will attribute the direct FTEs within each core bureau to payor categories based on the nature of the FTE work. We also will consider the ministerial adjustments necessitated by the more discernable changes from the prior year regulatory fee proceeding, *e.g.,* changes in the: (i) FY appropriation, (ii) FTE levels, and (iii) relevant unit measures for each regulatory fee category. Once the percentages of total direct FTEs in the core bureaus are determined, the Commission calculates fee rates among the specific fee categories within each core bureau based upon the fee categories' proportional fee amounts to be collected. These proportional calculations allocate all Commission non-auction related costs across all fee categories that total the target goal amount.

9. For FY 2023, our Human Resources Management office has provided the Commission data identifying 339.25 non-auctions, direct FTEs distributed among the core bureaus. In consultation with the bureaus and offices, we have validated this data. In the *FY 2023 NPRM,* following a high level, yet comprehensive, staff analysis of indirect FTE time in non-core bureaus and offices, we proposed to reallocate 63 indirect FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau where we were able to determine with reasonable accuracy for the fiscal year that the FTE burden of such work is directly related to the oversight and regulation of regulatory fee payors in a core bureau such that it should be considered as direct to that bureau for the purposes of calculating regulatory fees. As explained fully below, with the overwhelming support of commenters, we adopt our proposal for these reallocations. In addition, in order to apply consistent principles to our determinations, and in response to the record gathered in this proceeding, we also reallocate two direct FTEs from the Media Bureau to be considered as indirect FTEs because the nature of their work is sufficiently linked to work that is similar to that of work performed in the Enforcement Bureau, which is categorized as indirect. Our adoption of these reallocations results in a revised total of 400.25 non-auctions, direct FTEs for FY 2023. Our calculations of direct FTEs associated with each core bureau are now as follows: International Bureau (31), Wireless Telecommunications Bureau (98), Wireline Competition Bureau (143.25), and Media Bureau (128).

10. Based on these reallocations and after we make adjustments to these direct FTE counts to implement Commission precedent regarding FTEs working on non-high cost Universal Service Fund matters, we will collect approximately $30.32 million (7.77%) in fees from the International Bureau regulatory fee payors; $95.83 million (24.56%) in fees from the Wireless Telecommunications Bureau regulatory fee payors; $140.12 million (35.91%) in fees from Wireline Competition Bureau regulatory fee payors; and $123.92 million (31.76%) in fees from Media Bureau regulatory fee payors.

11. The record supports our proposal to reallocate certain indirect FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau as direct to a core bureau because we can determine with reasonable accuracy for the fiscal year that these FTEs are devoted to work that is sufficiently linked to the oversight and regulation of regulatory fee payors in a core bureau such that the burden of that work should be allocated as direct for regulatory fee purposes. Commenters addressing this issue agree that by taking a more granular approach, the Commission's fee structure more closely aligns the recovery of costs with those who benefit from Commission regulatory activities. Commenters support our proposal to reallocate a total of 63 indirect FTEs as direct for regulatory fee purposes. They contend that doing so will advance the Communications Act objective for the Commission to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.

12. We conclude that, as part of our annual FTE analysis, we will continue to evaluate whether any FTEs should be reallocated for regulatory fee purposes as we do each year when reviewing and validating the FTE data. And, where our evaluation merits inclusion of proposed reallocations, we will seek comment on any such potential reallocation of FTEs in an annual proceeding. We note, however, that we will exercise our discretion regarding where to focus our analytical efforts each year to best respond to changes in the FCC's substantive work, changes in the FCC's organization, and changes in the telecommunications industry itself. We further conclude that such agency discretion is particularly important because we agree with CTIA that we do not wish to inadvertently expand our indirect FTE levels by engaging in an endless review of all FTE allocations. As such, we will exercise our discretion to ensure that we conduct our annual review in a manner that is fair, manageable, and sustainable.

13. We emphasize that our decision to adopt our proposal today is in accord with past Commission precedent. Thus, it is not uncommon for the Commission to reassign direct FTEs as indirect or from one core bureau to another for regulatory fee purposes to reflect, among other things, changes in the FCC's substantive work, changes in the FCC's organization, and changes in the telecommunications industry.

14. As we described in the *FY 2023 NPRM,* we limit our reallocation of indirect FTEs as direct FTEs to a core bureau for regulatory fee purposes to those instances where we can determine with reasonable accuracy for the entire fiscal year that such FTE work furthers the oversight and regulation of regulatory fee payors. We recognize that this reclassification represents a change from some recent reviews of the same offices. Nevertheless, at this time our evaluation of FTE time in the non-core bureaus and offices supports our conclusion that, for certain FTEs in the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau, it is appropriate to consider the FTE burden of their work as directly devoted to the oversight and regulation of regulatory fee payors. For that reason, we are adopting our proposal that such FTE time should be considered direct for those relevant core bureau(s).

15. For the purposes of this determination, we have evaluated whether measurable FTE time for FY 2023 is primarily being spent on the regulation and oversight of regulatory fee payors. Commission staff excluded any FTE time from this analysis if it was not equivalent to the time of at least one FTE, concluding that less than a full-time FTE demonstrates that the work being done is appropriately considered to be indirect and should not be reassigned. Table 1 below summarizes all of the reallocations we are adopting today.

TABLE 1—CORE BUREAU FTE PERCENTAGES WITH AND WITHOUT FTE REALLOCATIONS

Core bureau	2023 FTE % *without* FTE reallocations	2023 Amount *without* FTE reallocations (millions)	2023 FTE % *with* FTE reallocations	2023 Amount *with* FTE reallocations (millions)
		FY 2023 appropriation is $390.192		FY 2023 appropriation is $390.192
Wireline Competition Bureau	35.57	$138.79	35.91	$140.12
Media Bureau	33.96	132.52	31.76	123.9
Media Bureau subcategory Broadcasters	15.28	59.65	14.12	55.10
Media Bureau subcategory Cable	18.68	72.87	17.64	68.83
Wireless Telecommunications Bureau	22.19	86.56	24.56	95.83
International Bureau	8.28	32.32	7.77	30.32

16. We conclude that 63 FTEs from the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau devote their time to the oversight and regulation of regulatory fee payors, where we can determine with reasonable accuracy for the entire fiscal year, as we discuss below. For that reason, we reallocate the FTE time as direct to the relevant core bureau(s) for calculating regulatory fees. Likewise, to apply consistent principles across our determinations, we reallocate two direct FTEs from the Media Bureau as indirect FTEs because the nature of their work is sufficiently linked to work that is similar to that performed in the Enforcement Bureau, which has been categorized as indirect. Below, we discuss our analysis.

17. *Office of Economics and Analytics (OEA).* We adopt our proposal to reallocate 30 indirect FTEs from OEA as direct to a core bureau for regulatory fee purposes as follows: two to the International Bureau, eight to the Wireless Telecommunications Bureau, 13 to the Wireline Competition Bureau, and seven to the Media Bureau. We reach this conclusion after evaluating the burden of FTE time in OEA.

18. Following its inception in 2018, the Commission concluded that it was appropriate for the non-auctions FTEs in OEA to be considered indirect FTEs because their work benefits the entire Commission as well as the telecommunications industry and does not specifically focus on regulatory fee payors. As a general matter, this remains true today. Of relevance to the regulatory fee proceeding, OEA's non-auction funded work provides economic analysis, including cost-benefit analysis, for rulemakings, transactions, adjudications, and other Commission actions; develops policies and strategies to help manage Commission data resources and establish best practices for data use throughout the Commission in coordination with other bureaus and offices; and conducts long-term research on ways to improve the Commission's policies and processes in each of these areas. Notably, OEA collaborates with and advises other bureaus and offices in the areas of economic and data analysis and with respect to the analysis of benefits, costs, and regulatory impacts of Commission policies, rules, and proposals. As part of this collaboration, OEA reviews all rulemakings prepared by those bureaus and offices, all other Commission-level items that contain economic or data analysis, and similar items that the bureaus or offices release on delegated authority.

19. In evaluating the burden of the work currently being performed by OEA's FTEs, staff recognized that certain bureaus tend to generate more economic and data issues for OEA to analyze as well as more documents that require OEA review. For FY 2023, we find that there is measurable work done by OEA FTEs that is being done directly in furtherance of the oversight and regulation of regulatory fee payors in certain industry segments. In fact, staff analysis reveals that the work and expertise of certain FTEs from OEA remain devoted to the oversight and regulation of regulatory fee payors in a manner that is consistent with the FTE burden of work performed within a core bureau prior to the OEA's implementation. This determination supports our decision to reallocate the burden of the work of certain of OEA's FTEs as direct for regulatory fee purposes. We recognize that this is a partial change from our determination in the 2019 regulatory fee proceeding with respect to OEA FTEs. We have explained however, that our determinations are based an analysis of the actual work of the OEA.

20. We conclude that 13 indirect FTEs from OEA should be reallocated as direct FTEs to the Wireline Competition Bureau because the burden of their work is devoted to universal service fund issues in high-cost areas; competition and interconnection; setting rates for calls from incarcerated persons; the establishment of a national suicide hotline, and efforts to evaluate the costs, benefits, and public interest factors associated with protecting privacy matters such as the Wireline Competition Bureau's work on customer proprietary network information (CPNI) rules addressing access, use, and disclosure of information related to the use of a telecommunications service subscribed to by a customer of a telecommunications carrier. This FTE work is being done directly in furtherance of the oversight and regulation of Wireline Competition Bureau regulatory fee payors, therefore, we find that it appropriate to reallocate it as direct to the Wireline Competition Bureau for purposes of our regulatory fee calculation.

21. Similarly, staff analysis shows that the work of eight OEA FTEs address various wireless and spectrum issues, such as mergers, transactions, and acquisitions, mobile spectrum holdings policies, and deployment in rural areas and on tribal lands. Insofar as the burden of this work is being done directly in furtherance of the oversight and regulation of Wireless Telecommunications Bureau regulatory fee payors, we adopt our proposal to reallocate these eight indirect FTEs as direct FTEs to the Wireless Telecommunications Bureau, for purposes of our regulatory fee calculation.

22. Further, we find that because the burden of the work of seven FTEs from OEA relates to broadcast and cable issues, including ownership regulation, next generation (or NextGen TV) standards, content source disclosures, program carriage and retransmission, and rates and billing practices, and is being done directly in furtherance of the oversight and regulation of Media Bureau regulatory fee payors, it is appropriate to reallocate these FTEs as direct to the Media Bureau, proportionally among the Media Bureau regulatory fee categories, for purposes of our regulatory fee calculation.

23. Lastly, because the burden of the work of two FTEs from OEA addressing undersea cables, international bearer circuits, and satellite services related issues is done directly in furtherance of the oversight and regulation of International Bureau regulatory fee payors, we conclude that it is appropriate to reallocate these two indirect FTEs as direct to the International Bureau, proportionally among the International Bureau regulatory fee categories.

24. *Office of General Counsel (OGC).* Our evaluation of the burden of the FTE time in OGC supports the Commission's repeated conclusion that the majority of the work this office performs is most appropriately categorized as indirect, for regulatory fee purposes. On review, however, for FY 2023 we conclude that certain aspects of OGC's work are sufficiently linked to the oversight and regulation of individual regulatory fee categories such that five FTEs from OGC should be reallocated as direct FTEs to a relevant core bureau for regulatory purposes.

25. OGC serves as the chief legal advisor to the Commission and its various bureaus and offices. In that capacity OGC's responsibilities are generally described as interpreting new and existing statutes and executive orders as they pertain to the Commission's exercise of its Communications Act authority and other authorities, as well as performing such functions involving implementation of such statutes and executive orders as may be assigned to it by the Commission. OGC advises the Commission in the preparation and revision of our rules, recommends decisions in adjudicatory matters before the Commission, assists the Commission in its decision-making capacity and performs a variety of legal functions regarding internal and other administrative matters. OGC also advises and represents the Commission in matters of litigation. These roles are divided between the Administrative Law Division and the Litigation Division and are overseen by the General Counsel (GC) and the GC's Front Office.

26. The Litigation Division represents the Commission in a wide variety of court cases covering actions that most federal agencies are subject to (*e.g.,* personnel, Federal Tort Claims Act, Freedom of Information Act, False Claims Act, and contract actions and disputes) in addition to challenges regarding the Commission's exercise of our Communications Act authority. After careful consideration of the burden of FTE work in this division, we do not make any FTE reallocations for the Litigation Division. The level of effort to support litigation that is unrelated to our Communications Act authority is generally not tied to oversight and regulation of any regulatory fee category. Thus, the FTE burden of this work remains appropriately considered as indirect. The FTE burden associated with litigation that directly touches on our Communications Act authority should also remain as indirect. We make this determination for a variety of reasons. Primarily, it is not possible to determine with any level of consistency year to year whether the FTE work in support of litigation matters benefits a particular regulatory fee category. This is particularly true because the essential issue in dispute when a matter moves to litigation may touch on issues of broader concern than any one regulatory fee group, or conversely be so procedural as to be effectively generic to all federal agency action. Moreover, at its core, the FTE work defending the Commission's expert authority in implementing the Communications Act is the epitome of work that benefits the agency as a whole and we do not believe it would be fair for any one regulatory fee group to shoulder the FTE burden of such work.

27. The Administrative Law Division provides legal advice to the Commission concerning a wide array of substantive areas of the law necessary to the functioning of any federal agency. In large part, such work benefits the work of the Commission as a whole and is not specific to any particular regulatory fee category. Thus, the FTE burden associated with such work properly remains almost entirely allocated as indirect. In contrast to the Litigation Division, however, it is possible to determine that some of the burden of the work performed by FTEs from the Administrative Law Division, particularly in reviewing Commission rules, proposed rules, and adjudicatory orders, as well as providing extensive advice on the Commission's authority under the Communications Act, including the exercise of delegated authority by the bureaus and offices, is done in furtherance of the oversight and regulation of regulatory fee payors in the core bureaus. Accordingly, where we have determined that this work is directly related to our oversight and regulation of specific regulatory fee payor categories, we adopt our determination to reallocate the FTE burden of such work as direct to the relevant core bureau(s). Specifically, for FY 2023 we reallocate one OGC FTE as direct to the Wireline Competition Bureau; two OGC FTEs as direct to the Wireless Telecommunications Bureau; one OGC FTE as direct to the Media Bureau, proportionally among the Media Bureau fee categories; and one OGC FTE as direct to the International

Bureau, proportionally among the International Bureau fee categories.

28. *Public Safety and Homeland Security Bureau (PSHSB).* We also adopt our proposal to reallocate, for regulatory fee purposes, a total of 28 indirect FTEs from PSHSB as direct FTEs to core bureaus as follows: 13 to the Wireless Telecommunications Bureau, nine to the Wireline Competition Bureau, and six to the Media Bureau.

29. PSHSB advises and coordinates within the Commission on all matters pertaining to public safety, homeland security, national security, cybersecurity, emergency management and preparedness, disaster management, and related matters. Insofar as the bureau leads initiatives that strengthen public safety and emergency response capabilities enabling the Commission to assist the public, first responders, law enforcement, hospitals, the communications industry and all levels of government in times of emergency, we continue to conclude that the majority of its work is best categorized as indirect. PSHSB is organized into three divisions: the Policy and Licensing Division, the Operations and Emergency Management Division, and the Cybersecurity and Communications Reliability Division. On review for FY 2023, we conclude that certain aspects of the burden of some of the FTE work within these divisions is sufficiently linked to the oversight and regulation of individual regulatory fee categories such that certain FTEs, as described below, should be reallocated as direct FTEs to a relevant core bureau for regulatory purposes.

30. The Policy and Licensing Division develops and administers rules, regulations, and policies to support public safety entities, including law enforcement, fire and emergency medical first responders, Public Safety Answering Points, and emergency operations organizations. The division handles licensing of public safety frequencies, including modifications, renewals and adjudications, in frequencies below 470 MHz, and in 470–512 MHz, 700 MHz, 800 MHz, 4.9 GHz and 5.9 GHz under part 90 of the Commission's rules, and the microwave bands under part 101; 911/Enhanced 911/Next Generation 911; Communications Assistance for Law Enforcement Act; the Emergency Alert System (EAS); operability and interoperability for public safety communications and the First Responder Network Authority; and intra- and interagency coordination on spectrum management.

31. After analyzing the FTE work in the Policy and Licensing Division, we conclude that the burden of the work of 14 FTEs in this division is directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau such that it is appropriate to adopt our proposal to reallocate these FTEs as direct, for regulatory fee purposes. Of the 14 FTEs we have identified, we reallocate two FTEs as direct to the Wireline Competition Bureau, eight FTEs as direct to the Wireless Telecommunications Bureau, and four FTEs as direct to the Media Bureau. Specifically, we adopt these reallocations for regulatory fee purposes because the burden of the work performed on 911 policy, covering issues such as 911 location accuracy, and the transition to Next Generation 911, as well as clarifying provider obligations and acting on waiver and other provider-specific requests, directly furthers the oversight and regulation of regulatory fee payors of the Wireline Competition Bureau and the Wireless Telecommunications Bureau. Similarly, with regard to the four FTEs we proposed to consider as direct to the Media Bureau, we adopt these reallocations for regulatory fee purposes, proportionally among the fee categories in the Media Bureau, because the FTE burden of the work on the EAS, developing and maintaining the operational rules that apply to EAS participants (*i.e.,* broadcasters), facilitating interactions between EAS participants and alert originators, reviewing State EAS Plans, and acting on waiver and similar requests from broadcasters directly furthers the oversight and regulation of the regulatory payors of the Media Bureau.

32. The Operations and Emergency Management Division (OEMD) ensures the readiness of the Federal Communications Commission to respond to threats and emergencies; conducts and coordinates risk and incident management activities; and supports public safety and events of national security significance. Division staff recommend, develop, and implement emergency plans, policies, and preparedness programs covering the reporting and situational awareness of communications status during times of emergency and Commission functions during emergency conditions. OEMD also manages the provision of service by communications service providers during emergency conditions.

33. The division staff provide legal guidance and perform technical operations in support of interagency Federal, State, Local, Tribal, and Territorial (SLTT) government national security and public safety risk and incident management efforts. In addition, the division provides situational awareness to FCC and federal government leadership regarding national security risks and makes recommendations to help manage those risks; manages the FCC Continuity Programs to ensure the Commission's ability to perform the functions vital to an enduring government and the availability of nationwide and international communications under all conditions; and assesses and evaluates the status of communications services and infrastructure through Over-The-Air observations and analysis by its Spectrum Monitoring and Analysis Response Team. The division also coordinates with the U.S. Department of Homeland Security on critical national security and emergency preparedness priority communications programs, such as Telecommunication Service Priority Program, Government Emergency Telecommunications Service, and Wireless Priority Service. After analyzing the FTE work in OEMD, we conclude that the burden of the work of five FTEs in this division is directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau such that it should be reallocated for regulatory purposes. Specifically, of the five FTEs we have identified from this division there are two FTEs that should be reallocated as direct FTEs to the Wireline Competition Bureau, two FTEs that should be reallocated as direct FTEs to the Wireless Telecommunications Bureau, and one FTE that should be reallocated as a direct FTE to the Media Bureau, proportionally among the fee categories in the Media Bureau. OEMD's deployment of personnel to disaster areas primarily supports the oversight and regulation of the regulatory fee payors of all three of these core bureaus by, among other things, receiving and facilitating federal partner responses to requests from providers in disaster areas with issues such as obtaining access to facility sites and procurement of fuel for generators.

34. Moreover, with regard to the two FTEs we reallocate as direct to the Wireline Competition Bureau and the two FTEs we reallocate as direct to the Wireless Telecommunications Bureau, we adopt these changes for regulatory fee purposes because the burden of the work performed by these FTEs is directly related to the oversight and regulation of wireline and wireless regulatory fee payors. In particular, the FTE burden from this division relates to working with federal partners on risk assessment and surveying the status of providers' service and infrastructure

following major disasters, emergencies, matters of law enforcement or events of a national security as well as facilitating providers' restoration by coordinating requests and responses with other federal and SLTT entities and private sector companies. In addition, the FTE burden of this work in this division involves administering legal oversight and review of the Commission's Local Number Portability Act (LNPA) activities.

35. In addition, the work done by one FTE in OEMD directly supports the oversight and regulation of regulatory fee payors of the Media Bureau by conducting site surveys of media broadcast transmitters to determine potential issues of radio frequency interference, and by deploying personnel to disaster areas to perform spectrum scans before and after disasters to ascertain the operational status of broadcast stations and assist those that are not operational. Based on this analysis, we adopt our proposal to reallocate, for regulatory fee purposes, one FTE from OEMD as a direct to Media Bureau, proportionally among the fee categories in that bureau.

36. The Communications and Crisis Management Center (FCC Operations Center), which is part of OEMD, maintains a 24/7 staff at FCC Headquarters. Its responsibilities include: monitoring the status of communications and engaging in real-time with emergency operations centers and PSAPs in the event of outages or disasters; resolving consumer complaints; supporting the Commission's enforcement activities; granting special temporary authority to Commission licensees after hours; and maintaining the Commission's primary classified environment and the required support systems.

37. The Operations Center is available 24/7 to field requests from all regulatees for assistance and to grant special temporary authority outside of normal business hours. Operations Center staff routinely field calls regarding consumer complaints of communications outages and interference or requests for information on the provision of wireless and wireline communications services in specific regions of the Nation. In response to these communications, Operations Center staff will coordinate solutions across Commission Bureaus and Offices, SLTT stakeholder entities, and private sector companies. After staff analysis of data regarding the FTE work performed in the Operations Center, we find that the burden of the work of three FTEs from the Operations Center is performed directly in furtherance of the oversight and regulation of regulatory fee payors such that it should be reallocated as direct to a core bureau, for regulatory fee purposes. Specifically, we reallocate one FTE as a direct to the Wireline Competition Bureau, one FTE as direct FTE to Wireless Telecommunications Bureau, and one FTE as direct to the Media Bureau, proportionally among the fee categories in that bureau.

38. The Cybersecurity and Communications Reliability Division helps ensure that the nation's communications networks are reliable and secure so that the public can communicate, especially during emergencies. This division identifies and promotes network improvements through analysis and investigation of significant communications outages, providing situational awareness of the status of communications infrastructure during times of emergency and administers the Commission's primary advisory committee on communications security and reliability, and rulemakings. Focus areas include emergency communications, such as 911 and wireless emergency alerting, network performance during disasters, and major network outages and threats. This division monitors and analyzes communications network outages to identify trends, assess actions the FCC can take to help prevent and mitigate outages, and where necessary, assist response and recovery activities. Finally, the division supports the security of services provided across platforms, in the Commission's Alerting Security docket, and Federal Advisory Committee work on 911 standards and alerting standards, as well as network and supply chain security.

39. The Cybersecurity and Communications Reliability Division provides oversight and regulation of the regulatory payors by, among other things, providing situational awareness of the status of communications infrastructure and coordinating requests for assistance during times of emergency. After analyzing the burden of the work done in this division, we adopt our proposal to reallocate four FTEs from this division as direct to the Wireline Competition Bureau because the burden of the work being done on wireline network outage reporting, in routine and disaster environments, as well as outages and notifications impacting the 911 and 988 systems, is directly in furtherance of the oversight and regulation of wireline regulatory fee payors We also adopt our proposal to reallocate two FTEs from this division as direct to the Wireless Telecommunications Bureau because the FTE burden of this work is being done to administer the Mandatory Disaster Response Initiative to ensure providers of commercial mobile services can engage in mutual aid activities during times of emergency. The FTE burden in this division also includes working with the Federal Advisory Committee on standards and best practices related to 5G deployment as well as the work performed to develop and implement performance standards and regulation of wireless regulatory fee payors.

40. *Conclusion Regarding Allocations.* Table 2 below summarizes the FTE reallocations adopted here.

TABLE 2—SUMMARY OF FTE REALLOCATIONS

Core bureau	Number of direct 2023 FTEs *without* FTE reallocations	% Before reallocations	Direct FTEs after reallocations	Number of direct 2023 FTEs *with* FTE reallocations	% After reallocations
International Bureau	28	8.28	+2 from OEA +1 from OGC Total additional FTEs +3	31	7.77
Wireless Telecommunications Bureau	75	22.19	+8 from OEA +2 from OGC +13 from PSHSB Total additional FTEs +23	98	24.56
Wireline Competition Bureau	120.25	35.57	+13 from OEA +1 from OGC +9 from PSHSB Total additional FTEs +23	143.25	35.91

TABLE 2—SUMMARY OF FTE REALLOCATIONS—Continued

Core bureau	Number of direct 2023 FTEs *without* FTE reallocations	% Before reallocations	Direct FTEs after reallocations	Number of direct 2023 FTEs *with* FTE reallocations	% After reallocations
Media Bureau	116	33.96	+7 from OEA +1 from OGC +6 from PSHSB −2 from MB Reallocated as Indirect Total additional FTEs +12	128	31.76
Total	339.25	100		400.25	100

B. Non-High Cost Universal Service Fund FTEs

41. In the *FY 2017 Report and Order,* the Commission reallocated 38 direct FTEs from the Wireline Competition Bureau working on the non-high-cost programs of the Universal Service Fund as indirect for regulatory fee purposes. The Commission found that this reallocation was supported by the fact that contributions to the Universal Service Fund are required from service providers using any technology that has end-user interstate telecommunications and because of changes in the universal service fund regulatory landscape. The Commission observed that although initially universal service programs were focused on wireline services, wireless carriers, and broadband providers had since become involved in the E-Rate, Lifeline, and Rural Healthcare programs. The Commission also noted that the E-Rate, Lifeline, and Rural Healthcare programs tie funding eligibility to the beneficiary, *i.e.,* a school, a library, a low-income individual or family, or a rural healthcare provider, and not to Commission regulatory fee payors. Given these considerations, the Commission concluded that the burden of FTE time dedicated to non-high cost Universal Service Fund programs should be considered indirect because the nature of the work being conducted is not focused specifically on the oversight and regulation of fee payors of any core bureau. The Universal Service Fund programs are administered by the Universal Service Administrative Company (USAC), with oversight from the Commission. Specifically, the Commission reasoned that the FTE time devoted to the non-high cost Universal Service Fund issues is not oversight and regulation of a category of regulatory fee payors, but instead is the oversight of several Universal Service Fund programs (administered by USAC) with a wide array of beneficiaries and participants. With such a diversity of participants, beneficiaries, and contributors, and a wide variety of issues addressed by Commission staff (including matters pertaining to entities that are not Commission regulatory fee payors), the Commission concluded that Interstate Telecommunications Service Providers (ITSPs) were no longer the sole contributors or beneficiaries of these programs. The Commission further found that it could not determine the benefits flowing from Commission oversight of the programs to any one fee category, let alone a particular cross-section of fee categories or even an entire industry. The Commission explained that as they are not traditional telecommunication industry members, attributing the benefits of FTE non-high cost work to any one fee category would be problematic at best. For all of these reasons, the Commission concluded that FTE time spent on non-high cost Universal Service Fund issues should be reassigned as indirect.

42. In the *FY 2017 Report and Order,* the Commission also observed that the concern that the reallocation would impose a burden on broadcasters, which do not participate in the universal service program was misplaced ''as there is no completely pure way to precisely allocate every Commission FTE.'' In support of this decision the Commission explained that the Commission's methodology need not reach scientific precision and instead must simply be reasonable. Subsequently, the Commission addressed NAB's continued objection to assessing broadcasters for the costs of these indirect FTEs in the *FY 2022 Report and Order* by explaining that the reallocation was appropriate and that indirect FTEs in the Commission devote their time to a large variety of issues, some of which may not directly affect every Commission regulatee, including broadcasters. The Commission nonetheless took a closer look at the FTE burden associated with these non-high cost Universal Service Fund issues, and determined that broadcasters should be excluded from the burden associated with these indirect FTEs. Based on this determination, the burden associated with these indirect FTEs in FY 2022 was apportioned among all other regulatory fee payors.

43. For FY 2023, we tentatively concluded that the Commission's FY 2022 reasoning remained sound and the indirect FTE burden associated with these non-high cost Universal Service Fund programs should not be apportioned to broadcasters. We sought comment on this tentative conclusion and asked any commenters asserting that these indirect FTEs should be reassigned as direct FTEs to a core bureau to provide an explanation of how these FTEs provide a direct benefit to other fee payors.

44. NAB continues to assert that we should reallocate the burden of FTE time dedicated to these matters as direct to a core bureau or bureaus because providers receive funding and program beneficiaries receive subsidies. Specifically, NAB argues that the Commission could base this reallocation upon the information the Commission has about the fee payors that receive a particular percentage of the Commission's non-high cost USF program funds. Likewise, the State Broadcasters Association contends that because these programs provide certain service providers with significant funding, it should not be difficult to determine the direct impact of the FTE burden that benefits specific regulatees. We disagree. As CTIA correctly points out, our regulatory fees must be based on the work conducted by Commission staff, *i.e.,* the Commission's FTE burden, and the amount of USF program funds that a regulatory fee payor receives, is not a relevant factor in allocating regulatory fees among the core bureaus.

45. In particular, we agree with CTIA that NAB's argument to reallocate FTEs based upon the financial benefit received by any particular service provider does not properly demonstrate that the FTE burden of this work is devoted to the oversight and regulation of any regulatory fee category such that it should be considered to be direct. WISPA also supports the Commission's decision to treat the FTE burden of this work as indirect, and remarks that

attributing FTEs as direct on the basis of such work could unfairly impact smaller providers, like WISPA's members, and cause an exodus from non-high cost USF programs, which would be contrary to the public interest. Moreover, the FTE work on these non-high cost Universal Service Fund programs covers issues regarding all program participants as well as benefits that are derived by the general public. We continue to agree with prior Commission determinations that FTE time spent on non-high cost Universal Service Fund issues is indirect because we cannot reasonably determine the FTE burden of oversight of the programs to any one fee payor category, let alone a particular cross-section of fee payors or even an entire industry.

46. As we have stated previously, indirect FTE time is devoted to issues that may include more than one regulated service or matters that are not related to services regulated by the Commission. Commenters' argument is based on their assertion that they do not obtain benefit from the universal service programs, but that is not a factor in determining whether the FTEs should be allocated as direct to other fee payors. Accordingly, we conclude that NAB's suggestion to reallocate the burden of the 23.75 FTEs working on non-high cost Universal Service Fund matters as direct to a core bureau based upon the percentage of subsidies received by any particular category of fee payor category conflates the nature of the work of the Commission's FTEs with the identity of the entities that ultimately receive support from any particular program. Commenters have thus failed to show that these indirect FTEs should be reassigned as direct. We therefore affirm prior Commission determinations that the burden of FTE time devoted to non-high cost Universal Service Fund programs is properly categorized as indirect, and that such a conclusion is consistent with how FTEs working for programs that benefit consumers and the American public are treated elsewhere in the Commission.

47. Additionally, as explained in the *FY 2023 NPRM,* staff analysis of the FTE burden associated with these non-high cost Universal Service Fund programs reveals that we need to adjust the number of indirect FTEs working on the non-high cost Universal Service Fund programs from 38 FTEs in FY 2022 downward to 23.75 indirect FTEs for FY 2023, a decrease of 14.25 indirect FTEs. As a result of staff's comprehensive review of the Commission's indirect bureaus and offices, we conclude that the FTE time within the Office of Engineering and Technology, the Enforcement Bureau, and the Consumer and Governmental Affairs Bureau, continues to be appropriately designated as indirect.

C. New Regulatory Fee Categories

48. In the *FY 2023 NPRM,* we sought comment on whether we should adopt new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service. The Satellite Operators argue that the Commission has unquestionable jurisdiction to extend its regulatory fee categories to include service providers and manufacturers that benefit from the Commission's regulatory activities. The Satellite Operators suggest that we again seek comment on four new fee categories: (i) broadband internet access providers, (ii) database administrators that enable unlicensed operations, (iii) equipment manufacturers, and (iv) experimental licenses. TechFreedom, on the other hand, contends that the Commission lacks legal authority to require entities that it neither licenses nor regulates to pay regulatory fees.

49. We have previously sought comment on the fee categories proposed by the Satellite Operators and others, and, as no new facts or analysis have been provided in the record to support such proposals, we are neither adopting such categories at this time nor seeking further comment on them. Because commenters have provided no basis for us to change the Commission's prior determinations on this issue and we therefore affirm that such fees would be unworkable and logistically infeasible to collect at this time.

D. Space Station and International Bearer Circuit Regulatory Fees

1. Space Station Regulatory Fees

a. NGSO/GSO 80/20 Allocation

50. For FY 2023, we adopt the regulatory fees for space and earth stations proposed in the *FY 2023 NPRM,* which were based on the allocation of International Bureau FTEs that regulated space and earth stations. The International Bureau existed for most of FY 2023, and therefore we conclude that it is appropriate to adopt regulatory fees for FY 2023 based on the work of International Bureau FTEs for this fiscal year. We find that the proposed categories and allocations continue to accurately reflect the allocation of International Bureau FTEs in FY 2023. For the reasons discussed below, we decline to change allocations or add categories or subcategories of space station regulatory fees at this time. FY 2024 will be the first full fiscal year that the Space Bureau will be in existence. We anticipate closely evaluating the work of staff during the first year to ensure the continued accuracy of our FTE allocations. Moreover, given the rapid pace of development change in this segment of the telecommunications industry, we also anticipate closely considering whether any space and earth station regulatory fee categories should be revised in the coming years.

51. The *FY 2023 NPRM* sought comment on proposed regulatory fees for space and earth stations. For space stations, the proposed fees were calculated using the existing allocation of FTEs between GSO and NGSO space station categories, and among different categories of NGSO space station systems. Under the existing methodology of calculating regulatory fees for space stations, 80% of space station regulatory fees are allocated to GSOs and 20% of the space station regulatory fees to NGSOs. In addition, there are two subcategories for NGSO space stations regulatory fees: ''less complex'' NGSO systems and all other NGSO systems identified as ''other'' NGSO systems. ''Less complex'' NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS). ''Less complex'' NGSO fees and ''other'' NGSO fees were split within the broader NGSO fee category on a 20/80 basis. In 2022, the Commission adopted a methodology for calculating the regulatory fee for small satellites and small spacecraft (together, small satellites) within the NGSO fee category based on 1/20th (5%) of the average of the non-small satellite NGSO space station regulatory fee rates from the current fiscal year on a per license basis.

52. The *FY 2023 NPRM* did not seek comment on the methodology previously adopted to allocate regulatory fees among GSO and NGSO space stations, nor did it seek comment on the definitions of existing subcategories of NGSO space stations or the creation of new subcategories of NGSO space stations in general. It did, however, seek comment generally on whether to adopt new regulatory fee categories and on ways to improve the regulatory fee process regarding ''any and all categories of service.'' It also sought comment specifically on how to apply regulatory fees to spacecraft performing On-Orbit Servicing (OOS) and Rendezvous and Proximity Operations (RPO) specifically operating near the geostationary satellite orbit arc.

53. No comments were received in response to the proposed regulatory fees

for earth stations or for small satellites. As stated above, we find that these categories and allocations continue to accurately reflect the allocation of International Bureau FTEs for FY 2023. Accordingly, we adopt the proposed regulatory fees for earth stations and small satellites for FY 2023.

54. Several space station operators, individually or collectively, submitted comments regarding proposed regulatory fees for space stations other than small satellites. Broadly speaking, the comments can be divided into two categories. The first category proposes revisions to our existing methodology and categories for assessing regulatory fees on NGSO space stations. These commenters argue in favor of revising the ''20/80'' allocation between ''less complex'' and ''other'' NGSO space stations, revisiting the definition of ''less complex'' NGSO space station systems, or proposing to initiate a further notice of proposed rulemaking to revise and expand the subcategories of NGSO space station fees. The second category provides comments on how to apply regulatory fees to OOS and RPO spacecraft. We address each category of comments in turn below, but in each instance conclude that the record is insufficient at this time to adopt changes to the proposed regulatory fees for FY 2023 or to initiate a further notice of proposed rulemaking. Moreover, as observed previously in this order, the Commission's methodology need not reach scientific precision and instead must simply be reasonable.

b. NGSO Space Stations ''Less Complex'' and ''Other'' Regulatory Fees

55. *20/80 Less Complex/Other Allocation.* The Satellite Operators contend that we should revisit the ''20/80 split'' between ''less complex'' and ''other'' NGSO space station systems and the assumptions that underly it. They argue that our regulatory fee structure should ''not remain stagnant'' regarding the nature of ''less complex'' NGSO space station systems that provide EESS, and that the Commission should initiate a further notice of proposed rulemaking because ''[t]oday's EESS business . . . is virtually unrecognizable from what existed when the Commission first established [the ''less complex''] NGSO regulatory fee structure'' in 2021.

56. We find that the record is insufficient at this time to revisit, or to initiate a further rulemaking to revisit, the 20/80 allocation between ''less complex'' and ''other'' NGSO space station systems. The Satellite Operators do not provide any specific alternative proposals to the current allocations, other than to seek comment on the significance of the purported changes to the EESS business in order to build a foundation to take action on next year. As the EESS Operators observe, however, the Satellite Operators offer no new evidence that might cause the Commission to alter its conclusions and change the allocation, but repeat the argument they have made in the regulatory fee proceedings for FY 2020, FY 2021, and FY 2022, and do not provide a basis for the Commission to revisit its decision regarding NGSO fee category definitions adopted in the *FY 2021 NPRM.* In addition, the purported changes to the EESS business presented by the Satellite Operators (for example, multiplying use cases, mushrooming demand of customers for data, and changes in methods of distribution) do not go to the factors relied on in adopting the 20/80 allocation between ''less complex'' and ''other'' NGSO space stations: the amount of staff work involved in regulating NGSO space stations planning to communicate with 20 or fewer U.S. authorized earth stations primarily in EESS and/or AIS versus the amount of work involved in regulating other types of NGSO space station systems. Thus, there is no basis for initiating a further notice of proposed rulemaking at this time.

57. *NGSO Space Station Fee Category Definitions and Expansion.* Some commenters propose to revisit the definition of ''less complex'' NGSO space station systems to include a broader range of NGSO space station systems, or to initiate a further notice of proposed rulemaking to revise and expand the subcategories of NGSO space station fees. In particular, Kinéis alleges that the Commission did not fully explain the decision in the *FY 2021 NPRM* to use ''the total number of earth stations with which satellite network will communicate'' as the ''only'' factor to distinguish NGSO space station systems as ''less complex'' for regulatory fee purposes. To the extent that Kinéis's comments seek reconsideration of our holding in in that order, we agree with other comments that such an argument would be untimely. While we decline to revisit our prior holding, we will, however, address the Kinéis comments to the extent it proposes that the Commission should, on a going forward basis, expand the category of ''less complex'' NGSO space stations to include factors other than ''the total number of earth stations with which satellite network will communicate'' to distinguish NGSO space station systems as ''less complex.''

58. As an initial matter, Kinéis mischaracterizes the prior decision as to which types of NGSO space station systems are ''less complex'' as being based only on the number of earth stations utilized by a NGSO space station system. In fact, the number of earth stations was not, and is not, the only factor for determining that an NGSO space station system is ''less complex'' for regulatory fee purposes. Rather, the Commission found that NGSO space station systems ''planning to communicate with 20 or fewer U.S.-authorized earth stations *that are primarily used for [EESS] and/or [AIS]* are significantly less complex to regulate than other types of NGSO systems'' (italics added). As the Commission explained, multiple factors led to determining that NGSO space station systems communicating with 20 or less U.S.-authorized earth stations used primarily for EESS and/or AIS involved less staff resources to regulate that other NGSO space station systems.

59. Thus, the number of earth stations is not the only factor for determining whether an NGSO space station system is ''less complex'' for regulatory fee purposes, but it is one factor, together with the service primarily being provided, that serves as a proxies for other factors, such as whether processing rounds are required to process the application, the geographic area being served by the system, the quantity and range of spectrum needs, and how the system utilizes spectrum vis-à-vis other systems. All these factors, not just the number of earth stations, go towards determining the amount of FTE resources required to regulate a NGSO space station system, thereby determining whether an NGSO space station system is ''less complex'' for regulatory fee purposes.

60. We note that the possibility of other NGSO space station systems being categorized as ''less complex'' for regulatory fee purposes in the future has not be rejected or precluded. Indeed, such a possibility has been expressly recognized. But the inclusion of NGSO space station systems into the ''less complex'' category must arise from factors that reflect the amount of work that FTEs perform to regulate such systems relative to the work performed for other NGSO space station systems. If the Commission finds in the future that another type of NGSO space station system requires less regulatory work than other NGSO space station systems, that type of NGSO space station system would be eligible for the ''less complex'' category as well. Although Kinéis and Myriota argue that their non-voice, non-geostationary mobile satellite service (NVNG MSS) designed to provide ''Internet of Things'' (IoT) connectivity

should also be categorized as ''less complex,'' their arguments focus on the alleged superior benefits received by other NGSO space station systems compared to their own, rather than on the amount of regulatory work that FTEs perform. Such benefits, however, are not material to determining the complexity of regulation of a satellite system, which is the determining criterion for a ''less complex'' NGSO space station system. As such, we find that the record is not sufficiently developed at this time to determine that NVNG MSS IoT space station systems should be included in the ''less complex'' NGSO space station regulatory fee category.

61. Kinéis also proposes that the Commission adopt a further notice of proposed rulemaking to develop a record to separate the various NGSO networks into more homogenous categories that group providers together with others that provide similar types of services. Kinéis proposes that we adopt a multi-tiered approach to the fee categories for NGSO space station systems, using many different factors to group NGSO space station systems into tiers that would ''charge each provider an amount commensurate with its demands on Commission resources and the benefits it receives through regulation based on these enumerated factors.'' Kinéis suggests five NGSO tiers: (1) Global Fixed/Mobile Broadband; (2) Big LEO Voice & Data; (3) EESS Space Imaging & Other; (4) UHF IoT Data Collection & Monitoring/AIS; and (5) SmallSat. Although much of the basis for the different tiers is purported differences in the benefits received from FCC regulation, Kinéis also attempts to quantify the amount of FTE work necessitated by each tier by evaluating the number of filings each tier made in our Electronic Comments Filing System (ECFS) from the start of FY 2022 until June 1, 2023.

62. We find Kinéis's multi-tiered proposal for defining NGSO fee categories to be potentially useful framework as the Commission has used such multi-tiered approaches for assessing regulatory fees for other services. There is not sufficient time, however, to consider such expansive changes in time to adopt regulatory fees for FY 2023 because the conclusions underlying the proposal by Kinéis require further comment and evaluation. Kinéis's attempts to quantify the amount of FTE work necessitated by each proposed tier rely exclusively on filings made during a limited time period in docketed proceedings such as rulemakings, without consideration of applications and related filings, which would be made through ICFS, not ECFS. In addition, as the Satellite Operators observe, Kinéis has not attempted to explain how we would allocate the FTE time among these categories.

63. We agree, however, that an examination of our regulatory fees and categories for NGSO space stations would be useful in light of changes resulting from the creation of the Space Bureau and fuller consideration of possible adjustments to into account factors that are reasonably related to the benefits provided by the Commission's activities. We do not, however, have a sufficient record to initiate such an examination at this time. Section 9 requires regulatory fees be keyed to the FTE burden associated with the oversight and regulation of each regulatory fee category. We anticipate that the changes in the industry that resulted our decision to create the Space Bureau will likely also result in changes in the relative FTE burden between and among our space and earth station fee payors. Moreover, we anticipate the creation of the Space Bureau will result in the streamlining of the oversight and regulation of space stations, which could also change FTE burdens. Accordingly, we find it will be more efficient to seek comment on proposals to reexamine the categories of regulatory fees for NGSO space station systems, like the one offered by Kinéis, at the same time as other proposals that might arise as part of a more holistic review of the FTE burden of the Space Bureau in FY 2024.

64. *Miscellaneous.* Space X contends that we have miscalculated the space station regulatory fees because we based our calculations on nine units in the ''Space Stations (Non-Geostationary, Other)'' category, instead of ten. Although there are ten such licensed systems, one of the licensed systems was not operational as of October 1, 2022, and we are removing that station from the unit count when calculating the per unit fee. A unit count of nine is correct.

c. Spacecraft Performing On-Orbit Servicing (OOS) and Rendezvous and Proximity Operations (RPO) (In-Space Servicing Industries)

65. In the *FY 2022 NPRM,* we sought comment on adopting regulatory fee categories for spacecraft performing OOS and RPO. OOS and RPO missions, which can include satellite refueling, inspecting and repairing in-orbit spacecraft, capturing and removing debris, and transforming materials through manufacturing while in space, have the potential to benefit all space stations and improve the sustainability of the outer space environment and the space-based services. Due to the nascent nature of the OOS and RPO, or more generally ''in-space servicing'' industries, we currently do not have a regulatory fee category for such spacecraft. The Commission noted at that time that there have been a limited number of such operations and tentatively concluded that it was too early to identify exactly where operations, such as those in low-Earth orbit (LEO), might fit into the regulatory fee structure in the future.

66. Neither the scope of in-space servicing operations nor the regulatory framework developed sufficiently to adopt regulatory fee categories for FY 2022. As a result, in the *FY 2023 NPRM* we sought comment on defining this emerging category of operations for regulatory fee purposes, including whether a separate regulatory fee category is necessary for those spacecraft that may conduct such in-space servicing operations in the future. The *FY 2023 NPRM* also observed that some spacecraft conducting satellite servicing operate, or plan to operate, near the GSO arc, but that most of these operations are likely to ultimately be in NGSO.

67. Currently, two spacecraft operate under part 25 for communications while conducting these types of operations with GSO satellites. These two spacecraft remain operational in FY 2023. In the *FY 2023 NPRM,* the Commission tentatively concluded that, despite being assigned their own call signs, which is the unit usually used to assess fees for satellite regulatees operating in GSO, such spacecraft appear to operate as part of existing GSO systems, rather than as separate independent spacecraft. Therefore, there would be no independent system for a separate fee assessment for these operations near the GSO arc, and the regulatory burden (*i.e.,* the FTE time) for such operations would be included in the fees collected from the GSO regulatory fee payors. The Commission sought comment on this tentative conclusion and whether it may not apply to future operations of OOS and RPO spacecraft, which may operate more independently of the satellites that they will service. The Commission also observed that, for spacecraft conducting OOS and RPO with GSO satellites, identifying whether such spacecraft operations are part of an existing GSO system appears to be the first step in determining whether the Commission should assess a separate regulatory fee. The *FY 2023 NPRM* proposed to apply the regulatory fee for ''Space Stations (Geostationary Orbit)'' to OOS and RPO spacecraft operating near the GSO arc,

unless a determination is made that the OOS or RPO spacecraft is operating as part of an existing GSO system and therefore should not be assessed a separate regulatory fee. The Commission sought comment on this approach, as well as on the specific factors that should be considered to determine whether a OOS or RPO spacecraft is operating as part of an existing GSO system for regulatory fee purposes.

68. We find that the record remains too incomplete to adopt a separate regulatory fee category for spacecraft performing OOS and RPO at this time. Although commenters generally support the creation of new, separate regulatory fee categories for OOS and RPO space stations, we conclude there is insufficient understanding of the nature and regulation of such spacecraft to consider concrete proposals for assessing regulatory fees for OOS and RPO space stations at this time. The Commission is still in the early stages of considering the regulatory environment for such services as a whole, and the definition of which services would fit into OOS and RPO and the regulatory framework for such services are yet to be developed. Accordingly, we are unable to determine who would be eligible for such a category or the amount of the FTE burden that the Commission would spend in regulating such a category, which is a necessary first step in adopting regulatory fees. We will continue to develop the record regarding a possible separate fee category for OOS, RPO, and in-space servicing more generally, with the benefit of progress made in rulemaking proceedings concerning these emerging services and will revisit this issue as part of the regulatory fees proceeding for FY 2024.

69. We will continue to develop a record that will inform possible establishment of a fee category(ies) and appropriate methodology for assessing such a fee category(ies). We will also continue to consider OOS and RPO spacecraft licensing for those spacecraft operating near the GSO arc on a mission-by-mission basis. Relatedly, Astroscale requests that we also clarify that a determination that the OOS or RPO spacecraft is operating as part of an existing GSO system could also include GSO servicing spacecraft operating in other frequency bands not supported by the client vehicle. We find, however, that the record is insufficiently developed at this time to act on this request. Although some comments oppose ever assessing the fee for GSO space stations on OOS and RPO spacecraft, arguing that the current GSO fee category reflects FTE hours spent on typical GSO spacecraft issues and that these are not efforts that servicing spacecraft near the GSO arc benefit from, there is no other fee category available for space stations operating in geostationary orbit, and section 9 does not permit the Commission to exempt regulatees from paying regulatory fees. Because we are not proposing to adopt, at this time, a regulatory fee category for OOS or RPO operations, or in-space servicing more generally, we need not consider what factors should go into determining the regulatory fees for such categories.

70. *Orbital Transfer Vehicle (OTV).* The *FY 2023 NPRM* also sought comment on additional or different definitions for a potential new fee category, such as including in the definition of OOS concepts of operation such as deployment via an OTV. Spaceflight argues that the new fee category for in-space servicing systems should be broadly defined, encompassing a range of activities, including OTV deployment services, rendezvous and proximity operations, refueling, situational awareness, and debris-related activities. Spaceflight submits that it is essential that OTVs are not simply designated as either GSO or NGSO, but rather recognized as a distinct category within the regulatory framework. Spaceflight believes that OTVs possess distinct capabilities and serve a specific purpose in space operations, making it crucial to establish a separate classification that reflects these characteristics. Spaceflight supports a fee assessment comparable to the one applicable for small satellites because there are similarities between OTVs and the small satellite systems. Spaceflight argues that both types of missions are generally characterized by the following factors: (i) limited interference protection, (ii) limited mission durations, (iii) smaller system investments, (iv) less probability of ongoing adjudications, (v) higher chance to require multiple licenses or market grants, and (vi) a limited number of in-space servicing missions.

71. In addition, Spaceflight disagrees with our position that innovative OTVs should not be classified as in-orbit servicing spacecraft but rather as an NGSO spacecraft which deploys other spacecraft and contends that the Commission has not provided a basis by which to characterize Sherpa-AC1, or OTVs more generally, as ''less complex'' NGSO systems for regulatory fee purposes. Spaceflight explains that the very purpose of OTVs is to support other space missions, and this service is more similar to that of a launch vehicle, rather than a traditional communications or other satellite service. Spaceflight argues that there is nothing in the record or the Commission's analysis to explain why a physical, in-orbit delivery service is like the satellite services provided by NGSO spacecraft classified in the ''less complex'' fee category, *i.e.,* Earth imaging or other type of monitoring services. Moreover, Spaceflight purports that simply classifying OTV missions as ''less complex'' based on the number of earth stations used to communicate with the OTV system would be inappropriate. Spaceflight submits that traditional systems generally rely more heavily on spectrum use, either for the provision of two-way communications or the transmission of service data, such as imagery of the Earth or other similar commercial data; however, OTVs generally use spectrum simply to operate the spacecraft or for other limited testing. Spaceflight argues that such spectrum use is also typically on a non-interference and unprotected basis because there is no specific spectrum allocation for the physical services provided by OTV operators.

72. Spaceflight also argues that OTVs generally have significantly shorter operational lives compared to traditional NGSO satellites, such as mission lifetimes of less than a few hours or days. In contrast, Spaceflight contends, satellites in traditional communications or imaging satellite systems have mission lifetimes measured in years and are generally parts of constellations with 15-year license terms. For these reasons, Spaceflight submits that OTVs are unlike ''less complex'' (or ''other'') NGSO systems and should not be treated as such for regulatory fee purposes. Spaceflight further argues that if the Commission decides that OTV licensees should pay annual regulatory fees associated with ''less complex'' NGSO licenses, OTV operators should be permitted to seek blanket licenses for the launch and operation of multiple OTV spacecraft per license. Spaceflight submits that such a policy would be consistent with the treatment of other NGSO systems and licensees and would more accurately reflect regulatory costs borne by the Commission.

73. As stated above, the record is not sufficiently complete to adopt or even propose a separate regulatory fee category for spacecraft performing OOS, regardless of whether OTVs are included within the definition of OOS or not. We will continue to develop the record regarding a possible separate fee category for OOS, RPO, and in-space servicing more generally, and will consider OTVs as part of that record

development. In addition, Spaceflight's proposal that OTV operators should be permitted to seek blanket licenses for the launch and operation of multiple OTV spacecraft per license is outside the scope of this proceeding and is more appropriately considered as part of a separate license application or rulemaking.

2. International Bearer Circuit Regulatory Fees—Submarine Cable Systems

74. We reject the Submarine Cable Coalition's request to revise the Commission's regulatory fee methodology for submarine cable operators, which is based upon the lit capacity of the fiber-optic submarine cable, because, they contend, that under our current methodology the fees charged to submarine cable operators do not account for the amount of Commission resources and services required for oversight. We find that the Submarine Cable Coalition provides no persuasive argument that the Commission's assessment of these regulatory fees based on capacity is contrary to the Communications Act and is not reasonably related to the benefits provided. We adopt our proposal to use the same tiers for assessing fees on submarine cable operators for FY 2023 as in FY 2022, which are based on the ''lit'' capacity of the fiber-optic submarine cable.

75. International bearer circuits (IBCs) consist of terrestrial and satellite circuits and submarine cable systems. In the 2009 *Submarine Cable Order* (74 FR 22104, May 12, 2009), based on a consensus proposal made by a large number of submarine cable operators (Consensus Proposal), the Commission adopted a new methodology for assessing IBC fees. Instead of assessing IBC fees based on 64 kbps circuits for all types of IBCs, the Commission began assessing regulatory fees for submarine cable operators on a per cable landing license basis, with higher fees for larger capacity submarine cable systems and lower fees for smaller capacity submarine cable systems. The Commission adopted a five-tier structure for assessing fees on submarine cables systems based on lit capacity. The Commission explained that it will define operational submarine cable systems as either ''large'' or ''small'' submarine cable systems based on the capacity of each system and the ''small'' systems will be further subdivided into additional subcategories. The Commission concluded that this methodology served the public interest and was competitively neutral because it included both common carrier and non-common carrier submarine cable operators. The Commission also explained that the methodology would be easier to administer and for submarine cable operators to comply with. The Commission further stated that a lower fee for licensees of smaller cable systems would mitigate concerns that a flat fee may create a barrier to entry for new entrants. In the *FY 2020 Report and Order* (85 FR 59864, September 23, 2020), the Commission found that lit capacity was an appropriate measure by which to assess IBC fees for submarine cables.

76. The Submarine Cable Coalition contends that the fee structure continues to impose disproportionate fees on submarine cable operations that do not reflect their limited use of Commission resources and services. These commenters argue that the benefits submarine cable licensees receive from the Commission's work pale significantly in comparison to the regulatory oversight required of other Commission licensees. The Submarine Cable Coalition argues that a regulatory fee structure disconnected from and disproportionate to the benefits rendered to the regulatory fee payor is contrary to the Communications Act and imposes an undue burden on the industry.

77. We disagree with the Submarine Cable Coalition's contention that the Commission's regulatory fee methodology is contrary to the Communications Act and that the Commission has not developed regulatory fees that are reasonably related to the benefits provided. The Commission has long held that capacity is a reasonable basis to assess regulatory costs among the submarine cable regulatory fee payors that benefit from the Commission's work. As the Commission has previously stated, the fee assessment on submarine cables covers the costs for regulatory activity concerning submarine cables as well as the services provided over the submarine cables. We find it reasonable to continue to assess higher regulatory fees on licensees with larger facilities that benefit more from the Commission's work and thus should pay a larger proportion of the Commission's costs.

78. Since FY 2009, when the Commission adopted the new methodology for assessing submarine cable fees, the level of lit capacity for submarine cable systems has increased and the Commission has expanded the different tiers to take into account this change and accommodate for this rapid growth in capacity. However, the basic methodology for calculating submarine cable fees based on capacity has not changed. Submarine cable fees are still calculated on the basis of ''1'' unit, ''.5'' units, ''.25'' units and so forth. Furthermore, we note that the regulatory fees for FY 2023 have been reduced from those assessed in FY 2022. As discussed above, lit capacity remains a reasonable basis to apportion regulatory costs among the submarine cable regulatory fee payors that benefit from the Commission's work, and our fee methodology with respect to submarine cables continues to reasonably reflect the FTE costs for our regulatory activity concerning submarine cables as well as the services provided over the submarine cables.

E. Broadcaster Regulatory Fees for FY 2023

1. Full Service Television

79. The Commission has utilized a population-based full-service broadcast television regulatory fee since 2020. The population-based methodology conforms with the service authorized here—broadcasting television to the American people. In the *FY 2023 NPRM,* we proposed to continue to assess fees for full-power broadcast stations based on the population covered by a full-service broadcast station's contour and proposed adopting a factor of 0.7799 of one cent ($0.007799) per population served for FY 2023 full-power broadcast television station fees. We received no comments on this issue. We therefore conclude that we will continue to use the population-based methodology for full-service television broadcasters based on the population covered by a full-service broadcast television station's contour. We also adopt a factor of 0.7799 of one cent ($0.007799) per population served for FY 2023 full-power broadcast television station fees. The population data for broadcasters' service areas will continue to be determined using the TVStudy software and the LMS database, based on a station's projected noise-limited service contour. The population data for each licensee and the population-based fee (population multiplied by $0.007799) for each full-power broadcast television station is listed in Table 10. For those VHF stations whose power had to be increased to obtain a clearer signal, the Commission will continue to use a population count based on that station's lower VHF power level rather than at the increased power level.

2. Radio Stations

80. In the *FY 2023 NPRM,* we sought comment on the existing tiered fee structure for radio broadcasters regulatory fees and proposed the creation of an additional tier within the lowest population tier to ensure that broadcaster fees fairly represent the regulatory oversight benefits distributed among all radio broadcasters and that the regulatory fees assessed to the smaller broadcasters are ''reasonably related to the benefits provided to the payor of the fee by the Commission's activities'' as required by section 9(d) of the Act. NAB agrees that we should adopt the proposal to create a new fee tier for the smallest AM and FM radio stations. In its reply comments, the State Associations of Broadcasters agree that the Commission should implement the proposed new radio tier to more fairly distribute the burden of regulatory fees. No commenter in the record objected to our proposal. We therefore adopt a revised radio station regulatory fee table that includes a lower population tier for AM and FM broadcasters. Specifically, we separate the previous years' tier of <=25,000 population into two tiers: (1) <=10,000, and (2) 10,001–25,000. The remaining population tier thresholds will stay the same as prior years. In addition, beginning in FY 2023, the radio population count that is the basis for assessing regulatory fees will include 2020 U.S. Census data.

TABLE 3—FY 2023 RADIO STATION REGULTORY FEES

FY 2023 Radio Station Regulatory Fees						
Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=10,000	$595	$430	$370	$410	$650	$745
10,001–25,000	990	715	620	680	1,085	1,240
25,001–75,000	1,485	1,075	930	1,020	1,630	1,860
75,001–150,000	2,230	1,610	1,395	1,530	2,440	2,790
150,001–500,000	3,345	2,415	2,095	2,300	3,665	4,190
500,001–1,200,000	5,010	3,620	3,135	3,440	5,490	6,275
1,200,001–3,000,000	7,525	5,435	4,710	5,170	8,245	9,425
3,000,001–6,000,000	11,275	8,145	7,060	7,745	12,360	14,125
>6,000,000	16,920	12,220	10,595	11,620	18,545	21,190

F. Continuing Flexibility in FY 2023 for Regulatory Fee Payors

81. In FYs 2020, 2021, and 2022, we provided temporary relief to fee payors experiencing financial hardship caused or exacerbated by the COVID–19 pandemic. In the *FY 2023 NPRM,* we asked whether we should continue certain of those temporary measures for FY 2023 regulatory fees. Both NAB and the State Broadcasters Associations filed comments in support of continuing the temporary measures for FY 2023 regulatory fees. While the National Emergency has ended, we recognize, as NAB and the State Broadcasters Associations pointed out in their comments to the *FY 2023 NPRM,* that extending relief measures for FY 2023 regulatory fees while businesses like broadcasters continue to recover from the economic impact of the pandemic, will benefit fee payors. Therefore, the Commission finds good cause to continue to offer a nominal interest rate and waive its down payment requirement, for installment payment of regulatory fee debt. OMD will continue to exercise its delegated authority to partially waive § 1.1910 of the Commission's rules to allow regulatees on ''red light'' and experiencing financial hardship to nonetheless request waiver, reduction, deferral, and/or installment payment of their FY 2023 regulatory fees, provided that those regulatees resolve all of the delinquent debt they owe to the Commission in advance of the Commission's decision on their relief requests.

82. We also will continue a partial waiver of § 1.1166 of our rules to permit fee payors seeking waiver, deferral or reduction of their FY 2023 regulatory fees to submit documentation supporting their requests after their underlying requests are submitted. This partial waiver of § 1.1166(c) does not remove the burden of submitting documents in support of individual waiver requests. Parties seeking waiver, deferral or reduction of their FY 2023 regulatory fees must make a good faith effort to submit all necessary documentation with their initial regulatory fee waiver requests. As part of our partial waiver of 1.1166(c), we will provide fee payors, after filing their requests for waiver, reduction or deferral of their FY 2023 regulatory fees, with one opportunity to submit additional documents to support their requests, which submission must occur by January 31, 2024 in order for their supplemental documentation to be considered with their requests. We condition our temporary waiver in order to more closely align our practices with the requirements of § 1.1166. This provides fee payors with relief while at the same time scaffolding a return to normal operation of our rules.

83. The State Broadcasters Associations also advocate for making permanent these remaining temporary measures, stating that without them, the Commission's processes and rules, particularly with respect to installment payment requests, are sufficiently onerous as to prevent distressed fee payors from effectively accessing the relief. Because we did not propose to codify the remaining temporary measures in the *FY 2023 NPRM,* the record is insufficient to consider the State Broadcasters Associations' proposal and we therefore decline to consider it at this time.

84. Finally, in the *FY 2023 NPRM,* we amended § 1.1166 of our rules to permit parties seeking regulatory fee waiver, reduction and/or deferral to make a single request for all forms of relief sought, rather than requiring separate filings for each form of relief, and to require all requests made under the rule to be submitted electronically to a dedicated email address. We also amended § 1.1914 of our rules to direct parties seeking to pay their regulatory fees in installments to submit those requests to the same dedicated email address and to permit those parties to combine their installment payment requests with their waiver. While we did not receive any comments on this point, it is very unlikely that the OMB PRA approval process will conclude in time for parties seeking installment relief to proceed under the codified revisions to § 1.1914. Therefore, we will continue these revisions to § 1.1914 as temporary measures until their codification is effective.

85. We also remind regulatory fee payors that we cannot relax the

substantive standard for granting a waiver or deferral of fees, penalties, or other charges for late payment of regulatory fees under section 9A of the Act. Under the statute, the Commission may only waive a regulatory fee, penalty, or interest charge if it finds there is good cause for the waiver and that the waiver is in the public interest. The Commission has only granted financial hardship waivers when the requesting party has shown it ''lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.'' Other statutory limitations include that the Commission must act on waiver requests individually, and cannot extend the deadline we set for payment of fees beyond September 30.

G. Providing Installment Payment Relief to Small Regulatory Fee Payors

86. In the *FY 2023 NPRM,* we sought comment on a proposal to allow regulatory fee payors to prepay their annual regulatory fees in increments before the annual regulatory fee payment deadline. The State Broadcasters Associations asked that the Commission consider the proposal, on the basis that permitting incremental prepayment of regulatory fees would ease broadcasters' regulatory fee burden. In seeking comment on the proposal, we noted that implementation of such a program would require modifications to our recordkeeping, financial operations, and accounting systems and additional personnel to administer the program. We asked commenters what concrete benefits the Commission and participating regulatory fee payors would derive from the program, to justify the Commission's cost of implementing and administering a prepayment by installment program. In their reply comments, the State Broadcasters Associations concede the significant administrative difficulties of a prepayment program but do not identify any program benefits sufficient to justify implementation and administration of such a program. We received no other comments on the proposal. Because the record does not identify any concrete benefits derived from a prepayment program, as distinct from, for example, broadcasters individually setting aside money each month in advance of the payment deadline to pay their regulatory fee obligation, and would increase the Commission's costs, we decline to adopt the proposal to permit regulated parties to prepay their annual regulatory fee obligation in increments in advance of the regulatory fee payment deadline.

H. Technical Corrections to Sections 1.1166 and 1.1914 of the Commission's Rules

87. We further amend § 1.1166 to delete certain language added to the rule in error in the FY 2023 NPRM. Specifically, we delete ''or installment payment'' in the introductory paragraph of § 1.1166 and in 1.1166(a), make grammatical changes to move the word ''or'' twice, and we delete ''and 1.1914'' in 1.1166(a). We also restore the following text (bolded) that was inadvertently deleted from § 1.1166(a) in the FY 2023 NPRM: ''All requests for waiver, reduction and deferral shall be acted upon by the Managing Director with the concurrence of the General Counsel.''

88. We also make two technical corrections to § 1.1914 to clarify the language of the rule. The third sentence of § 1.1914(a) is revised to read as follows: ''Requests for installment payment of non-regulatory fee debt shall be filed electronically, by submission to the following email address: *installmentplanrequest@fcc.gov*.'' We make this change to ensure that, for administrative simplicity purposes, installment payment requests that are non-regulatory fee in nature are submitted to a different email address than the email address to which all regulatory fee relief requests, including those for installment payment of regulatory fees, are to be submitted. Finally, we revise the fourth sentence of § 1.1914(a) to more clearly state that requests for installment payment of regulatory fees may be combined with other regulatory fee relief requests that are filed pursuant to § 1.1166 of our rules. We make these technical corrections *sua sponte* without notice and comment because we conclude that they are rules of agency organization, procedure, or practice exempt from the general notice-and-comment requirements of the Administrative Procedure Act (APA).

I. Advancing Diversity, Equity, Inclusion, and Accessibility

89. In the *FY 2023 NPRM,* we sought comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority. We did not receive any comments on this issue. While diversity and equity considerations do not impact our methodology for establishing regulatory fee rates, we continue to remain mindful of the importance of these considerations and the impact of our rules on them. We again emphasize, however, that the Commission is not permitted to shift fees from one party of fee payors to another nor to raise fees for any purpose other than as an offsetting collection in the amount of our annual S&E appropriation, consistent with the requirements of section 9 of the Act.

III. Procedural Matters

90. Included below are procedural items as well as our current payment and collection methods.

91. *Commission's Registration System.* To increase efficiency, the Commission is using an all-electronic payment system for regulatory fees, which is contained within the Commission's Registration System (CORES). Before using CORES for the first time, you must obtain an FCC Username through the FCC User Registration System, and subsequently use it to access CORES and either register an FCC Registration Number (FRN) or associate an existing FRN to your password. If you are unable to register electronically, you may fax your application for a Registration Number (FCC Form 160) to the CORES Helpdesk at (202) 418–7869 for filing procedures.

92. *Credit Card Transaction Levels.* In accordance with *Treasury Financial Manual,* Volume I, Part 5, Chapter 7000, Section 7055.20—*Transaction Maximums,* the highest amount that can be charged on a credit card for transactions with federal agencies is $24,999.99. Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in the CORES system. Further details will be provided regarding payment methods and procedures at the time of FY 2023 regulatory fee collection in Fact Sheets, *https://www.fcc.gov/regfees.*

93. *Payment Methods.* During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through *Pay.gov*, ACH, debit card, or by wire transfer. Additional payment instructions are posted on the Commission's website at *https://www.fcc.gov/licensing-databases/fees/wire-transfer.* The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other

form of payment (*e.g.,* checks, cashier's checks, or money orders) will be rejected. For payments by wire, an FCC Form 159–E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Commission at (202) 418–2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *https://www.fcc.gov/licensing-databases/fees/wire-transfer.*

94. *De Minimis Regulatory Fees, Section 9(e)(2) Exemption.* Under the de minimis rule, and pursuant to our analysis under section 9(e)(2) of the Act, a regulatory fee payor is exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is $1,000 or less for the fiscal year. The de minimis threshold applies only to filers of annual regulatory fees, not regulatory fees paid through multi-year filings, and it is not a permanent exemption. Each regulatory fee payor will need to reevaluate the total annual fee liability each fiscal year to determine whether it meets the de minimis exemption.

95. *Standard Fee Calculations and Payment Dates.* The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2022 for AM/FM radio stations and VHF/UHF broadcast television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2022.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category. For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in § 52.103 of the Commission's rules. The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2022.
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2022. The number of subscribers, units, or telephone numbers on December 31, 2022 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services, Multi-year fees:* The first seven regulatory fee categories in our Schedule of Regulatory Fees pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount period covered by the ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed, or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2022.
- *Multichannel Video Programming Distributor Services (cable television operators, CARS licensees, DBS, and IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2022. Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services (Earth Stations and Space Stations):* Regulatory fees must be paid for (1) by all licensed or authorized earth stations on or before October 1, 2022, (2) geostationary orbit space stations and non-geostationary orbit satellite systems that are licensed and operational on or before October 1, 2022, and (3) small satellite space stations that were licensed and operational on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. During the ''de-commissioning'' phase of satellites, whereby satellites are often not operational, the satellite license must be cancelled by September 30, 2022 to avoid paying FY 2023 regulatory fees.
- *International Services* (*Submarine Cable Systems, Terrestrial and Satellite Services*): Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on lit circuit capacity as of December 31, 2022. Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2022 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, ''active circuits'' include backup and redundant circuits as of December 31, 2022. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.

96. *Commercial Mobile Radio Service (CMRS) and Mobile Services Assessments.* The Commission compiled data from the Numbering Resource Utilization Forecast (NRUF) report that is based on ''assigned'' telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''). We have included non-geographic numbers in the calculation of the number of subscribers for each CMRS provider in Table 6 and the CMRS regulatory fee rate. CMRS provider regulatory fees are calculated and should be paid based on the inclusion of non-geographic numbers. CMRS providers can adjust the total number of subscribers, if needed. This information of telephone numbers (subscriber count) will be posted on the Commission's electronic filing and payment system.

97. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing CORES and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or

supporting documentation. The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in CORES. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in CORES. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in CORES. A final CMRS assessment letter will not be mailed out.

98. Because some carriers do not file the NRUF report, they may not see their telephone number counts in CORES. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.,* compute their telephone number counts as of December 31, 2022, and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in CORES or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

99. *Effective Date.* Providing a 30-day period after **Federal Register** publication before this Report and Order becomes effective as normally required by 5 U.S.C. 553(d) will not allow sufficient time to collect the FY 2023 fees before FY 2023 ends on September 30, 2023. For this reason, pursuant to 5 U.S.C. 553(d)(3), we find there is good cause to waive the requirements of section 553(d), and this Report and Order will become effective upon publication in the **Federal Register**. Because payments of the regulatory fees will not actually be due until late September, persons affected by the Report and Order will still have a reasonable period in which to make their payments and thereby comply with the rules established herein.

100. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

IV. List of Tables

TABLE 4—CALCULATION OF FY 2023 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	FY 2023 payment units	Yrs	FY 2022 revenue estimate	Pro-rated FY 2023 revenue requirement	Computed FY 2023 regulatory fee	Rounded FY 2023 reg. fee	Expected FY 2023 revenue
PLMRS (Exclusive Use)	1,200	10	187,500	300,000	25.00	25	300,000
PLMRS (Shared use)	19,000	10	1,250,000	1,900,000	10.00	10	1,900,000
Microwave	16,000	10	4,500,000	4,000,000	25.00	25	4,000,000
Marine (Ship)	7,000	10	1,035,000	1,050,000	15.00	15	1,050,000
Aviation (Aircraft)	4,800	10	420,000	480,000	10.00	10	480,000
Marine (Coast)	240	10	84,000	96,000	40.00	40	96,000
Aviation (Ground)	300	10	70,000	60,000	20.00	20	60,000
AM Class A [1]	60	1	326,740	286,929	4,782	4,780	286,800
AM Class B [1]	1,403	1	4,054,050	3,559,924	2,537	2,535	3,556,605
AM Class C [1]	814	1	1,450,360	1,274,519	1,566	1,565	1,273,910
AM Class D [1]	1,373	1	4,793,460	4,210,959	3,067	3,065	4,208,245
FM Classes A, B1 & C3 [1]	3,043	1	10,109,400	8,880,633	2,918	2,920	8,885,560
FM Classes B, C, C0, C1 & C2 [1]	3,111	1	12,378,460	10,874,394	3,496	3,495	10,872,945
AM Construction Permits [2]	5	1	3,450	3,100	620.1	620	3,100
FM Construction Permits [2]	16	1	19,360	17,360	1,085	1,085	17,360
Digital Television [5] (including Satellite TV)	3.265 billion population.	1	28,897,591	25,463,155	.00779893	.007799	25,463,735
Digital TV Construction Permits [2]	4	1	20,840	20,400	5,100	5,100	20,400
LPTV/Class A/Translators FM Trans/Boosters	6,325	1	1,858,440	1,630,258	257.7	260	1,644,500
CARS Stations	120	1	230,175	206,629	1,721.9	1,720	206,400
Cable TV Systems, including IPTV & DBS	56,000,000	1	76,475,000	68,642,063	1.226	1.23	68,880,000
Interstate Telecommunication Service Providers	$25,100,000,000	1	124,597,500	135,463,365	0.005397	0.00540	135,540,000
Toll Free Numbers	34,700,000	1	4,164,000	4,654,582	0.1341	0.13	4,511,000
CMRS Mobile Services (Cellular/Public Mobile)	553,000,000	1	74,900,000	86,750,595	0.1569	0.16	88,480,000
CMRS Messaging Services	1,300,000	1	120,000	104,000	0.0800	0.080	104,000
BRS/ [3]	1,195	1	716,625	836,500	700	700	836,500
LMDS	360	1	204,750	252,000	700	700	252,000
Per Gbps circuit Int'l Bearer Circuits	17,000	1	468,000	433,092	25.48	26	442,000
Terrestrial (Common & Non-Common) & Satellite (Common & Non-Common)							
Submarine Cable Providers (See chart at bottom of Table 6) [4].	67.00	1	8,822,138	8,228,737	122,817	122,815	8,228,605
Earth Stations	2,900	1	1,783,500	1,667,486	575	575	1,667,500
Space Stations (Geostationary)	136	1	17,143,565	15,990,883	117,580	117,580	15,990,880
Space Stations (Non-Geostationary, Other)	9	1	3,380,200	3,129,773	347,753	347,755	3,129,795
Space Stations (Non-Geostationary, Less Complex).	6	1	845,040	782,443	130,407	130,405	782,430
Space Stations (Non-Geostationary, Small Satellite).	7	1	60,725	85,505	12,215	12,215	85,505
****** Total Estimated Revenue to be Collected.			385,369,869	389,885,391			392,991,324
****** Total Revenue Requirement			381,950,000	390,192,000			390,192,000

TABLE 4—CALCULATION OF FY 2023 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	FY 2023 payment units	Yrs	FY 2022 revenue estimate	Pro-rated FY 2023 revenue requirement	Computed FY 2023 regulatory fee	Rounded FY 2023 reg. fee	Expected FY 2023 revenue
Difference			3,419,869	(306,609)			2,799,324

[1] The fee amounts listed in the column entitled ''Rounded New FY 2023 Regulatory Fee'' constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2023 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 6.

[2] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service based on the threshold 10,001–25,000, the traditional basis for identifying the lowest licensed fee. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

[3] The MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[4] The chart at the end of Table 5 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009). The Submarine Cable fee in Table 4 is a weighted average of the various fee payers in the chart at the end of Table 5.

[5] The actual digital television regulatory fees to be paid by call sign are identified in Table 9.

TABLE 5—FY 2023 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category).	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers).	.16.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27).	700.
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	700.
AM Radio Construction Permits	620.
FM Radio Construction Permits	1,085.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	$.007799.
	See Table 10 for fee amounts due, also available at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees.*
Digital TV Construction Permits	5,100.
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74).	260.
CARS (47 CFR part 78)	1,720.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS).	1.23.
Interstate Telecommunication Service Providers (per revenue dollar)	.00540.
Toll Free (per toll free subscriber) (47 CFR 52.101 (f) of the rules)	.13.
Earth Stations (47 CFR part 25)	575.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	117,580.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other).	347,755.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex).	130,405.
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite).	12,215.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	$26.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2023—RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤10,000	$595	$430	$370	$410	$650	$745
10,001–25,000	990	715	620	680	1,085	1,240
25,001–75,000	1,485	1,075	930	1,020	1,630	1,860
75,001–150,000	2,230	1,610	1,395	1,530	2,440	2,790
150,001–500,000	3,345	2,415	2,095	2,300	3,665	4,190
500,001–1,200,000	5,010	3,620	3,135	3,440	5,490	6,275
1,200,001–3,000,000	7,525	5,435	4,710	5,170	8,245	9,425
3,000,001–6,000,000	11,275	8,145	7,060	7,745	12,360	14,125
>6,000,000	16,920	12,220	10,595	11,620	18,545	21,190

FY 2023 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2022)	Fee ratio (Units)	FY 2023 regulatory fees
Less than 50 Gbps	.0625	$7,680
50 Gbps or greater, but less than 250 Gbps	.125	15,355
250 Gbps or greater, but less than 1,500 Gbps	.25	30,705
1,500 Gbps or greater, but less than 3,500 Gbps	.5	61,410
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	122,815
6,500 Gbps or greater	2.0	245,630

Table 6—Sources of Payment Unit Estimates for FY 2023

In order to calculate individual service fees for FY 2023, we adjusted FY 2022 payment units for each service to more accurately reflect expected FY 2023 payment liabilities. We obtained our updated estimates through a variety of means and sources. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections, where available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS), Licensing and Management System (LMS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.* Regulatory fee payment units are not all the same for all fee categories. For most fee categories, the term ''units'' reflect licenses or permits that have been issued, but for other fee categories, the term ''units'' reflect quantities such as subscribers, population counts, circuit counts, telephone numbers, and revenues. As more current data is received after the *Notice of Proposed Rulemaking (NPRM)* is released, the Commission sometimes adjusts the NPRM fee rates to reflect the new information in the *Report and Order.* This is intended to make sure that the fee rates in the *Report and Order* reflect more recent and accurate information. We realize that by adjusting the unit counts as more accurate information is received may adjust the fee rates for certain regulatory fee categories. Certain entities that collect the fees from customers in advance in order to pay the Commission, such as Cable and DBS companies, ITSP providers, Cell Phone and Toll-Free providers, to name a few, may need to adjust their billings to customers as the Commission adjusts its fee rates. As a result, the Commission understands that these adjustments are necessary so that these regulatees can recover their fee obligations from their customers.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2023 estimates with actual FY 2022 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2023 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2023 payment units are based on FY 2022 actual payment units, it does not necessarily mean that our FY 2023 projection is exactly the same number as in FY 2022. We have either rounded the FY 2023 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) information as well as prior year payment information. Estimates have been adjusted to take into consideration the licensing of portions of these services.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2022 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2022 payment data.
AM/FM Radio Stations	Based on downloaded LMS data, adjusted for exemptions, and actual FY 2022 payment units.

Fee category	Sources of payment unit estimates
Digital TV Stations (Combined VHF/UHF units)	Based on LMS data, fee rate adjusted for exemptions, and population figures are calculated based on individual station parameters.
AM/FM/TV Construction Permits	Based on LMS data, adjusted for exemptions, and actual FY 2022 payment units.
LPTV, Translators and Boosters, Class A Television	Based on LMS data, adjusted for exemptions, and actual FY 2022 payment units.
BRS (formerly MDS/MMDS)LMDS	Based on WTB reports and actual FY 2022 payment units. Based on WTB reports and actual FY 2022 payment units.
Cable Television Relay Service (CARS) Stations	Based on cable trend data, data from the Media Bureau's COALS database, and actual FY 2022 payment units.
Cable Television System Subscribers, Including IPTV Subscribers	Based on publicly available data sources for estimated subscriber counts, trend information from past payment data, and actual FY 2022 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–A worksheets due in April 2023, and any data assistance provided by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau licensing data and actual FY 2022 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau data reports and actual FY 2022 payment units.
International Bearer Circuits	Based on assistance provided by the International Bureau, any data submissions by licensees, adjusted as necessary, and actual FY 2022 payment units.
Submarine Cable Licenses	Based on International Bureau license information, and actual FY 2022 payment units.

Table 7—Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

TABLE 8—SATELLITE CHARTS FOR FY 2023 REGULATORY FEES—U.S.-LICENSED SPACE STATIONS

Licensee	Call sign	Satellite name	Type
DIRECTV Enterprises, LLC	S2922	SKY–B1	GSO
DIRECTV Enterprises, LLC	S2640	DIRECTV T11	GSO
DIRECTV Enterprises, LLC	S2632	DIRECTV T8	GSO
DIRECTV Enterprises, LLC	S2669	DIRECTV T9S	GSO
DIRECTV Enterprises, LLC	S2641	DIRECTV T10	GSO
DIRECTV Enterprises, LLC	S2797	DIRECTV T12	GSO
DIRECTV Enterprises, LLC	S2930	DIRECTV T15	GSO
DIRECTV Enterprises, LLC	S2673	DIRECTV T5	GSO
DIRECTV Enterprises, LLC	S2133	SPACEWAY 2	GSO
DIRECTV Enterprises, LLC	S3039	DIRECTV T16	GSO
DISH Operating L.L.C	S2931	ECHOSTAR 18	GSO
DISH Operating L.L.C	S2738	ECHOSTAR 11	GSO

TABLE 8—SATELLITE CHARTS FOR FY 2023 REGULATORY FEES—U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
DISH Operating L.L.C	S2694	ECHOSTAR 10	GSO
DISH Operating L.L.C	S2740	ECHOSTAR 7	GSO
DISH Operating L.L.C	S2790	ECHOSTAR 14	GSO
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO
EchoStar Satellite Services L.L.C	S2179	ECHOSTAR 9	GSO
ES 172 LLC	S2610	EUTELSAT 174A	GSO
ES 172 LLC	S3021	EUTELSAT 172B	GSO
Horizon-3 Satellite LLC	S2947	HORIZONS–3e	GSO
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO
Hughes Network Systems, LLC	S2834	ECHOSTAR 19	GSO
Hughes Network Systems, LLC	S2753	ECHOSTAR XVII	GSO
Intelsat License LLC/ViaSat, Inc	S2160	GALAXY 28	GSO
Intelsat License LLC	S2414	INTELSAT 10–02	GSO
Intelsat License LLC	S2972	INTELSAT 37e	GSO
Intelsat License LLC	S2854	NSS–7	GSO
Intelsat License LLC	S2409	INELSAT 905	GSO
Intelsat License LLC	S2405	INTELSAT 901	GSO
Intelsat License LLC	S2408	INTELSAT 904	GSO
Intelsat License LLC	S2804	INTELSAT 25	GSO
Intelsat License LLC	S2959	INTELSAT 35e	GSO
Intelsat License LLC	S2237	INTELSAT 11	GSO
Intelsat License LLC	S2785	INTELSAT 14	GSO
Intelsat License LLC	S2380	INTELSAT 9	GSO
Intelsat License LLC	S2831	INTELSAT 23	GSO
Intelsat License LLC	S2915	INTELSAT 34	GSO
Intelsat License LLC	S2863	INTELSAT 21	GSO
Intelsat License LLC	S2750	INTELSAT 16	GSO
Intelsat License LLC	S2715	GALAXY 17	GSO
Intelsat License LLC	S2154	GALAXY 25	GSO
Intelsat License LLC	S2253	GALAXY 11	GSO
Intelsat License LLC	S2381	GALAXY 3C	GSO
Intelsat License LLC	S2887	INTELSAT 30	GSO
Intelsat License LLC	S2924	INTELSAT 31	GSO
Intelsat License LLC	S2647	GALAXY 19	GSO
Intelsat License LLC	S2687	GALAXY 16	GSO
Intelsat License LLC	S2733	GALAXY 18	GSO
Intelsat License LLC	S2385	GALAXY 14	GSO
Intelsat License LLC	S2386	GALAXY 13	GSO
Intelsat License LLC	S2422	GALAXY 12	GSO
Intelsat License LLC	S2387	GALAXY 15	GSO
Intelsat License LLC	S2704	INTELSAT 5	GSO
Intelsat License LLC	S2817	INTELSAT 18	GSO
Intelsat License LLC	S2850	INTELSAT 19	GSO
Intelsat License LLC	S2368	INTELSAT 1R	GSO
Intelsat License LLC	S2789	INTELSAT 15	GSO
Intelsat License LLC	S2423	HORIZONS 2	GSO
Intelsat License LLC	S2846	INTELSAT 22	GSO
Intelsat License LLC	S2847	INTELSAT 20	GSO
Intelsat License LLC	S2948	INTELSAT 36	GSO
Intelsat License LLC	S2814	INTELSAT 17	GSO
Intelsat License LLC	S2410	INTELSAT 906	GSO
Intelsat License LLC	S2406	INTELSAT 902	GSO
Intelsat License LLC	S2939	INTELSAT 33e	GSO
Intelsat License LLC	S2382	INTELSAT 10	GSO
Intelsat License LLC	S2751	NEW DAWN	GSO
Intelsat License LLC	S3023	INTELSAT 39	GSO
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA–1	GSO
Ligado Networks Subsidiary, LLC	AMSC–1	MSAT–2	GSO
Novavision Group, Inc	S2861	DIRECTV KU–79W	GSO
Satellite CD Radio LLC	S2812	FM–6	GSO
SES Americom, Inc	S2415	NSS–10	GSO
SES Americom, Inc	S2162	AMC–3	GSO
SES Americom, Inc	S2347	AMC–6	GSO
SES Americom, Inc	S2826	SES–2	GSO
SES Americom, Inc	S2807	SES–1	GSO
SES Americom, Inc	S2892	SES–3	GSO
SES Americom, Inc	S2180	AMC–15	GSO
SES Americom, Inc	S2445	AMC–1	GSO
SES Americom, Inc	S2135	AMC–4	GSO
SES Americom, Inc	S2713	AMC–18	GSO
SES Americom, Inc	S2433	AMC–11	GSO

TABLE 8—SATELLITE CHARTS FOR FY 2023 REGULATORY FEES—U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
SES Americom, Inc./Alascom, Inc	S2379/S3138	AMC–8/SES–22	GSO
Sirius XM Radio Inc	S2710	FM–5	GSO
Sirius XM Radio Inc	S3034/S2617/S2616	XM–8/XM–3/XM–4	GSO
Skynet Satellite Corporation	S2933	TELSTAR 12V	GSO
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO
ViaSat, Inc	S2747	VIASAT–1	GSO
XM Radio LLC	S2786/S3033	XM–5/XM–7	GSO

NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING

Licensee	Call sign	Satellite common name	Satellite type
ABS Global Ltd	S2987	ABS–3A	GSO
Avanti Hylas 2 Ltd	S3130	HYLAS–4	GSO
DBSD Services Ltd	S2651	DBSD G1	GSO
Empresa Argentina de Soluciones Satelitales S.A	S2956	ARSAT–2	GSO
Eutelsat S.A	S3031	EUTELSAT 133 WEST A	GSO
Eutelsat S.A	S3056	EUTELSAT 8 WEST B	GSO
Eutelsat S.A	S3055	EUTELSAT 139 WEST A	GSO
Gamma Acquisition L.L.C	S2633	TerreStar 1	GSO
Hispamar Satélites, S.A	S2793	AMAZONAS–2	GSO
Hispamar Satélites, S.A	S2886	AMAZONAS–3	GSO
Hispasat, S.A	S2969	HISPASAT 30W–6	GSO
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO
New Skies Satellites B.V	S2756	NSS–9	GSO
New Skies Satellites B.V	S2870	SES–6	GSO
New Skies Satellites B.V	S3048	NSS–6	GSO
New Skies Satellites B.V	S2828	SES–4	GSO
New Skies Satellites B.V	S2950	SES–10	GSO
Satelites Mexicanos, S.A. de C.V	S2695	EUTELSAT 113 WEST A	GSO
Satelites Mexicanos, S.A. de C.V	S2926	EUTELSAT 117 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2938	EUTELSAT 115 WEST B	GSO
Satelites Mexicanos, S.A. de C.V	S2873	EUTELSAT 117 WEST A	GSO
SES Satellites (Gibraltar) Ltd	S2676	AMC 21	GSO
SES Americom, Inc	S3037	NSS–11	GSO
SES Americom, Inc	S2964	SES–11	GSO
SES DTH do Brasil Ltda	S2974	SES–14	GSO
SES Satellites (Gibraltar) Ltd	S2951	SES–15	GSO
SES–17 S.a.r.l	S3043	SES–17	GSO
Embratel Tvsat Telecommunicacoes S.A	S2678	STAR ONE C2	GSO
Embratel Tvsat Telecommunicacoes S.A	S2845	STAR ONE C3	GSO
Telesat Brasil Capacidade de Satelites Ltda	S2821	ESTRELA DO SUL 2	GSO
Telesat Canada	S2745	ANIK F1	GSO
Telesat Canada	S2674	ANIK F1R	GSO
Telesat Canada	S2703	ANIK F3	GSO
Telesat Canada	S2646/S2472	ANIK F2	GSO
Telesat International Ltd	S2955	TELSTAR 19 VANTAGE	GSO
Viasat, Inc	S2902	VIASAT–2	GSO

NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH EARTH STATION LICENSES

ITU name (if available)	Common name	Call sign	GSO/NGSO
APSTAR VI	APSTAR 6	M292090	GSO
AUSSAT B 152E	OPTUS D2	M221170	GSO
Ciel Satellite Group	Ciel-2	E050029	GSO
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO
INMARSAT 5F2	INMARSAT 5F2	E120072	GSO
INMARSAT 5F3	INMARSAT 5F3	E150028	GSO
JCSAT–2B	JCSAT–2B	M174163	GSO
NIMIQ 5	NIMIQ 5	E080107	GSO
QUETZSAT–1(MEX)	QUETZSAT–1	NUS1101	GSO
Superbird C2	Superbird C2	M334100	GSO
WILDBLUE–1	WILDBLUE–1	E040213	GSO

NON-GEOSTATIONARY SPACE STATIONS (NGSO)

ITU name (if available)	Common name	Call sign	NGSO
U.S.-Licensed NGSO Systems			
ORBCOMM License Corp	ORBCOMM	S2103	Other.
Iridium Constellation LLC	IRIDIUM	S2110	Other.
Space Exploration Holdings, LLC	SPACEX Ku/Ka-Band	S2983/S3018	Other.
Swarm Technologies	SWARM	S3041	Other.
Planet Labs	Flock/Skysats	S2912	Less Complex.
Maxar License	WorldView 1, 2 & 3, GeoEye-1	S2129/S2348	Less Complex.
BlackSky Global	Global	S3032	Less Complex.
Astro Digital U.S., Inc	LANDMAPPER	S3014	Less Complex.
Hawkeye 360	HE360	S3042	Less Complex.
Non-U.S.-Licensed NGSO Systems—Market Access Through Petition for Declaratory Ruling			
Telesat Canada	TELESAT Ku/Ka-Band	S2976	Other.
Kepler Communications, Inc	KEPLER	S2981	Other.
WorldVu Satellites Ltd	ONEWEB	S2963	Other.
O3b Ltd	O3b	S2935	Other.
NGSO Systems that Are Partly U.S.-Licensed and Partly Non-U.S.-Licensed with Market Access Through Petition for Declaratory Ruling			
Globalstar License LLC	GLOBALSTAR	S2115	Other.
Spire Global	LEMUR & MINAS	S2946/S3045	Less Complex.
NGSO Systems Licensed Under the Streamlined Small Satellite Rules			
Capella Space Corp	Capella-2, Capella-3, Capella-4	S3073	Small Satellite.
Capella Space Corp	Capella-5, Capella-6	S3080	Small Satellite.
Capella Space Corp	Capella-7, Capella-8	S3100	Small Satellite.
Loft Orbital Solutions Inc	YAM–3	S3072	Small Satellite.
R2 Space, Inc	XR–1	S3067	Small Satellite.
ICEYE US, Inc	ICEYE	S3082	Small Satellite.
Umbra Lab Inc	Umbra SAR	S3095	Small Satellite.

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
3246	KAAH–TV	955,391	879,906	$6,862
18285	KAAL	589,502	568,169	4,431
11912	KAAS–TV	220,262	219,922	1,715
56528	KABB	2,474,296	2,456,689	19,160
282	KABC–TV	17,540,791	16,957,292	132,250
1236	KACV–TV	372,627	372,330	2,904
33261	KADN–TV	877,965	877,965	6,847
8263	KAEF–TV	138,085	122,808	958
2728	KAET	4,217,217	4,184,386	32,634
2767	KAFT	1,204,376	1,122,928	8,758
62442	KAID	711,035	702,721	5,481
4145	KAII–TV	188,810	165,396	1,290
67494	KAIL	1,947,635	1,914,765	14,933
13988	KAIT	605,456	596,232	4,650
40517	KAJB	383,886	383,195	2,989
65522	KAKE	803,937	799,254	6,233
804	KAKM	380,240	379,105	2,957
148	KAKW–DT	2,615,956	2,531,813	19,746
51598	KALB–TV	943,307	942,043	7,347
51241	KALO	954,557	910,409	7,100
40820	KAMC	390,519	390,487	3,045
8523	KAMR–TV	366,476	366,335	2,857
65301	KAMU–TV	346,892	342,455	2,671
2506	KAPP	319,797	283,944	2,214
3658	KARD	703,234	700,887	5,466
23079	KARE	3,868,806	3,861,502	30,116
33440	KARK–TV	1,212,038	1,196,196	9,329
37005	KARZ–TV	1,113,486	1,095,224	8,542
32311	KASA–TV	1,161,837	1,119,457	8,731
41212	KASN	1,175,627	1,159,721	9,045
7143	KASW	4,174,437	4,160,497	32,448
55049	KASY–TV	1,145,133	1,100,391	8,582

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
33471	KATC	1,348,897	1,348,897	10,520
13813	KATN	97,466	97,128	758
21649	KATU	3,030,547	2,881,993	22,477
33543	KATV	1,257,777	1,234,933	9,631
50182	KAUT–TV	1,637,333	1,636,330	12,762
21488	KAUU	381,413	380,355	2,966
6864	KAUZ–TV	381,671	379,435	2,959
73101	KAVU–TV	319,618	319,484	2,492
49579	KAWB	186,919	186,845	1,457
49578	KAWE	136,033	133,937	1,045
58684	KAYU–TV	809,464	750,766	5,855
29234	KAZA–TV	14,973,535	13,810,130	107,705
17433	KAZD	6,776,778	6,774,172	52,832
1151	KAZQ	1,097,010	1,084,327	8,457
35811	KAZT–TV	436,925	359,273	2,802
4148	KBAK–TV	1,510,400	1,263,910	9,857
16940	KBCA	479,260	479,219	3,737
53586	KBCB	1,323,222	1,295,924	10,107
69619	KBCW	8,227,562	7,375,199	57,519
22685	KBDI–TV	4,042,177	3,683,394	28,727
56384	KBEH	17,736,497	17,695,306	138,006
65395	KBFD–DT	953,207	834,341	6,507
169030	KBGS–TV	159,269	156,802	1,223
61068	KBHE–TV	140,860	133,082	1,038
48556	KBIM–TV	205,701	205,647	1,604
29108	KBIN–TV	912,921	911,725	7,111
33658	KBJR–TV	275,585	271,298	2,116
83306	KBLN–TV	297,384	134,927	1,052
63768	KBLR	1,964,979	1,915,861	14,942
53324	KBME–TV	123,571	123,485	963
10150	KBMT	767,572	766,414	5,977
22121	KBMY	119,993	119,908	935
49760	KBOI–TV	715,191	708,374	5,525
55370	KBRR	149,869	149,868	1,169
66414	KBSD–DT	155,012	154,891	1,208
66415	KBSH–DT	102,781	100,433	783
19593	KBSI	756,501	754,722	5,886
66416	KBSL–DT	49,814	48,483	378
4939	KBSV	1,352,166	1,262,708	9,848
62469	KBTC–TV	3,697,981	3,621,965	28,248
61214	KBTV–TV	734,008	734,008	5,725
6669	KBTX–TV	4,404,648	4,401,048	34,324
35909	KBVO	1,498,015	1,312,360	10,235
58618	KBVU	135,249	120,827	942
6823	KBYU–TV	2,389,548	2,209,060	17,228
33756	KBZK	123,523	109,131	851
21422	KCAL–TV	17,499,483	16,889,157	131,719
11265	KCAU–TV	714,315	706,224	5,508
14867	KCBA	3,088,394	2,369,803	18,482
27507	KCBD	414,804	414,091	3,229
9628	KCBS–TV	17,853,152	16,656,778	129,906
49750	KCBY–TV	89,156	73,211	571
33710	KCCI	1,109,952	1,102,514	8,599
9640	KCCW–TV	284,280	276,935	2,160
63158	KCDO–TV	2,798,103	2,650,225	20,669
62424	KCDT	698,389	657,101	5,125
83913	KCEB	417,491	417,156	3,253
57219	KCEC	3,831,192	3,613,287	28,180
10245	KCEN–TV	1,795,767	1,757,018	13,703
13058	KCET	17,129,650	15,689,832	122,365
18079	KCFW–TV	177,697	140,192	1,093
132606	KCGE–DT	123,930	123,930	967
60793	KCHF	1,118,671	1,085,205	8,464
33722	KCIT	382,477	381,818	2,978
62468	KCKA	953,680	804,362	6,273
41969	KCLO–TV	138,413	132,157	1,031
47903	KCNC–TV	3,794,400	3,541,089	27,617
71586	KCNS	8,270,858	7,381,656	57,570
33742	KCOP–TV	17,386,133	16,647,708	129,835
19117	KCOS	1,014,396	1,014,205	7,910
63165	KCOY–TV	664,655	459,468	3,583

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
33894	KCPQ	4,439,875	4,312,133	33,630
53843	KCPT	2,507,879	2,506,224	19,546
33875	KCRA–TV	10,612,483	6,500,774	50,700
9719	KCRG–TV	1,136,762	1,107,130	8,635
60728	KCSD–TV	273,553	273,447	2,133
59494	KCSG	174,814	164,765	1,285
33749	KCTS–TV	4,177,824	4,115,603	32,098
41230	KCTV	2,547,456	2,545,645	19,853
58605	KCVU	684,900	674,585	5,261
10036	KCWC–DT	44,216	39,439	308
64444	KCWE	2,459,924	2,458,302	19,172
51502	KCWI–TV	1,043,811	1,042,642	8,132
42008	KCWO–TV	50,707	50,685	395
166511	KCWV	207,398	207,370	1,617
24316	KCWX	3,961,268	3,954,787	30,843
68713	KCWY–DT	80,904	80,479	628
22201	KDAF	6,648,507	6,645,226	51,826
33764	KDBC–TV	1,015,564	1,015,162	7,917
79258	KDCK	43,088	43,067	336
166332	KDCU–DT	753,204	753,190	5,874
38375	KDEN–TV	3,376,799	3,351,182	26,136
17037	KDFI	6,684,439	6,682,487	52,117
33770	KDFW	6,659,312	6,657,023	51,918
29102	KDIN–TV	1,088,376	1,083,845	8,453
25454	KDKA–TV	3,611,796	3,450,690	26,912
60740	KDKF	71,413	64,567	504
4691	KDLH	263,422	260,394	2,031
41975	KDLO–TV	208,354	208,118	1,623
55379	KDLT–TV	639,284	628,281	4,900
55375	KDLV–TV	96,873	96,620	754
25221	KDMD	376,906	374,641	2,922
78915	KDMI	1,141,990	1,140,939	8,898
56524	KDNL–TV	2,987,219	2,982,311	23,259
24518	KDOC–TV	17,503,793	16,701,233	130,253
1005	KDOR–TV	1,112,060	1,108,556	8,646
60736	KDRV	519,706	440,002	3,432
61064	KDSD–TV	64,314	59,635	465
53329	KDSE	42,896	41,432	323
56527	KDSM–TV	1,096,220	1,095,478	8,544
49326	KDTN	6,602,327	6,600,186	51,475
83491	KDTP	26,564	24,469	191
33778	KDTV–DT	7,959,349	7,129,638	55,604
67910	KDTX–TV	6,680,738	6,679,424	52,093
126	KDVR	3,644,912	3,521,884	27,467
18084	KECI–TV	211,745	193,803	1,511
51208	KECY–TV	399,372	394,379	3,076
58408	KEDT	513,683	513,683	4,006
55435	KEET	177,313	159,960	1,248
37103	KEKE	97,959	94,560	737
41983	KELO–TV	705,364	646,126	5,039
34440	KEMO–TV	8,270,858	7,381,656	57,570
2777	KEMV	619,889	559,135	4,361
26304	KENS	2,544,094	2,529,382	19,727
63845	KENV–DT	47,220	40,677	317
18338	KENW	87,017	87,017	679
50591	KEPB–TV	576,964	523,655	4,084
56029	KEPR–TV	453,259	433,260	3,379
49324	KERA–TV	6,681,083	6,677,852	52,081
40878	KERO–TV	1,285,357	1,164,979	9,086
61067	KESD–TV	166,018	159,195	1,242
25577	KESQ–TV	1,334,172	572,057	4,461
50205	KETA–TV	1,702,441	1,688,227	13,166
62182	KETC	2,913,924	2,911,313	22,705
37101	KETD	3,323,570	3,285,231	25,622
2768	KETG	426,883	409,511	3,194
12895	KETH–TV	6,088,821	6,088,677	47,486
55643	KETK–TV	1,031,567	1,030,122	8,034
2770	KETS	1,185,111	1,166,796	9,100
53903	KETV	1,355,238	1,350,292	10,531
92872	KETZ	526,890	523,877	4,086
68853	KEYC–TV	544,900	531,079	4,142

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
33691	KEYE–TV	2,732,257	2,652,529	20,687
60637	KEYT–TV	1,419,564	1,239,577	9,667
83715	KEYU	339,348	339,302	2,646
34406	KEZI	1,113,171	1,065,880	8,313
34412	KFBB–TV	93,519	91,964	717
125	KFCT	795,114	788,747	6,151
51466	KFDA–TV	385,064	383,977	2,995
22589	KFDM	732,665	732,588	5,713
65370	KFDX–TV	381,703	381,318	2,974
49264	KFFV	4,020,926	3,987,153	31,096
12729	KFFX–TV	409,952	403,692	3,148
83992	KFJX	689,090	663,506	5,175
42122	KFMB–TV	3,947,735	3,699,981	28,856
53321	KFME	393,045	392,472	3,061
74256	KFNB	80,382	79,842	623
21613	KFNE	54,988	54,420	424
21612	KFNR	10,988	10,965	86
66222	KFOR–TV	1,616,459	1,615,614	12,600
33716	KFOX–TV	1,023,999	1,018,549	7,944
41517	KFPH–DT	347,579	282,838	2,206
81509	KFPX–TV	963,969	963,846	7,517
31597	KFQX	186,473	163,637	1,276
59013	KFRE–TV	1,721,275	1,705,484	13,301
51429	KFSF–DT	7,348,828	6,528,430	50,915
66469	KFSM–TV	906,728	884,919	6,901
8620	KFSN–TV	1,836,607	1,819,585	14,191
29560	KFTA–TV	818,859	809,173	6,311
83714	KFTC	61,990	61,953	483
60537	KFTH–DT	6,080,688	6,080,373	47,421
60549	KFTR–DT	17,560,679	16,305,726	127,168
61335	KFTS	74,936	65,126	508
81441	KFTU–DT	113,876	109,731	856
34439	KFTV–DT	1,794,984	1,779,917	13,882
664	KFVE	82,902	73,553	574
592	KFVS–TV	895,871	873,777	6,815
29015	KFWD	6,666,428	6,660,565	51,946
35336	KFXA	875,538	874,070	6,817
17625	KFXB–TV	373,280	368,466	2,874
70917	KFXK–TV	934,043	931,791	7,267
84453	KFXL–TV	862,531	854,678	6,666
56079	KFXV	1,225,732	1,225,732	9,559
41427	KFYR–TV	130,881	128,301	1,001
25685	KGAN	1,083,213	1,057,597	8,248
34457	KGBT–TV	1,239,001	1,238,870	9,662
7841	KGCW	949,575	945,476	7,374
24485	KGEB	1,186,225	1,150,201	8,970
34459	KGET–TV	917,927	874,332	6,819
53320	KGFE	114,564	114,564	893
7894	KGIN	230,535	228,338	1,781
83945	KGLA–DT	1,636,922	1,636,922	12,766
34445	KGMB	953,398	851,088	6,638
58608	KGMC	1,936,675	1,914,168	14,929
36914	KGMD–TV	94,323	93,879	732
36920	KGMV	193,564	162,230	1,265
10061	KGNS–TV	267,236	259,548	2,024
34470	KGO–TV	8,637,074	7,929,294	61,841
56034	KGPE	1,699,131	1,682,082	13,119
81694	KGPX–TV	685,626	624,955	4,874
25511	KGTF	161,885	160,568	1,252
40876	KGTV	3,960,667	3,682,219	28,718
36918	KGUN–TV	1,398,527	1,212,484	9,456
34874	KGW	3,026,617	2,878,510	22,449
63177	KGWC–TV	80,475	80,009	624
63162	KGWL–TV	38,125	38,028	297
63166	KGWN–TV	469,467	440,388	3,435
63170	KGWR–TV	51,315	50,957	397
4146	KHAW–TV	95,204	94,851	740
60353	KHBS	631,770	608,052	4,742
27300	KHCE–TV	2,353,883	2,348,391	18,315
26431	KHET	959,060	944,568	7,367
21160	KHGI–TV	233,973	229,173	1,787

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
36917	KHII–TV	953,895	851,585	6,642
29085	KHIN	1,041,244	1,039,383	8,106
17688	KHME	181,345	179,706	1,402
47670	KHMT	175,601	170,957	1,333
47987	KHNE–TV	203,931	202,944	1,583
34867	KHNL	953,398	851,088	6,638
60354	KHOG–TV	765,360	702,984	5,483
4144	KHON–TV	953,207	886,431	6,913
34529	KHOU	6,083,315	6,081,936	47,433
4690	KHQA–TV	318,469	316,134	2,466
34537	KHQ–TV	822,371	774,821	6,043
30601	KHRR	1,227,847	1,166,890	9,101
34348	KHSD–TV	188,735	185,202	1,444
24508	KHSL–TV	625,904	608,850	4,748
69677	KHSV	2,059,794	2,020,045	15,754
64544	KHVO	94,226	93,657	730
23394	KIAH	6,099,694	6,099,297	47,568
34564	KICU–TV	8,233,041	7,174,316	55,952
56028	KIDK	305,509	302,535	2,359
58560	KIDY	116,614	116,596	909
53382	KIEM–TV	174,390	160,801	1,254
66258	KIFI–TV	324,422	320,118	2,497
16950	KIFR	2,180,045	2,160,460	16,849
10188	KIII	569,864	566,796	4,420
29095	KIIN	1,365,215	1,335,707	10,417
34527	KIKU	953,896	850,963	6,637
63865	KILM	17,256,205	15,804,489	123,259
56033	KIMA–TV	308,604	260,593	2,032
66402	KIMT	654,083	643,384	5,018
67089	KINC	2,002,066	1,920,903	14,981
34847	KING–TV	4,074,288	4,036,926	31,484
51708	KINT–TV	1,015,582	1,015,274	7,918
26249	KION–TV	2,400,317	855,808	6,674
62427	KIPT	171,405	170,455	1,329
66781	KIRO–TV	4,058,101	4,030,968	31,438
62430	KISU–TV	311,827	307,651	2,399
12896	KITU–TV	712,362	712,362	5,556
64548	KITV	953,207	839,906	6,550
59255	KIVI–TV	710,819	702,619	5,480
47285	KIXE–TV	467,518	428,118	3,339
13792	KJJC–TV	82,749	81,865	638
14000	KJLA	17,929,100	16,794,896	130,983
20015	KJNP–TV	98,403	98,097	765
53315	KJRE	16,187	16,170	126
59439	KJRH–TV	1,416,108	1,397,311	10,898
55364	KJRR	45,515	44,098	344
7675	KJTL	379,594	379,263	2,958
55031	KJTV–TV	406,283	406,260	3,168
13814	KJUD	31,229	30,106	235
36607	KJZZ–TV	2,388,965	2,209,183	17,229
83180	KKAI	953,400	919,742	7,173
58267	KKAP	957,786	923,172	7,200
24766	KKCO	206,018	172,628	1,346
35097	KKJB	629,939	624,784	4,873
22644	KKPX–TV	7,588,288	6,758,490	52,709
35037	KKTV	2,892,126	2,478,864	19,333
35042	KLAS–TV	2,094,297	1,940,030	15,130
52907	KLAX–TV	367,212	366,839	2,861
3660	KLBK–TV	387,783	387,743	3,024
65523	KLBY	31,102	31,096	243
38430	KLCS	17,129,650	15,689,832	122,365
77719	KLCW–TV	381,889	381,816	2,978
51479	KLDO–TV	250,832	250,832	1,956
37105	KLEI	175,045	138,087	1,077
56032	KLEW–TV	164,908	148,256	1,156
35059	KLFY–TV	1,355,890	1,355,409	10,571
54011	KLJB	1,027,104	1,012,309	7,895
11264	KLKN	1,161,979	1,122,111	8,751
52593	KLML	270,089	218,544	1,704
47975	KLNE–TV	123,324	123,246	961
38590	KLPA–TV	414,699	414,447	3,232

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
38588	KLPB–TV	749,053	749,053	5,842
749	KLRN	2,374,472	2,353,440	18,354
11951	KLRT–TV	1,171,678	1,152,541	8,989
8564	KLRU	2,614,658	2,575,518	20,086
8322	KLSR–TV	564,415	508,157	3,963
31114	KLST	199,067	169,551	1,322
24436	KLTJ	6,034,131	6,033,867	47,058
38587	KLTL–TV	423,574	423,574	3,303
38589	KLTM–TV	694,280	688,915	5,373
38591	KLTS–TV	947,141	944,257	7,364
68540	KLTV	1,069,690	1,051,361	8,200
12913	KLUJ–TV	1,195,751	1,195,751	9,326
57220	KLUZ–TV	1,079,718	1,019,302	7,950
11683	KLVX	2,044,150	1,936,083	15,100
82476	KLWB	1,065,748	1,065,748	8,312
40250	KLWY	541,043	538,231	4,198
64551	KMAU	213,060	188,953	1,474
51499	KMAX–TV	10,767,605	7,132,240	55,624
65686	KMBC–TV	2,506,035	2,504,622	19,534
35183	KMCB	69,357	66,203	516
41237	KMCC	2,064,592	2,010,262	15,678
42636	KMCI–TV	2,429,392	2,428,626	18,941
38584	KMCT–TV	267,004	266,880	2,081
22127	KMCY	71,797	71,793	560
162016	KMDE	35,409	35,401	276
26428	KMEB	221,810	203,470	1,587
39665	KMEG	708,748	704,130	5,492
35123	KMEX–DT	17,628,354	16,318,720	127,270
40875	KMGH–TV	3,815,224	3,574,344	27,876
35131	KMID	383,449	383,439	2,990
16749	KMIR–TV	2,760,914	730,764	5,699
63164	KMIZ	532,025	530,008	4,134
53541	KMLM–DT	293,290	293,290	2,287
52046	KMLU	711,951	708,107	5,523
47981	KMNE–TV	47,232	44,189	345
24753	KMOH–TV	199,885	184,283	1,437
4326	KMOS–TV	804,745	803,129	6,264
41425	KMOT	81,517	79,504	620
70034	KMOV	3,035,077	3,029,405	23,626
51488	KMPH–TV	1,754,037	1,717,555	13,395
73701	KMPX	6,678,829	6,674,706	52,056
44052	KMSB	1,321,614	1,039,442	8,107
68883	KMSP–TV	3,857,891	3,829,859	29,869
12525	KMSS–TV	1,067,838	1,066,106	8,315
43095	KMTP–TV	5,242,638	4,441,372	34,638
35189	KMTR	589,948	520,666	4,061
35190	KMTV–TV	1,346,549	1,344,796	10,488
77063	KMTW	761,521	761,516	5,939
35200	KMVT	184,647	176,351	1,375
32958	KMVU–DT	308,150	231,506	1,806
86534	KMYA–DT	200,764	200,725	1,565
51518	KMYS	2,273,888	2,267,913	17,687
54420	KMYT–TV	1,314,197	1,302,378	10,157
35822	KMYU	133,563	130,198	1,015
993	KNAT–TV	1,157,630	1,124,619	8,771
24749	KNAZ–TV	332,321	227,658	1,776
47906	KNBC	17,244,237	15,812,389	123,321
81464	KNBN	145,493	136,995	1,068
9754	KNCT	1,751,838	1,726,148	13,462
82611	KNDB	118,154	118,122	921
82615	KNDM	72,216	72,209	563
12395	KNDO	314,875	270,892	2,113
12427	KNDU	475,612	462,556	3,607
17683	KNEP	101,389	95,890	748
48003	KNHL	277,777	277,308	2,163
125710	KNIC–DT	2,398,296	2,383,294	18,587
59363	KNIN–TV	708,289	703,838	5,489
48525	KNLC	2,981,508	2,978,979	23,233
48521	KNLJ	655,000	642,705	5,012
84215	KNMD–TV	1,135,642	1,108,358	8,644
55528	KNME–TV	1,148,741	1,105,095	8,619

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
47707	KNMT	2,887,142	2,794,995	21,798
48975	KNOE–TV	733,097	729,703	5,691
49273	KNOP–TV	87,904	85,423	666
10228	KNPB	604,614	462,732	3,609
55362	KNRR	25,957	25,931	202
35277	KNSD	3,861,660	3,618,321	28,219
19191	KNSN–TV	611,981	459,485	3,584
23302	KNSO	1,824,786	1,803,796	14,068
35280	KNTV	8,525,818	8,027,505	62,607
144	KNVA	2,550,225	2,529,184	19,725
33745	KNVN	495,902	470,252	3,667
69692	KNVO	1,247,014	1,247,014	9,725
29557	KNWA–TV	822,906	804,682	6,276
59440	KNXV–TV	4,183,943	4,173,022	32,545
59014	KOAA–TV	1,608,528	1,203,731	9,388
50588	KOAB–TV	207,070	203,371	1,586
50590	KOAC–TV	1,957,282	1,543,401	12,037
58552	KOAM–TV	793,563	767,962	5,989
53928	KOAT–TV	1,132,372	1,105,116	8,619
35313	KOB	1,152,841	1,113,162	8,682
35321	KOBF	201,911	166,177	1,296
8260	KOBI	562,463	519,063	4,048
62272	KOBR	211,709	211,551	1,650
50170	KOCB	1,629,783	1,629,152	12,706
4328	KOCE–TV	17,446,133	16,461,581	128,384
84225	KOCM	1,434,325	1,433,605	11,181
12508	KOCO–TV	1,716,569	1,708,085	13,321
83181	KOCW	83,807	83,789	653
18283	KODE–TV	740,156	731,512	5,705
66195	KOED–TV	1,497,297	1,459,833	11,385
50198	KOET	658,606	637,640	4,973
51189	KOFY–TV	5,242,638	4,441,372	34,638
34859	KOGG	190,829	161,310	1,258
166534	KOHD	201,310	197,662	1,542
35380	KOIN	3,028,482	2,881,460	22,473
35388	KOKH–TV	1,627,116	1,625,246	12,675
11910	KOKI–TV	1,366,220	1,352,227	10,546
48663	KOLD–TV	1,216,228	887,754	6,924
7890	KOLN	1,421,223	1,337,970	10,435
63331	KOLO–TV	959,178	826,985	6,450
28496	KOLR	1,076,144	1,038,613	8,100
21656	KOMO–TV	4,132,260	4,087,435	31,878
65583	KOMU–TV	551,658	542,544	4,231
35396	KONG	3,998,831	3,981,688	31,053
60675	KOOD	113,416	113,285	884
50589	KOPB–TV	3,059,231	2,875,815	22,428
2566	KOPX–TV	1,501,110	1,500,883	11,705
64877	KORO	560,983	560,983	4,375
6865	KOSA–TV	340,978	338,070	2,637
34347	KOTA–TV	174,876	152,861	1,192
8284	KOTI	298,175	97,132	758
35434	KOTV–DT	1,417,753	1,403,838	10,949
56550	KOVR	10,784,477	7,162,989	55,864
51101	KOZJ	429,982	427,991	3,338
51102	KOZK	839,841	834,308	6,507
3659	KOZL–TV	992,495	963,281	7,513
35455	KPAX–TV	206,895	193,201	1,507
67868	KPAZ–TV	4,190,080	4,176,323	32,571
6124	KPBS	3,584,237	3,463,189	27,009
50044	KPBT–TV	340,080	340,080	2,652
77452	KPCB–DT	30,861	30,835	240
35460	KPDX	2,970,703	2,848,423	22,215
12524	KPEJ–TV	368,212	368,208	2,872
41223	KPHO–TV	4,195,073	4,175,139	32,562
61551	KPIC	156,687	105,807	825
86205	KPIF	265,080	258,174	2,013
25452	KPIX–TV	8,226,463	7,360,625	57,406
58912	KPJK	7,884,411	6,955,179	54,243
166510	KPJR–TV	3,402,088	3,372,831	26,305
13994	KPLC	1,406,085	1,403,853	10,949
41964	KPLO–TV	55,827	52,765	412

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
35417	KPLR–TV	2,991,598	2,988,106	23,304
12144	KPMR	1,731,370	1,473,251	11,490
47973	KPNE–TV	92,675	89,021	694
35486	KPNX	4,180,982	4,176,442	32,572
77512	KPNZ	2,394,311	2,208,707	17,226
73998	KPOB–TV	144,525	143,656	1,120
26655	KPPX–TV	4,186,998	4,171,450	32,533
53117	KPRC–TV	6,099,422	6,099,076	47,567
48660	KPRY–TV	42,521	42,426	331
61071	KPSD–TV	19,886	18,799	147
53544	KPTB–DT	322,780	320,646	2,501
81445	KPTF–DT	84,512	84,512	659
77451	KPTH	660,556	655,373	5,111
51491	KPTM	1,405,533	1,404,364	10,953
33345	KPTS	832,000	827,866	6,457
50633	KPTV	2,998,460	2,847,263	22,206
82575	KPTW	89,433	82,522	644
1270	KPVI–DT	271,379	264,204	2,061
58835	KPXB–TV	6,062,458	6,062,238	47,279
68695	KPXC–TV	3,362,518	3,341,951	26,064
68834	KPXD–TV	6,555,157	6,553,373	51,110
33337	KPXE–TV	2,437,178	2,436,024	18,999
5801	KPXG–TV	3,026,219	2,882,598	22,481
81507	KPXJ	1,138,632	1,135,626	8,857
61173	KPXL–TV	2,257,007	2,243,520	17,497
35907	KPXM–TV	3,507,312	3,506,503	27,347
58978	KPXN–TV	17,256,205	15,804,489	123,259
77483	KPXO–TV	953,329	913,341	7,123
21156	KPXR–TV	828,915	821,250	6,405
10242	KQCA	10,077,891	6,276,197	48,948
41430	KQCD–TV	35,623	33,415	261
18287	KQCK	3,216,059	3,185,307	24,842
78322	KQCW–DT	1,128,198	1,123,324	8,761
35525	KQDS–TV	304,935	301,439	2,351
35500	KQED	8,195,398	7,283,828	56,807
35663	KQEH	8,195,398	7,283,828	56,807
8214	KQET	2,981,040	2,076,157	16,192
5471	KQIN	596,371	596,277	4,650
17686	KQME	188,783	184,719	1,441
61063	KQSD–TV	32,526	31,328	244
8378	KQSL	199,123	142,419	1,111
20427	KQTV	1,494,987	1,401,160	10,928
78921	KQUP	697,016	551,824	4,304
306	KRBC–TV	229,395	229,277	1,788
166319	KRBK	983,888	966,187	7,535
22161	KRCA	17,540,791	16,957,292	132,250
57945	KRCB	8,783,441	8,503,802	66,321
41110	KRCG	737,927	722,255	5,633
8291	KRCR–TV	423,000	402,594	3,140
10192	KRCW–TV	2,966,912	2,842,523	22,169
49134	KRDK–TV	349,941	349,929	2,729
52579	KRDO–TV	2,622,603	2,272,383	17,722
70578	KREG–TV	149,306	95,141	742
34868	KREM	817,619	752,113	5,866
51493	KREN–TV	810,039	681,212	5,313
70596	KREX–TV	145,700	145,606	1,136
70579	KREY–TV	74,963	65,700	512
48589	KREZ–TV	148,079	105,121	820
43328	KRGV–TV	1,247,057	1,247,029	9,726
82698	KRII	133,840	132,912	1,037
29114	KRIN	949,313	923,735	7,204
25559	KRIS–TV	565,112	565,044	4,407
22204	KRIV	6,078,936	6,078,846	47,409
14040	KRMA–TV	3,722,512	3,564,949	27,803
14042	KRMJ	174,094	159,511	1,244
20476	KRMT	2,956,144	2,864,236	22,338
84224	KRMU	85,274	72,499	565
20373	KRMZ	36,293	33,620	262
47971	KRNE–TV	47,473	38,273	298
60307	KRNV–DT	955,490	792,543	6,181
65526	KRON–TV	8,573,167	8,028,256	62,612

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
53539	KRPV–DT	65,943	65,943	514
48575	KRQE	1,135,461	1,105,093	8,619
57431	KRSU–TV	1,000,289	998,310	7,786
82613	KRTN–TV	84,231	68,550	535
35567	KRTV	92,645	90,849	709
84157	KRWB–TV	111,538	110,979	866
35585	KRWF	85,596	85,596	668
55516	KRWG–TV	894,492	661,703	5,161
48360	KRXI–TV	725,391	548,865	4,281
307	KSAN–TV	135,063	135,051	1,053
11911	KSAS–TV	752,513	752,504	5,869
53118	KSAT–TV	2,539,658	2,502,246	19,515
35584	KSAX	365,209	365,209	2,848
35587	KSAZ–TV	4,203,126	4,178,448	32,588
38214	KSBI	1,577,231	1,575,865	12,290
19653	KSBW	5,083,461	4,429,165	34,543
19654	KSBY	535,029	495,562	3,865
82910	KSCC	517,740	517,740	4,038
10202	KSCE	1,015,148	1,010,581	7,882
35608	KSCI	17,446,133	16,461,581	128,384
72348	KSCW–DT	915,691	910,511	7,101
46981	KSDK	2,986,776	2,979,047	23,234
35594	KSEE	1,761,193	1,746,282	13,619
48658	KSFY–TV	670,536	607,844	4,741
17680	KSGW–TV	62,178	57,629	449
59444	KSHB–TV	2,432,205	2,431,273	18,961
73706	KSHV–TV	943,947	942,978	7,354
29096	KSIN–TV	340,143	338,811	2,642
34846	KSIX–TV	74,884	74,884	584
35606	KSKN	731,818	643,590	5,019
70482	KSLA	1,017,556	1,016,667	7,929
6359	KSL–TV	2,390,742	2,206,920	17,212
71558	KSMN	320,813	320,808	2,502
33336	KSMO–TV	2,401,201	2,398,686	18,707
28510	KSMQ–TV	524,391	507,983	3,962
35611	KSMS–TV	1,589,263	882,948	6,886
21161	KSNB–TV	664,079	662,726	5,169
72359	KSNC	174,135	173,744	1,355
67766	KSNF	621,919	617,868	4,819
72361	KSNG	145,058	144,822	1,129
72362	KSNK	48,715	45,414	354
67335	KSNT	622,818	594,604	4,637
10179	KSNV	1,967,781	1,919,296	14,969
72358	KSNW	791,403	791,127	6,170
61956	KSPS–TV	819,101	769,852	6,004
52953	KSPX–TV	7,078,228	5,275,946	41,147
166546	KSQA	382,328	374,290	2,919
53313	KSRE	75,181	75,181	586
35843	KSTC–TV	3,843,788	3,835,674	29,914
63182	KSTF	51,317	51,122	399
28010	KSTP–TV	3,788,898	3,782,053	29,496
60534	KSTR–DT	6,632,577	6,629,296	51,702
64987	KSTS	8,363,473	7,264,852	56,659
22215	KSTU	2,384,996	2,201,716	17,171
23428	KSTW	4,265,956	4,186,266	32,649
5243	KSVI	175,390	173,667	1,354
58827	KSWB–TV	3,677,190	3,488,655	27,208
60683	KSWK	79,012	78,784	614
35645	KSWO–TV	483,132	458,057	3,572
61350	KSYS	519,209	443,204	3,457
59988	KTAB–TV	274,707	274,536	2,141
999	KTAJ–TV	2,343,843	2,343,227	18,275
35648	KTAL–TV	1,094,332	1,092,958	8,524
12930	KTAS	471,882	464,149	3,620
81458	KTAZ	4,182,503	4,160,481	32,448
35649	KTBC	3,242,215	2,956,614	23,059
67884	KTBN–TV	17,929,445	16,750,096	130,634
67999	KTBO–TV	1,585,293	1,583,553	12,350
35652	KTBS–TV	1,163,228	1,159,665	9,044
28324	KTBU	6,035,927	6,035,725	47,073
67950	KTBW–TV	4,202,104	4,108,031	32,039

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
35655	KTBY	348,080	346,562	2,703
68594	KTCA–TV	3,693,877	3,684,081	28,732
68597	KTCI–TV	3,606,606	3,597,183	28,054
35187	KTCW	103,341	89,207	696
36916	KTDO	1,015,336	1,010,771	7,883
2769	KTEJ	419,750	417,368	3,255
83707	KTEL–TV	52,878	52,875	412
35666	KTEN	602,788	599,778	4,678
24514	KTFD–TV	3,210,669	3,172,543	24,743
35512	KTFF–DT	2,225,169	2,203,398	17,184
20871	KTFK–DT	6,969,307	5,211,719	40,646
68753	KTFN	1,017,335	1,013,157	7,902
35084	KTFQ–TV	1,151,433	1,117,061	8,712
29232	KTGM	159,358	159,091	1,241
2787	KTHV	1,275,053	1,246,348	9,720
29100	KTIN	281,096	279,385	2,179
66170	KTIV	751,089	746,274	5,820
49397	KTKA–TV	759,369	746,370	5,821
35670	KTLA	18,156,910	16,870,262	131,571
62354	KTLM	1,044,526	1,044,509	8,146
49153	KTLN–TV	5,381,955	4,740,894	36,974
64984	KTMD	6,095,741	6,095,606	47,540
14675	KTMF	187,251	168,526	1,314
10177	KTMW	2,261,671	2,144,791	16,727
21533	KTNC–TV	8,270,858	7,381,656	57,570
47996	KTNE–TV	100,341	95,324	743
60519	KTNL–TV	8,642	8,642	67
74100	KTNV–TV	2,094,506	1,936,752	15,105
71023	KTNW	450,926	432,398	3,372
8651	KTOO–TV	31,269	31,176	243
7078	KTPX–TV	1,066,196	1,063,754	8,296
68541	KTRE	441,879	421,406	3,287
35675	KTRK–TV	6,114,259	6,112,870	47,674
28230	KTRV–TV	714,833	707,557	5,518
69170	KTSC	3,124,536	2,949,795	23,005
61066	KTSD–TV	83,645	82,828	646
37511	KTSF	7,959,349	7,129,638	55,604
67760	KTSM–TV	1,015,348	1,011,264	7,887
35678	KTTC	815,213	731,919	5,708
28501	KTTM	76,133	73,664	575
11908	KTTU	1,324,801	1,060,613	8,272
22208	KTTV	17,380,551	16,693,085	130,189
28521	KTTW	329,633	326,405	2,546
65355	KTTZ–TV	380,240	380,225	2,965
35685	KTUL	1,416,959	1,388,183	10,826
10173	KTUU–TV	380,240	379,047	2,956
77480	KTUZ–TV	1,668,531	1,666,026	12,993
49632	KTVA	342,517	342,300	2,670
34858	KTVB	714,865	707,882	5,521
31437	KTVC	137,239	100,204	781
68581	KTVD	3,800,970	3,547,607	27,668
35692	KTVE	641,139	640,201	4,993
49621	KTVF	98,068	97,929	764
5290	KTVH–DT	228,832	184,264	1,437
35693	KTVI	2,995,764	2,991,513	23,331
40993	KTVK	4,184,825	4,173,028	32,545
22570	KTVL	419,849	369,469	2,881
18066	KTVM–TV	260,105	217,694	1,698
59139	KTVN	955,490	800,420	6,242
21251	KTVO	227,128	226,616	1,767
35694	KTVQ	179,797	173,271	1,351
50592	KTVR	147,808	54,480	425
23422	KTVT	6,912,366	6,908,715	53,881
35703	KTVU	8,297,634	7,406,751	57,765
35705	KTVW–DT	4,174,310	4,160,877	32,451
68889	KTVX	2,389,392	2,200,520	17,162
55907	KTVZ	201,828	198,558	1,549
18286	KTWO–TV	80,426	79,905	623
70938	KTWU	1,703,798	1,562,305	12,184
51517	KTXA	6,915,461	6,911,822	53,905
42359	KTXD–TV	6,706,651	6,704,781	52,291

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
51569	KTXH	6,092,627	6,092,442	47,515
10205	KTXL	8,306,449	5,896,320	45,985
308	KTXS–TV	247,603	246,760	1,924
69315	KUAC–TV	98,717	98,189	766
51233	KUAM–TV	159,358	159,358	1,243
2722	KUAS–TV	994,802	977,391	7,623
2731	KUAT–TV	1,485,024	1,253,342	9,775
60520	KUBD	14,817	13,363	104
70492	KUBE–TV	6,090,970	6,090,817	47,502
1136	KUCW	2,388,889	2,199,787	17,156
69396	KUED	2,388,995	2,203,093	17,182
69582	KUEN	2,364,481	2,184,483	17,037
82576	KUES	30,925	25,978	203
82585	KUEW	132,168	120,411	939
66611	KUFM–TV	187,680	166,697	1,300
169028	KUGF–TV	86,622	85,986	671
68717	KUHM–TV	154,836	145,241	1,133
69269	KUHT	6,080,222	6,078,866	47,409
62382	KUID–TV	432,855	284,023	2,215
169027	KUKL–TV	124,505	115,844	903
35724	KULR–TV	177,242	170,142	1,327
41429	KUMV–TV	41,607	41,224	322
81447	KUNP	130,559	43,472	339
4624	KUNS–TV	4,027,849	4,015,626	31,318
86532	KUOK	28,974	28,945	226
66589	KUON–TV	1,375,257	1,360,005	10,607
86263	KUPB	318,914	318,914	2,487
65535	KUPK	149,642	148,180	1,156
27431	KUPT	87,602	87,602	683
89714	KUPU	956,178	948,005	7,393
57884	KUPX–TV	2,374,672	2,191,229	17,089
23074	KUSA	3,802,407	3,560,546	27,769
61072	KUSD–TV	460,480	460,277	3,590
10238	KUSI–TV	3,572,818	3,435,670	26,795
43567	KUSM–TV	122,678	109,830	857
69694	KUTF	1,210,774	1,031,870	8,048
81451	KUTH–DT	2,219,788	2,027,174	15,810
68886	KUTP	4,191,015	4,176,014	32,569
35823	KUTV	2,388,625	2,199,731	17,156
63927	KUVE–DT	1,294,971	964,396	7,521
7700	KUVI–DT	1,204,490	1,009,943	7,877
35841	KUVN–DT	6,680,126	6,678,157	52,083
58609	KUVS–DT	4,043,413	4,005,657	31,240
49766	KVAL–TV	1,016,673	866,173	6,755
32621	KVAW	76,153	76,153	594
58795	KVCR–DT	18,215,524	17,467,140	136,226
35846	KVCT	288,221	287,446	2,242
10195	KVCW	1,967,550	1,918,809	14,965
64969	KVDA	2,566,563	2,548,720	19,877
19783	KVEA	17,538,249	16,335,335	127,399
12523	KVEO–TV	1,244,504	1,244,504	9,706
2495	KVEW	476,720	464,347	3,621
35852	KVHP	747,917	747,837	5,832
49832	KVIA–TV	1,015,350	1,011,266	7,887
35855	KVIE	10,759,440	7,467,369	58,238
40450	KVIH–TV	91,912	91,564	714
40446	KVII–TV	379,042	378,218	2,950
61961	KVLY–TV	362,850	362,838	2,830
16729	KVMD	15,274,297	14,512,400	113,182
83825	KVME–TV	26,711	22,802	178
25735	KVOA	1,317,956	1,030,404	8,036
35862	KVOS–TV	2,202,674	2,131,652	16,625
69733	KVPT	1,744,349	1,719,318	13,409
55372	KVRR	356,645	356,645	2,781
166331	KVSN–DT	2,706,244	2,283,409	17,808
608	KVTH–DT	303,755	299,230	2,334
2784	KVTJ–DT	1,466,426	1,465,802	11,432
607	KVTN–DT	936,328	925,884	7,221
35867	KVUE	2,661,290	2,611,314	20,366
78910	KVUI	257,964	251,872	1,964
35870	KVVU–TV	2,045,255	1,935,583	15,096

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
36170	KVYE	396,495	392,498	3,061
35095	KWBA–TV	1,129,524	1,073,029	8,369
78314	KWBM	657,822	639,560	4,988
27425	KWBN	953,207	840,455	6,555
76268	KWBQ	1,149,598	1,107,211	8,635
66413	KWCH–DT	883,647	881,674	6,876
71549	KWCM–TV	252,284	244,033	1,903
35419	KWDK	4,194,152	4,117,852	32,115
42007	KWES–TV	424,854	423,536	3,303
50194	KWET	127,976	112,750	879
35881	KWEX–DT	2,376,463	2,370,469	18,487
35883	KWGN–TV	3,706,455	3,513,537	27,402
37099	KWHB	979,393	978,719	7,633
36846	KWHE	952,966	834,341	6,507
26231	KWHY–TV	17,736,497	17,695,306	138,006
35096	KWKB	1,121,676	1,111,629	8,670
162115	KWKS	39,708	39,323	307
12522	KWKT–TV	1,299,675	1,298,478	10,127
21162	KWNB–TV	91,093	89,332	697
67347	KWOG	512,412	505,049	3,939
56852	KWPX–TV	4,220,008	4,148,577	32,355
6885	KWQC–TV	1,063,507	1,054,618	8,225
29121	KWSD	280,675	280,672	2,189
53318	KWSE	54,471	53,400	416
71024	KWSU–TV	725,554	468,295	3,652
25382	KWTV–DT	1,628,106	1,627,198	12,691
35903	KWTX–TV	2,071,023	1,972,365	15,382
593	KWWL	1,089,498	1,078,458	8,411
84410	KWWT	293,291	293,291	2,287
14674	KWYB	86,495	69,598	543
10032	KWYP–DT	148,473	133,470	1,041
35920	KXAN–TV	2,678,666	2,624,648	20,470
49330	KXAS–TV	6,774,295	6,771,827	52,813
24287	KXGN–TV	14,217	13,883	108
35954	KXII	2,323,974	2,264,951	17,664
55083	KXLA	17,929,100	16,794,896	130,983
35959	KXLF–TV	258,100	217,808	1,699
53847	KXLN–DT	6,085,891	6,085,712	47,462
35906	KXLT–TV	348,025	347,296	2,709
61978	KXLY–TV	772,116	740,960	5,779
55684	KXMA–TV	32,005	31,909	249
55686	KXMB–TV	142,755	138,506	1,080
55685	KXMC–TV	97,569	89,483	698
55683	KXMD–TV	37,962	37,917	296
47995	KXNE–TV	305,839	304,682	2,376
81593	KXNW	602,168	597,747	4,662
35991	KXRM–TV	1,843,363	1,500,689	11,704
1255	KXTF	140,746	140,312	1,094
25048	KXTV	10,759,864	7,477,140	58,314
35994	KXTX–TV	6,721,578	6,718,616	52,398
62293	KXVA	185,478	185,276	1,445
23277	KXVO	1,397,072	1,396,085	10,888
9781	KXXV	1,771,620	1,748,287	13,635
31870	KYAZ	6,038,257	6,038,071	47,091
29086	KYIN	581,748	574,691	4,482
60384	KYLE–TV	323,330	323,225	2,521
33639	KYMA–DT	396,278	391,619	3,054
47974	KYNE–TV	980,094	979,887	7,642
53820	KYOU–TV	651,334	640,935	4,999
36003	KYTV	1,095,904	1,083,524	8,450
55644	KYTX	927,327	925,550	7,218
13815	KYUR	379,943	379,027	2,956
5237	KYUS–TV	12,496	12,356	96
33752	KYVE	301,951	259,559	2,024
55762	KYVV–TV	67,201	67,201	524
25453	KYW–TV	11,212,189	11,008,413	85,855
69531	KZJL	6,037,458	6,037,272	47,085
69571	KZJO	4,147,016	4,097,776	31,959
61062	KZSD–TV	41,207	35,825	279
33079	KZTV	567,635	564,464	4,402
57292	WAAY–TV	1,531,377	1,452,612	11,329

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
1328	WABC–TV	20,948,273	20,560,001	160,347
4190	WABE–TV	5,308,575	5,291,523	41,269
43203	WABG–TV	393,020	392,348	3,060
17005	WABI–TV	530,773	510,729	3,983
16820	WABM	1,772,367	1,742,240	13,588
23917	WABW–TV	1,097,560	1,096,376	8,551
19199	WACH	1,403,222	1,400,385	10,922
189358	WACP	9,415,263	9,301,049	72,539
23930	WACS–TV	786,536	783,207	6,108
60018	WACX	4,292,829	4,288,149	33,443
361	WACY–TV	946,580	946,071	7,378
455	WADL	4,610,065	4,606,521	35,926
589	WAFB	1,857,882	1,857,418	14,486
591	WAFF	1,527,517	1,456,436	11,359
70689	WAGA–TV	6,000,355	5,923,191	46,195
48305	WAGM–TV	64,721	63,331	494
37809	WAGV	1,614,321	1,282,063	9,999
706	WAIQ	611,733	609,794	4,756
701	WAKA	799,637	793,645	6,190
4143	WALA–TV	1,320,419	1,318,127	10,280
70713	WALB	773,899	772,467	6,024
60536	WAMI–DT	5,449,193	5,449,193	42,498
70852	WAND	1,388,118	1,386,074	10,810
39270	WANE–TV	1,146,442	1,146,442	8,941
72120	WANF	6,027,276	5,961,471	46,494
52280	WAOE	2,963,253	2,907,224	22,673
64546	WAOW	636,957	629,068	4,906
52073	WAPA–TV[27]	3,759,648	2,784,044	21,713
49712	WAPT	793,621	791,620	6,174
67792	WAQP	2,135,670	2,131,399	16,623
13206	WATC–DT	5,732,204	5,705,819	44,500
71082	WATE–TV	1,874,433	1,638,059	12,775
22819	WATL	5,882,837	5,819,099	45,383
20287	WATM–TV	893,989	749,183	5,843
11907	WATN–TV	1,787,595	1,784,560	13,918
13989	WAVE	1,891,797	1,880,563	14,667
71127	WAVY–TV	2,080,708	2,080,691	16,227
54938	WAWD	579,079	579,023	4,516
65247	WAWV–TV	705,790	700,361	5,462
12793	WAXN–TV	2,677,951	2,669,224	20,817
65696	WBAL–TV	9,743,335	9,344,875	72,881
74417	WBAY–TV	1,226,036	1,225,443	9,557
71085	WBBH–TV	2,017,267	2,017,267	15,733
65204	WBBJ–TV	662,148	658,839	5,138
9617	WBBM–TV	9,914,233	9,907,806	77,271
9088	WBBZ–TV	1,269,256	1,260,686	9,832
70138	WBDT	3,831,757	3,819,550	29,789
51349	WBEC–TV	5,421,355	5,421,355	42,281
10758	WBFF	8,523,983	8,381,042	65,364
12497	WBFS–TV	5,349,613	5,349,613	41,722
6568	WBGU–TV	1,343,816	1,343,816	10,480
81594	WBIF	309,707	309,707	2,415
84802	WBIH	718,439	706,994	5,514
717	WBIQ	1,563,080	1,532,266	11,950
46984	WBIR–TV	1,978,347	1,701,857	13,273
67048	WBKB–TV	136,823	130,625	1,019
34167	WBKI	2,104,090	2,085,393	16,264
4692	WBKO	963,413	862,651	6,728
76001	WBKP	55,655	55,305	431
68427	WBMM	562,284	562,123	4,384
73692	WBNA	1,699,683	1,666,248	12,995
23337	WBNG–TV	1,435,634	1,051,932	8,204
71217	WBNS–TV	2,847,721	2,784,795	21,719
72958	WBNX–TV	3,639,256	3,630,531	28,315
71218	WBOC–TV	813,888	813,888	6,348
71220	WBOY–TV	711,302	621,367	4,846
60850	WBPH–TV	10,613,847	9,474,797	73,894
7692	WBPX–TV	6,833,712	6,761,949	52,736
5981	WBRA–TV	1,726,408	1,677,204	13,081
71221	WBRC	1,884,007	1,849,135	14,421
71225	WBRE–TV	2,879,196	2,244,735	17,507

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
38616	WBRZ–TV	2,223,336	2,222,309	17,332
82627	WBSF	1,836,543	1,832,446	14,291
30826	WBTV	4,433,795	4,296,893	33,511
66407	WBTW	1,975,457	1,959,172	15,280
16363	WBUI	981,884	981,868	7,658
59281	WBUP	126,472	112,603	878
60830	WBUY–TV	1,569,254	1,567,815	12,227
72971	WBXX–TV	2,142,759	1,984,544	15,477
25456	WBZ–TV	7,960,556	7,730,847	60,293
63153	WCAU	11,269,831	11,098,540	86,558
363	WCAV	1,032,270	874,886	6,823
46728	WCAX–TV	784,748	665,685	5,192
39659	WCBB	964,079	910,222	7,099
10587	WCBD–TV	1,149,489	1,149,489	8,965
12477	WCBI–TV	680,511	678,424	5,291
9610	WCBS–TV	22,087,789	21,511,236	167,766
49157	WCCB	3,642,232	3,574,928	27,881
9629	WCCO–TV	3,862,571	3,855,451	30,069
14050	WCCT–TV	5,818,471	5,307,612	41,394
69544	WCCU	694,550	693,317	5,407
3001	WCCV–TV	3,391,703	2,062,994	16,089
23937	WCES–TV	1,098,868	1,097,706	8,561
65666	WCET	3,123,290	3,110,519	24,259
46755	WCFE–TV	459,417	419,756	3,274
71280	WCHS–TV	1,352,824	1,274,766	9,942
42124	WCIA	834,084	833,547	6,501
711	WCIQ	3,186,320	3,016,907	23,529
71428	WCIU–TV	10,052,136	10,049,244	78,374
9015	WCIV	1,152,800	1,152,800	8,991
42116	WCIX	554,002	549,911	4,289
16993	WCJB–TV	977,492	977,492	7,623
11125	WCLF	4,097,389	4,096,624	31,950
68007	WCLJ–TV	2,305,723	2,303,534	17,965
50781	WCMH–TV	2,756,260	2,712,989	21,159
9917	WCML	233,439	224,255	1,749
9908	WCMU–TV	707,702	699,551	5,456
9922	WCMV	425,499	411,288	3,208
9913	WCMW	106,975	104,859	818
32326	WCNC–TV	3,883,049	3,809,706	29,712
53734	WCNY–TV	1,342,821	1,279,429	9,978
73642	WCOV–TV	889,102	884,417	6,898
40618	WCPB	567,809	567,809	4,428
59438	WCPO–TV	3,330,885	3,313,654	25,843
10981	WCPX–TV	9,753,235	9,751,916	76,055
71297	WCSC–TV	1,028,018	1,028,018	8,018
39664	WCSH	1,755,325	1,548,824	12,079
69479	WCTE	612,760	541,314	4,222
18334	WCTI–TV	1,688,065	1,685,638	13,146
31590	WCTV	1,065,524	1,065,464	8,310
33081	WCTX	7,844,936	7,332,431	57,186
65684	WCVB–TV	7,780,868	7,618,496	59,417
9987	WCVE–TV	1,721,004	1,712,249	13,354
83304	WCVI–TV	50,601	50,495	394
34204	WCVN–TV	2,129,816	2,120,349	16,537
9989	WCVW	1,505,484	1,505,330	11,740
73042	WCWF	1,131,390	1,130,818	8,819
35385	WCWG	3,630,551	3,299,114	25,730
29712	WCWJ	1,661,270	1,661,132	12,955
73264	WCWN	1,909,223	1,621,751	12,648
2455	WCYB–TV	2,363,002	2,057,404	16,046
11291	WDAF–TV	2,539,581	2,537,411	19,789
21250	WDAM–TV	512,594	500,343	3,902
22129	WDAY–TV	339,239	338,856	2,643
22124	WDAZ–TV	151,720	151,659	1,183
71325	WDBB	1,792,728	1,762,643	13,747
71326	WDBD	940,665	939,489	7,327
71329	WDBJ	1,626,017	1,435,762	11,198
51567	WDCA	8,101,358	8,049,329	62,777
16530	WDCQ–TV	1,269,199	1,269,199	9,898
30576	WDCW	8,155,998	8,114,847	63,288
54385	WDEF–TV	1,730,762	1,530,403	11,936

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
32851	WDFX–TV	271,499	270,942	2,113
43846	WDHN	452,377	451,978	3,525
71338	WDIO–DT	341,506	327,469	2,554
714	WDIQ	663,062	620,124	4,836
53114	WDIV–TV	5,450,318	5,450,174	42,506
71427	WDJT–TV	3,267,652	3,256,507	25,397
39561	WDKA	658,699	658,277	5,134
64017	WDKY–TV	1,204,817	1,173,579	9,153
67893	WDLI–TV	4,147,298	4,114,920	32,092
72335	WDPB	596,888	596,888	4,655
83740	WDPM–DT	1,365,977	1,364,744	10,644
1283	WDPN–TV	11,594,463	11,467,616	89,436
6476	WDPX–TV	6,833,712	6,761,949	52,736
28476	WDRB	2,054,813	2,037,086	15,887
12171	WDSC–TV	3,389,559	3,389,559	26,435
17726	WDSE	330,994	316,643	2,469
71353	WDSI–TV	1,100,302	1,042,191	8,128
71357	WDSU	1,649,083	1,649,083	12,861
7908	WDTI	2,092,242	2,091,941	16,315
65690	WDTN	3,831,757	3,819,550	29,789
70592	WDTV	566,592	524,961	4,094
25045	WDVM–TV	3,074,837	2,646,508	20,640
4110	WDWL	2,638,361	1,977,410	15,422
49421	WEAO	3,960,217	3,945,408	30,770
71363	WEAR–TV	1,520,973	1,520,386	11,857
7893	WEAU	1,006,393	971,050	7,573
61003	WEBA–TV	641,354	632,282	4,931
19561	WECN	2,886,669	2,157,288	16,825
48666	WECT	1,156,807	1,156,807	9,022
13602	WEDH	5,328,800	4,724,167	36,844
13607	WEDN	3,451,170	2,643,344	20,615
69338	WEDQ	5,379,887	5,365,612	41,846
21808	WEDU	5,379,887	5,365,612	41,846
13594	WEDW	5,996,408	5,544,708	43,243
13595	WEDY	5,328,800	4,724,167	36,844
24801	WEEK–TV	752,596	752,539	5,869
6744	WEFS	3,380,743	3,380,743	26,366
24215	WEHT	857,558	844,070	6,583
721	WEIQ	1,055,632	1,055,193	8,229
18301	WEIU–TV	458,480	458,416	3,575
69271	WEKW–TV	1,263,049	773,108	6,029
60825	WELF–TV	1,477,691	1,387,044	10,818
26602	WELU	2,315,163	1,721,317	13,425
40761	WEMT	1,726,085	1,186,706	9,255
69237	WENH–TV	4,500,498	4,328,222	33,756
71508	WENY–TV	656,240	517,754	4,038
83946	WEPH	604,105	602,833	4,701
81508	WEPX–TV	950,012	950,012	7,409
25738	WESH	4,063,973	4,053,252	31,611
65670	WETA–TV	8,315,499	8,258,807	64,410
69944	WETK	670,087	558,842	4,358
60653	WETM–TV	870,206	770,731	6,011
18252	WETP–TV	2,167,383	1,888,574	14,729
2709	WEUX	380,569	373,680	2,914
72041	WEVV–TV	752,417	751,094	5,858
59441	WEWS–TV	4,112,984	4,078,299	31,807
72052	WEYI–TV	3,715,686	3,652,991	28,490
72054	WFAA	6,917,502	6,907,616	53,872
81669	WFBD	817,914	817,389	6,375
69532	WFDC–DT	8,155,998	8,114,847	63,288
10132	WFFF–TV	633,649	552,182	4,306
25040	WFFT–TV	1,095,429	1,095,411	8,543
11123	WFGC	3,018,351	3,018,351	23,540
6554	WFGX	1,493,866	1,493,319	11,646
13991	WFIE	743,079	740,909	5,778
715	WFIQ	546,563	544,258	4,245
64592	WFLA–TV	5,583,544	5,576,649	43,492
22211	WFLD	9,957,301	9,954,828	77,638
72060	WFLI–TV	1,294,209	1,189,897	9,280
39736	WFLX	5,740,086	5,740,086	44,767
72062	WFMJ–TV	4,328,477	3,822,691	29,813

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
72064	WFMY–TV	4,772,783	4,746,167	37,015
39884	WFMZ–TV	10,613,847	9,474,797	73,894
83943	WFNA	1,391,519	1,390,447	10,844
47902	WFOR–TV	5,398,266	5,398,266	42,101
11909	WFOX–TV	1,603,324	1,603,324	12,504
40626	WFPT	5,829,153	5,442,279	42,444
21245	WFPX–TV	2,637,949	2,634,141	20,544
25396	WFQX–TV	537,340	534,314	4,167
9635	WFRV–TV	1,263,353	1,256,376	9,798
53115	WFSB	4,752,788	4,370,519	34,086
6093	WFSG	364,961	364,796	2,845
21801	WFSU–TV	576,105	576,093	4,493
11913	WFTC	3,787,177	3,770,207	29,404
64588	WFTS–TV	5,236,379	5,236,287	40,838
16788	WFTT–TV	4,523,828	4,521,879	35,266
72076	WFTV	3,882,888	3,882,888	30,283
70649	WFTX–TV	1,758,172	1,758,172	13,712
60553	WFTY–DT	5,678,755	5,560,460	43,366
25395	WFUP	234,863	234,436	1,828
60555	WFUT–DT	20,538,272	20,130,459	156,997
22108	WFWA	1,035,114	1,034,862	8,071
9054	WFXB	1,393,865	1,393,510	10,868
3228	WFXG	1,070,032	1,057,760	8,249
70815	WFXL	793,637	785,106	6,123
19707	WFXP	583,315	562,500	4,387
24813	WFXR	1,426,061	1,286,450	10,033
6463	WFXT	7,494,070	7,400,830	57,719
22245	WFXU	218,273	218,273	1,702
43424	WFXV	702,682	612,494	4,777
25236	WFXW	274,078	270,967	2,113
41397	WFYI	2,389,627	2,388,970	18,632
53930	WGAL	6,287,688	5,610,833	43,759
2708	WGBA–TV	1,170,375	1,170,127	9,126
24314	WGBC	249,415	249,235	1,944
72099	WGBH–TV	7,711,842	7,601,732	59,286
12498	WGBO–DT	9,828,737	9,826,530	76,637
11113	WGBP–TV	1,820,589	1,812,232	14,134
72098	WGBX–TV	7,803,280	7,636,641	59,558
72096	WGBY–TV	4,470,009	3,739,675	29,166
62388	WGCU	1,510,671	1,510,671	11,782
54275	WGEM–TV	361,598	356,682	2,782
27387	WGEN–TV	43,037	43,037	336
7727	WGFL	877,163	877,163	6,841
25682	WGGB–TV	3,443,386	3,053,436	23,814
11027	WGGN–TV	4,002,841	3,981,382	31,051
9064	WGGS–TV	2,759,326	2,705,067	21,097
72106	WGHP	4,174,964	4,123,106	32,156
710	WGIQ	363,849	363,806	2,837
12520	WGMB–TV	1,742,708	1,742,659	13,591
25683	WGME–TV	1,495,724	1,325,465	10,337
24618	WGNM	742,458	741,502	5,783
72119	WGNO	1,641,765	1,641,765	12,804
9762	WGNT	2,128,079	2,127,891	16,595
72115	WGN–TV	9,983,395	9,981,137	77,843
40619	WGPT	578,294	344,300	2,685
65074	WGPX–TV	2,765,350	2,754,743	21,484
64547	WGRZ	1,878,725	1,812,309	14,134
63329	WGTA	1,061,654	1,030,538	8,037
66285	WGTE–TV	2,210,496	2,208,927	17,227
59279	WGTQ	116,301	112,633	878
59280	WGTU	358,543	353,477	2,757
23948	WGTV	5,989,342	5,917,966	46,154
7623	WGTW–TV	807,797	807,797	6,300
24783	WGVK	2,439,225	2,437,526	19,010
24784	WGVU–TV	1,825,744	1,784,264	13,915
21536	WGWG	986,963	986,963	7,697
56642	WGWW	1,677,166	1,647,976	12,853
58262	WGXA	779,955	779,087	6,076
73371	WHAM–TV	1,381,564	1,334,653	10,409
32327	WHAS–TV	1,955,983	1,925,901	15,020
6096	WHA–TV	1,635,777	1,628,950	12,704

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
13950	WHBF–TV	1,712,339	1,704,072	13,290
12521	WHBQ–TV	1,736,335	1,708,345	13,323
10894	WHBR	1,302,764	1,302,041	10,155
65128	WHDF	1,553,469	1,502,852	11,721
72145	WHDH	7,441,208	7,343,735	57,274
83929	WHDT	5,768,239	5,768,239	44,986
70041	WHEC–TV	1,322,243	1,279,606	9,980
67971	WHFT–TV	5,417,409	5,417,409	42,250
41458	WHIO–TV	3,877,520	3,868,597	30,171
713	WHIQ	1,278,174	1,225,940	9,561
61216	WHIZ–TV	911,245	840,696	6,557
65919	WHKY–TV	3,358,493	3,294,261	25,692
18780	WHLA–TV	554,446	515,561	4,021
48668	WHLT	484,432	483,532	3,771
24582	WHLV–TV	3,906,201	3,906,201	30,464
37102	WHMB–TV	2,959,585	2,889,145	22,532
61004	WHMC	774,921	774,921	6,044
36117	WHME–TV	1,455,358	1,455,110	11,348
37106	WHNO	1,499,653	1,499,653	11,696
72300	WHNS	2,549,610	2,270,868	17,710
48693	WHNT–TV	1,569,885	1,487,578	11,602
66221	WHO–DT	1,120,480	1,099,818	8,577
6866	WHOI	736,125	736,047	5,740
72313	WHP–TV	4,030,693	3,538,096	27,594
51980	WHPX–TV	5,579,464	5,114,336	39,887
73036	WHRM–TV	535,778	532,820	4,155
25932	WHRO–TV	2,169,238	2,169,237	16,918
68058	WHSG–TV	5,870,314	5,808,605	45,301
4688	WHSV–TV	845,013	711,912	5,552
9990	WHTJ	807,960	690,381	5,384
72326	WHTM–TV	3,211,085	2,799,192	21,831
11117	WHTN	1,914,755	1,905,733	14,863
27772	WHUT–TV	7,953,119	7,915,675	61,734
18793	WHWC–TV	1,123,941	1,091,281	8,511
72338	WHYY–TV	10,448,829	10,049,700	78,378
5360	WIAT	1,868,854	1,830,924	14,279
63160	WIBW–TV	1,234,347	1,181,009	9,211
25684	WICD	1,238,332	1,237,046	9,648
25686	WICS	1,101,798	1,099,718	8,577
24970	WICU–TV	740,115	683,435	5,330
62210	WICZ–TV	1,249,974	965,416	7,529
18410	WIDP	2,559,306	1,899,768	14,816
26025	WIFS	1,583,693	1,578,870	12,314
720	WIIQ	353,241	347,685	2,712
68939	WILL–TV	1,178,545	1,158,147	9,032
6863	WILX–TV	3,378,644	3,218,221	25,099
22093	WINK–TV	1,818,122	1,818,122	14,180
67787	WINM	1,001,485	971,031	7,573
41314	WINP–TV	2,935,057	2,883,944	22,492
3646	WIPB	1,965,353	1,965,174	15,326
48408	WIPL	850,656	799,165	6,233
53863	WIPM–TV [1]	2,280,935	1,648,150	2,251
53859	WIPR–TV [1]	3,596,802	2,811,148	21,924
10253	WIPX–TV	2,305,723	2,303,534	17,965
39887	WIRS [12]	1,091,825	757,978	4,676
71336	WIRT–DT	127,001	126,300	985
13990	WIS	2,644,715	2,600,887	20,284
65143	WISC–TV	1,734,112	1,697,537	13,239
13960	WISE–TV	1,070,155	1,070,155	8,346
39269	WISH–TV	2,912,963	2,855,253	22,268
65680	WISN–TV	3,003,636	2,997,695	23,379
73083	WITF–TV	2,412,561	2,191,501	17,092
73107	WITI	3,111,641	3,102,097	24,193
594	WITN–TV	1,861,458	1,836,905	14,326
61005	WITV	871,783	871,783	6,799
7780	WIVB–TV	1,900,503	1,820,106	14,195
11260	WIVT	855,138	613,934	4,788
60571	WIWN	3,338,845	3,323,941	25,923
62207	WIYC	639,641	637,499	4,972
73120	WJAC–TV	2,219,529	1,897,986	14,802
10259	WJAL	8,750,706	8,446,074	65,871

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
50780	WJAR	7,108,180	6,976,099	54,407
35576	WJAX–TV	1,630,782	1,630,782	12,718
27140	WJBF	1,601,088	1,588,444	12,388
73123	WJBK	5,748,623	5,711,224	44,542
37174	WJCL	938,086	938,086	7,316
73130	WJCT	1,618,817	1,617,292	12,613
29719	WJEB–TV	1,607,603	1,607,603	12,538
65749	WJET–TV	747,431	717,721	5,598
7651	WJFB	2,310,517	2,302,217	17,955
49699	WJFW–TV	277,530	268,295	2,092
73136	WJHG–TV	864,121	859,823	6,706
57826	WJHL–TV	2,034,663	1,462,129	11,403
68519	WJKT	655,780	655,373	5,111
1051	WJLA–TV	8,750,706	8,447,643	65,883
86537	WJLP	21,384,080	21,119,164	164,708
9630	WJMN–TV	160,991	154,424	1,204
61008	WJPM–TV	623,939	623,787	4,865
58340	WJPX [6 10 12]	3,254,481	2,500,195	19,499
21735	WJRT–TV	2,788,684	2,543,446	19,836
23918	WJSP–TV	4,225,860	4,188,428	32,666
41210	WJTC	1,381,529	1,379,283	10,757
48667	WJTV	987,206	980,717	7,649
73150	WJW	3,977,148	3,905,325	30,458
61007	WJWJ–TV	1,034,555	1,034,555	8,068
58342	WJWN–TV [6]	2,063,156	1,461,497	4,676
53116	WJXT	1,622,616	1,622,616	12,655
11893	WJXX	1,618,191	1,617,272	12,613
32334	WJYS	9,667,341	9,667,317	75,395
25455	WJZ–TV	9,743,335	9,350,346	72,923
73152	WJZY	4,432,745	4,301,117	33,544
64983	WKAQ–TV [3]	3,697,088	2,731,588	2,628
6104	WKAR–TV	1,693,373	1,689,830	13,179
34171	WKAS	542,308	512,994	4,001
51570	WKBD–TV	5,065,617	5,065,350	39,505
73153	WKBN–TV	4,898,622	4,535,576	35,373
13929	WKBS–TV	1,082,894	937,847	7,314
74424	WKBT–DT	866,325	824,795	6,433
54176	WKBW–TV	2,247,191	2,161,366	16,856
53465	WKCF	4,241,181	4,240,354	33,071
73155	WKEF	3,730,595	3,716,127	28,982
34177	WKGB–TV	413,268	411,587	3,210
34196	WKHA	511,281	400,721	3,125
34207	WKLE	856,237	846,630	6,603
34212	WKMA–TV	524,617	524,035	4,087
71293	WKMG–TV	3,817,673	3,817,673	29,774
34195	WKMJ–TV	1,477,906	1,470,645	11,470
34202	WKMR	463,316	428,462	3,342
34174	WKMU	344,430	344,050	2,683
42061	WKNO	1,645,867	1,642,092	12,807
83931	WKNX–TV	1,684,178	1,459,493	11,383
34205	WKOH	584,645	579,258	4,518
67869	WKOI–TV	3,831,757	3,819,550	29,789
34211	WKON	1,080,274	1,072,320	8,363
18267	WKOP–TV	1,555,654	1,382,098	10,779
64545	WKOW	1,918,224	1,899,746	14,816
21432	WKPC–TV	1,525,919	1,517,701	11,837
65758	WKPD	283,454	282,250	2,201
34200	WKPI–TV	606,666	481,220	3,753
27504	WKPT–TV	1,131,213	887,806	6,924
58341	WKPV [10]	1,132,932	731,199	4,676
11289	WKRC–TV	3,281,914	3,229,223	25,185
73187	WKRG–TV	1,526,600	1,526,075	11,902
73188	WKRN–TV	2,409,767	2,388,588	18,629
34222	WKSO–TV	658,441	642,090	5,008
40902	WKTC	1,387,229	1,386,779	10,815
60654	WKTV	1,573,503	1,342,387	10,469
73195	WKYC	4,180,327	4,124,135	32,164
24914	WKYT–TV	1,174,615	1,156,978	9,023
71861	WKYU–TV	411,448	409,310	3,192
34181	WKZT–TV	1,044,532	1,020,878	7,962
18819	WLAE–TV	1,397,967	1,397,967	10,903

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
36533	WLAJ	4,100,475	4,063,963	31,695
2710	WLAX	469,017	447,381	3,489
68542	WLBT	948,671	947,857	7,392
39644	WLBZ	373,129	364,346	2,842
69328	WLED–TV	332,718	174,998	1,365
63046	WLEF–TV	200,517	199,188	1,553
73203	WLEX–TV	969,481	964,735	7,524
37806	WLFB	798,916	688,519	5,370
37808	WLFG	1,614,321	1,282,063	9,999
73204	WLFI–TV	2,243,009	2,221,313	17,324
73205	WLFL	3,747,583	3,743,960	29,199
19777	WLII–DT[48]	2,801,102	2,153,564	16,796
37503	WLIO	1,067,232	1,050,170	8,190
38336	WLIW	20,027,920	19,717,729	153,779
27696	WLJC–TV	1,401,072	1,281,256	9,993
71645	WLJT–DT	385,493	385,380	3,006
53939	WLKY	1,927,997	1,919,810	14,973
11033	WLLA	2,081,693	2,081,436	16,233
1222	WLMA	1,646,714	1,644,206	12,823
17076	WLMB	2,754,484	2,747,490	21,428
68518	WLMT	1,736,552	1,733,496	13,520
22591	WLNE–TV	6,429,522	6,381,825	49,772
74420	WLNS–TV	4,100,475	4,063,963	31,695
73206	WLNY–TV	7,501,199	7,415,578	57,834
84253	WLOO	913,960	912,674	7,118
56537	WLOS	3,086,751	2,544,410	19,844
37732	WLOV–TV	609,526	607,780	4,740
13995	WLOX	1,182,149	1,170,659	9,130
38586	WLPB–TV	1,219,624	1,219,407	9,510
73189	WLPX–TV	1,066,912	1,022,543	7,975
66358	WLRN–TV	5,447,399	5,447,399	42,484
73226	WLS–TV	10,174,464	10,170,757	79,322
73230	WLTV–DT	5,427,398	5,427,398	42,328
37176	WLTX	1,580,677	1,578,645	12,312
37179	WLTZ	689,521	685,358	5,345
21259	WLUC–TV	92,246	85,393	666
4150	WLUK–TV	1,187,616	1,186,861	9,256
73238	WLVI	7,441,208	7,343,735	57,274
36989	WLVT–TV	10,613,847	9,474,797	73,894
3978	WLWC	3,281,532	3,150,875	24,574
46979	WLWT	3,367,381	3,355,009	26,166
54452	WLXI	4,184,851	4,166,318	32,493
55350	WLYH	3,211,085	2,799,192	21,831
43192	WMAB–TV	405,483	399,560	3,116
43170	WMAE–TV	686,076	653,173	5,094
43197	WMAH–TV	1,257,393	1,256,995	9,803
43176	WMAO–TV	369,696	369,343	2,881
47905	WMAQ–TV	9,914,395	9,913,272	77,314
59442	WMAR–TV	9,198,495	9,072,076	70,753
43184	WMAU–TV	642,328	636,504	4,964
43193	WMAV–TV	1,008,339	1,008,208	7,863
43169	WMAW–TV	726,173	715,450	5,580
46991	WMAZ–TV	1,185,678	1,136,616	8,864
66398	WMBB	935,027	914,607	7,133
43952	WMBC–TV	18,706,132	18,458,331	143,957
42121	WMBD–TV	742,729	742,660	5,792
83969	WMBF–TV	445,363	445,363	3,473
60829	WMCF–TV	612,942	609,635	4,755
9739	WMCN–TV	10,448,829	10,049,700	78,378
19184	WMC–TV	2,047,403	2,043,125	15,934
189357	WMDE	6,384,827	6,257,910	48,805
73255	WMDN	278,227	278,018	2,168
16455	WMDT	731,868	731,868	5,708
39656	WMEA–TV	902,755	853,857	6,659
39648	WMEB–TV	511,761	494,574	3,857
70537	WMEC	218,027	217,839	1,699
39649	WMED–TV	30,488	29,577	231
39662	WMEM–TV	71,700	69,981	546
41893	WMFD–TV	1,561,367	1,324,244	10,328
41436	WMFP	5,792,048	5,564,295	43,396
61111	WMGM–TV	807,797	807,797	6,300

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
43847	WMGT–TV	601,894	601,309	4,690
73263	WMHT	1,719,949	1,550,977	12,096
68545	WMLW–TV	1,843,933	1,843,663	14,379
53819	WMOR–TV	5,394,541	5,394,541	42,072
81503	WMOW	121,150	105,957	826
65944	WMPB	7,452,728	7,343,061	57,269
43168	WMPN–TV	856,237	854,089	6,661
65942	WMPT	8,637,742	8,584,398	66,950
60827	WMPV–TV	1,423,052	1,422,411	11,093
10221	WMSN–TV	1,947,942	1,927,158	15,030
2174	WMTJ[11]	3,143,148	2,365,308	18,447
6870	WMTV	1,548,616	1,545,459	12,053
73288	WMTW	1,940,292	1,658,816	12,937
23935	WMUM–TV	925,814	920,835	7,182
73292	WMUR–TV	5,242,334	5,057,770	39,446
42663	WMVS	3,172,534	3,112,231	24,272
42665	WMVT	3,172,534	3,112,231	24,272
81946	WMWC–TV	946,858	916,989	7,152
56548	WMYA–TV	1,650,798	1,571,594	12,257
74211	WMYD	5,750,989	5,750,873	44,851
20624	WMYT–TV	4,432,745	4,301,117	33,544
25544	WMYV	3,901,915	3,875,210	30,223
73310	WNAB	2,176,984	2,166,809	16,899
73311	WNAC–TV	7,310,183	6,959,064	54,274
47535	WNBC	21,952,082	21,399,204	166,892
83965	WNBW–DT	1,400,631	1,396,012	10,887
72307	WNCF	667,683	665,950	5,194
50782	WNCN	3,795,494	3,783,131	29,505
57838	WNCT–TV	1,935,414	1,887,929	14,724
41674	WNDU–TV	1,863,764	1,835,398	14,314
28462	WNDY–TV	2,912,963	2,855,253	22,268
71928	WNED–TV	1,387,961	1,370,480	10,688
60931	WNEH	1,261,482	1,255,218	9,789
41221	WNEM–TV	1,475,094	1,471,908	11,479
49439	WNEO	3,353,869	3,271,369	25,513
73318	WNEP–TV	3,429,213	2,838,000	22,134
18795	WNET	21,113,760	20,615,190	160,778
51864	WNEU	7,135,190	7,067,520	55,120
23942	WNGH–TV	5,744,856	5,595,366	43,638
67802	WNIN	908,275	891,946	6,956
41671	WNIT	1,305,447	1,305,447	10,181
48457	WNJB	20,787,272	20,036,393	156,264
48477	WNJN	20,787,272	20,036,393	156,264
48481	WNJS	7,383,483	7,343,269	57,270
48465	WNJT	7,383,483	7,343,269	57,270
73333	WNJU	21,952,082	21,399,204	166,892
73336	WNJX–TV[2]	1,628,732	1,170,083	2,462
61217	WNKY	379,002	377,357	2,943
71905	WNLO	1,900,503	1,820,106	14,195
4318	WNMU	181,736	179,662	1,401
73344	WNNE	792,551	676,539	5,276
54280	WNOL–TV	1,632,389	1,632,389	12,731
71676	WNPB–TV	2,130,047	1,941,707	15,143
62137	WNPI–DT	167,931	161,748	1,261
41398	WNPT	2,266,543	2,235,316	17,433
28468	WNPX–TV	2,084,890	2,071,017	16,152
61009	WNSC–TV	2,431,154	2,425,044	18,913
61010	WNTV	2,419,841	2,211,019	17,244
16539	WNTZ–TV	344,704	343,849	2,682
7933	WNUV	9,098,694	8,906,508	69,462
9999	WNVC	807,960	690,381	5,384
10019	WNVT	1,721,004	1,712,249	13,354
73354	WNWO–TV	2,872,428	2,872,250	22,401
136751	WNYA	1,923,118	1,651,777	12,882
30303	WNYB	1,785,269	1,756,096	13,696
6048	WNYE–TV	19,414,613	19,180,858	149,592
34329	WNYI	1,627,542	1,338,811	10,441
67784	WNYO–TV	1,430,491	1,409,756	10,995
73363	WNYT	1,679,494	1,516,775	11,829
22206	WNYW	20,075,874	19,753,060	154,054
69618	WOAI–TV	2,525,811	2,513,887	19,606

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
66804	WOAY–TV	581,486	443,210	3,457
41225	WOFL	4,048,104	4,043,672	31,537
70651	WOGX	1,112,408	1,112,408	8,676
8661	WOI–DT	1,173,757	1,170,432	9,128
39746	WOIO	3,821,233	3,745,335	29,210
71725	WOLE–DT[4]	1,784,094	1,312,984	7,379
73375	WOLF–TV	2,990,646	2,522,858	19,676
60963	WOLO–TV	2,635,715	2,594,980	20,238
36838	WOOD–TV	2,507,053	2,501,084	19,506
67602	WOPX–TV	3,877,863	3,877,805	30,243
64865	WORA–TV[3 13]	3,594,115	2,762,755	21,547
73901	WORO–DT	3,236,498	2,516,588	19,627
60357	WOST	1,193,381	853,762	6,658
66185	WOSU–TV	2,843,651	2,776,901	21,657
131	WOTF–TV	3,451,383	3,451,383	26,917
10212	WOTV	2,368,797	2,368,397	18,471
50147	WOUB–TV	756,762	734,988	5,732
50141	WOUC–TV	1,713,515	1,649,853	12,867
23342	WOWK–TV	1,159,175	1,083,663	8,451
65528	WOWT	1,380,979	1,377,287	10,741
31570	WPAN	1,254,821	1,254,636	9,785
51988	WPBF	3,190,307	3,186,405	24,851
21253	WPBN–TV	442,005	430,953	3,361
62136	WPBS–TV	338,448	301,692	2,353
13456	WPBT	5,416,604	5,416,604	42,244
13924	WPCB–TV	2,934,614	2,800,516	21,841
64033	WPCH–TV	5,948,778	5,874,163	45,813
4354	WPCT	195,270	194,869	1,520
69880	WPCW	3,393,365	3,188,441	24,867
17012	WPDE–TV	1,772,233	1,769,553	13,801
52527	WPEC	5,764,571	5,764,571	44,958
84088	WPFO	1,329,690	1,209,873	9,436
54728	WPGA–TV	559,495	559,025	4,360
60820	WPGD–TV	2,355,629	2,343,715	18,279
73875	WPGH–TV	3,236,098	3,121,767	24,347
2942	WPGX	425,098	422,872	3,298
73879	WPHL–TV	10,421,216	10,246,856	79,915
73881	WPIX	20,948,273	20,501,774	159,893
53113	WPLG	5,588,748	5,588,748	43,587
11906	WPMI–TV	1,468,001	1,467,594	11,446
10213	WPMT	2,412,561	2,191,501	17,092
18798	WPNE–TV	1,161,295	1,160,631	9,052
73907	WPNT	3,172,170	3,064,423	23,899
28480	WPPT	10,613,847	9,474,797	73,894
51984	WPPX–TV	8,044,823	7,839,141	61,137
47404	WPRI–TV	7,254,721	6,990,606	54,520
51991	WPSD–TV	883,814	879,213	6,857
12499	WPSG	10,798,264	10,529,460	82,119
66219	WPSU–TV	1,055,133	868,013	6,770
73905	WPTA	1,099,180	1,099,180	8,573
25067	WPTD	3,423,417	3,411,727	26,608
25065	WPTO	2,961,254	2,951,883	23,022
59443	WPTV–TV	5,840,102	5,840,102	45,547
57476	WPTZ	792,551	676,539	5,276
8616	WPVI–TV	11,491,587	11,302,701	88,150
48772	WPWR–TV	9,957,301	9,954,828	77,638
51969	WPXA–TV	6,587,205	6,458,510	50,370
71236	WPXC–TV	1,561,014	1,561,014	12,174
5800	WPXD–TV	5,249,447	5,249,447	40,940
37104	WPXE–TV	3,067,071	3,057,388	23,845
48406	WPXG–TV	2,577,848	2,512,150	19,592
73312	WPXH–TV	1,471,601	1,451,634	11,321
73910	WPXI	3,300,896	3,197,864	24,940
2325	WPXJ–TV	2,357,870	2,289,706	17,857
52628	WPXK–TV	1,801,997	1,577,806	12,305
21729	WPXL–TV	1,639,180	1,639,180	12,784
48608	WPXM–TV	5,153,621	5,153,621	40,193
73356	WPXN–TV	20,878,066	20,454,468	159,524
27290	WPXP–TV	5,565,072	5,565,072	43,402
50063	WPXQ–TV	3,281,532	3,150,875	24,574
70251	WPXR–TV	1,375,640	1,200,331	9,361

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
40861	WPXS	2,339,305	2,251,498	17,559
53065	WPXT	1,002,128	952,535	7,429
37971	WPXU–TV	700,488	700,488	5,463
67077	WPXV–TV	1,919,794	1,919,794	14,972
74091	WPXW–TV	8,075,268	8,024,342	62,582
21726	WPXX–TV	1,562,675	1,560,834	12,173
73319	WQAD–TV	1,101,012	1,089,523	8,497
65130	WQCW	1,307,345	1,236,020	9,640
71561	WQEC	183,969	183,690	1,433
41315	WQED	3,529,305	3,426,684	26,725
3255	WQHA	3,322,840	2,368,215	18,470
60556	WQHS–DT	3,996,567	3,952,672	30,827
53716	WQLN	602,232	577,633	4,505
52075	WQMY	410,269	254,586	1,986
64550	WQOW	369,066	358,576	2,797
5468	WQPT–TV	941,381	933,107	7,277
64690	WQPX–TV	1,644,283	1,212,587	9,457
52408	WQRF–TV	1,375,774	1,354,979	10,567
2175	WQTO [11]	2,864,201	1,598,365	5,728
8688	WRAL–TV	3,852,675	3,848,801	30,017
10133	WRAY–TV	4,184,851	4,166,318	32,493
64611	WRAZ	3,800,594	3,797,515	29,617
136749	WRBJ–TV	1,030,831	1,028,010	8,017
3359	WRBL	1,493,140	1,461,459	11,398
57221	WRBU	2,933,497	2,929,776	22,849
54940	WRBW	4,080,267	4,077,341	31,799
59137	WRCB	1,587,742	1,363,582	10,635
47904	WRC–TV	8,188,601	8,146,696	63,536
54963	WRDC	3,972,477	3,966,864	30,938
55454	WRDQ	3,930,315	3,930,315	30,653
73937	WRDW–TV	1,564,584	1,533,682	11,961
66174	WREG–TV	1,642,307	1,638,585	12,779
61011	WRET–TV	2,419,841	2,211,019	17,244
73940	WREX	2,303,027	2,047,951	15,972
54443	WRFB [13]	2,674,527	1,975,375	2,628
73942	WRGB	1,759,432	1,550,958	12,096
411	WRGT–TV	3,451,036	3,416,078	26,642
74416	WRIC–TV	2,059,152	1,996,075	15,567
61012	WRJA–TV	1,204,291	1,201,900	9,374
412	WRLH–TV	2,017,508	1,959,111	15,279
61013	WRLK–TV	1,229,094	1,228,616	9,582
43870	WRLM	3,960,217	3,945,408	30,770
74156	WRNN–TV	19,853,836	19,615,370	152,980
73964	WROC–TV	1,203,412	1,185,203	9,243
159007	WRPT	110,009	109,937	857
20590	WRPX–TV	2,637,949	2,634,141	20,544
62009	WRSP–TV	1,102,162	1,100,077	8,580
40877	WRTV	2,919,683	2,895,164	22,579
15320	WRUA	2,985,428	2,224,902	17,352
71580	WRXY–TV	1,784,000	1,784,000	13,913
48662	WSAV–TV	1,000,315	1,000,309	7,801
6867	WSAW–TV	652,442	646,386	5,041
36912	WSAZ–TV	1,239,187	1,168,954	9,117
56092	WSBE–TV	7,535,710	7,266,304	56,670
73982	WSBK–TV	7,290,901	7,225,463	56,351
72053	WSBS–TV	42,952	42,952	335
73983	WSBT–TV	1,763,215	1,752,698	13,669
23960	WSB–TV	5,897,425	5,828,269	45,455
69446	WSCG	867,516	867,490	6,766
64971	WSCV	5,465,435	5,465,435	42,625
70536	WSEC	538,090	536,891	4,187
49711	WSEE–TV	613,176	595,476	4,644
21258	WSES	1,829,499	1,796,561	14,011
73988	WSET–TV	1,575,886	1,340,273	10,453
13993	WSFA	1,166,744	1,132,826	8,835
11118	WSFJ–TV	1,675,987	1,667,150	13,002
10203	WSFL–TV	5,344,129	5,344,129	41,679
72871	WSFX–TV	970,833	970,833	7,572
73999	WSIL–TV	672,560	669,176	5,219
4297	WSIU–TV	1,019,939	937,070	7,308
74007	WSJV	1,651,178	1,644,683	12,827

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
78908	WSKA	546,588	431,354	3,364
74034	WSKG–TV	892,402	633,163	4,938
76324	WSKY–TV	1,934,585	1,934,519	15,087
57840	WSLS–TV	1,447,286	1,277,753	9,965
21737	WSMH	2,339,224	2,327,660	18,153
41232	WSMV–TV	2,447,769	2,404,766	18,755
70119	WSNS–TV	9,914,395	9,913,272	77,314
74070	WSOC–TV	3,706,808	3,638,832	28,379
66391	WSPA–TV	3,388,945	3,227,025	25,168
64352	WSPX–TV	1,298,295	1,174,763	9,162
17611	WSRE	1,354,495	1,353,634	10,557
63867	WSST–TV	331,907	331,601	2,586
60341	WSTE–DT	3,723,967	3,000,000	23,397
21252	WSTM–TV	1,455,586	1,379,393	10,758
11204	WSTR–TV	3,297,280	3,286,795	25,634
19776	WSUR–DT[8]	3,714,790	3,000,000	7,379
2370	WSVI	50,601	50,601	395
63840	WSVN	5,588,748	5,588,748	43,587
73374	WSWB	1,530,002	1,102,316	8,597
28155	WSWG	381,004	380,910	2,971
71680	WSWP–TV	902,592	694,697	5,418
74094	WSYM–TV	1,568,403	1,567,920	12,228
73113	WSYR–TV	1,329,977	1,243,098	9,695
40758	WSYT	1,970,721	1,739,071	13,563
56549	WSYX	2,635,937	2,592,420	20,218
65681	WTAE–TV	2,995,755	2,860,979	22,313
23341	WTAJ–TV	1,187,718	948,598	7,398
4685	WTAP–TV	512,358	494,914	3,860
416	WTAT–TV	1,111,476	1,111,476	8,668
67993	WTBY–TV	15,858,470	15,766,438	122,962
29715	WTCE–TV	2,620,599	2,620,599	20,438
65667	WTCI	1,216,209	1,104,698	8,616
67786	WTCT	608,457	607,620	4,739
28954	WTCV[59]	3,254,481	2,500,195	19,499
74422	WTEN	1,902,431	1,613,747	12,586
9881	WTGL	3,707,507	3,707,507	28,915
27245	WTGS	966,519	966,357	7,537
70655	WTHI–TV	978,126	928,582	7,242
70162	WTHR	2,949,339	2,901,633	22,630
147	WTIC–TV	5,318,753	4,707,697	36,715
26681	WTIN–TV[7]	3,716,312	2,987,150	2,462
66536	WTIU	1,570,257	1,569,135	12,238
1002	WTJP–TV	1,947,743	1,907,300	14,875
4593	WTJR	334,527	334,221	2,607
70287	WTJX–TV	135,017	121,498	948
47401	WTKR	2,149,376	2,149,375	16,763
82735	WTLF	349,696	349,691	2,727
23486	WTLH	1,065,127	1,065,105	8,307
67781	WTLJ	1,622,365	1,621,227	12,644
65046	WTLV	1,757,600	1,739,021	13,563
74098	WTMJ–TV	3,096,406	3,085,983	24,068
74109	WTNH	7,845,782	7,332,431	57,186
19200	WTNZ	1,699,427	1,513,754	11,806
590	WTOC–TV	993,098	992,658	7,742
74112	WTOG	5,268,364	5,267,177	41,079
4686	WTOK–TV	417,919	412,276	3,215
13992	WTOL	4,487,440	4,479,518	34,936
21254	WTOM–TV	120,369	117,121	913
74122	WTOV–TV	3,892,886	3,619,899	28,232
82574	WTPC–TV	2,049,246	2,042,851	15,932
86496	WTPX–TV	255,972	255,791	1,995
6869	WTRF–TV	2,941,511	2,565,375	20,007
67798	WTSF	922,441	851,465	6,641
11290	WTSP	5,506,869	5,489,954	42,816
4108	WTTA	5,583,544	5,576,649	43,492
74137	WTTE	2,690,341	2,650,354	20,670
22207	WTTG	8,101,358	8,049,329	62,777
56526	WTTK	2,844,384	2,825,807	22,038
74138	WTTO	1,877,570	1,844,214	14,383
56523	WTTV	2,522,077	2,518,133	19,639
10802	WTTW	9,776,348	9,776,348	76,246

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
74148	WTVA	823,492	810,123	6,318
22590	WTVC	1,579,628	1,366,976	10,661
8617	WTVD	3,790,354	3,775,757	29,447
55305	WTVE	5,156,905	5,152,997	40,188
36504	WTVF	2,384,622	2,367,601	18,465
74150	WTVG	4,405,350	4,397,113	34,293
74151	WTVH	1,390,502	1,327,319	10,352
10645	WTVI	2,856,703	2,829,960	22,071
63154	WTVJ	5,458,451	5,458,451	42,570
595	WTVM	1,498,667	1,405,957	10,965
72945	WTVO	1,409,708	1,398,825	10,909
28311	WTVP	678,884	678,539	5,292
51597	WTVQ–DT	989,786	983,552	7,671
57832	WTVR–TV	1,816,197	1,809,035	14,109
16817	WTVS	5,511,091	5,510,837	42,979
68569	WTVT	5,473,148	5,460,179	42,584
3661	WTVW	839,003	834,187	6,506
35575	WTVX	3,157,609	3,157,609	24,626
4152	WTVY	974,532	971,173	7,574
40759	WTVZ–TV	2,156,534	2,156,346	16,817
66908	WTWC–TV	1,061,101	1,061,079	8,275
20426	WTWO	737,341	731,294	5,703
81692	WTWV	1,527,511	1,526,625	11,906
51568	WTXF–TV	10,784,256	10,492,549	81,831
41065	WTXL–TV	1,054,514	1,054,322	8,223
8532	WUAB	3,821,233	3,745,335	29,210
12855	WUCF–TV	3,707,507	3,707,507	28,915
36395	WUCW	3,664,480	3,657,236	28,523
69440	WUFT	1,372,142	1,372,142	10,701
413	WUHF	1,152,580	1,147,972	8,953
8156	WUJA	2,638,361	1,977,410	15,422
69080	WUNC–TV	4,184,851	4,166,318	32,493
69292	WUND–TV	1,504,532	1,504,532	11,734
69114	WUNE–TV	3,146,865	2,625,942	20,480
69300	WUNF–TV	2,625,583	2,331,723	18,185
69124	WUNG–TV	3,605,143	3,588,220	27,985
60551	WUNI	7,209,571	7,084,349	55,251
69332	WUNJ–TV	1,116,458	1,116,458	8,707
69149	WUNK–TV	1,991,039	1,985,696	15,486
69360	WUNL–TV	3,055,263	2,834,274	22,105
69444	WUNM–TV	1,357,346	1,357,346	10,586
69397	WUNP–TV	1,402,186	1,393,524	10,868
69416	WUNU	1,202,495	1,201,481	9,370
83822	WUNW	1,856,918	1,333,273	10,398
6900	WUPA	5,966,454	5,888,379	45,923
13938	WUPL	1,721,320	1,721,320	13,425
10897	WUPV	1,933,664	1,914,643	14,932
19190	WUPW	2,100,914	2,099,572	16,375
23128	WUPX–TV	1,102,435	1,089,118	8,494
65593	WUSA	8,750,706	8,446,074	65,871
4301	WUSI–TV	339,507	339,507	2,648
60552	WUTB	8,523,983	8,381,042	65,364
30577	WUTF–TV	7,918,927	7,709,189	60,124
57837	WUTR	526,114	481,957	3,759
415	WUTV	1,589,376	1,557,474	12,147
16517	WUVC–DT	3,768,817	3,748,841	29,237
48813	WUVG–DT	6,029,495	5,965,975	46,529
3072	WUVN	1,233,568	1,157,140	9,025
60560	WUVP–DT	10,421,216	10,246,856	79,915
9971	WUXP–TV	2,316,872	2,305,293	17,979
417	WVAH–TV	1,373,555	1,295,383	10,103
23947	WVAN–TV	1,026,862	1,025,950	8,001
65387	WVBT	1,885,169	1,885,169	14,702
72342	WVCY–TV	3,111,641	3,102,097	24,193
60559	WVEA–TV	4,553,004	4,552,113	35,502
74167	WVEC	2,098,679	2,092,868	16,322
5802	WVEN–TV	3,921,016	3,919,361	30,567
61573	WVEO[5]	1,091,825	757,978	4,676
69946	WVER	888,756	758,441	5,915
10976	WVFX	711,483	618,730	4,825
47929	WVIA–TV	3,429,213	2,838,000	22,134

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
3667	WVII–TV	368,022	346,874	2,705
70309	WVIR–TV	1,945,637	1,908,395	14,884
74170	WVIT	5,846,093	5,357,639	41,784
18753	WVIZ	3,695,223	3,689,173	28,772
70021	WVLA–TV	1,897,179	1,897,007	14,795
81750	WVLR	1,412,728	1,300,554	10,143
35908	WVLT–TV	1,888,607	1,633,633	12,741
74169	WVNS–TV	916,451	588,963	4,593
11259	WVNY	742,579	659,270	5,142
29000	WVOZ–TV[9]	1,132,932	731,199	4,676
71657	WVPB–TV	992,798	959,526	7,483
60111	WVPT	767,268	642,173	5,008
70491	WVPX–TV	4,147,298	4,114,920	32,092
66378	WVPY	756,696	632,649	4,934
67190	WVSN	2,948,832	2,137,333	16,669
66943	WVTA	760,072	579,703	4,521
69940	WVTB	455,880	257,445	2,008
74173	WVTM–TV	2,009,346	1,940,153	15,131
74174	WVTV	3,091,132	3,083,108	24,045
77496	WVUA	2,209,921	2,160,101	16,847
4149	WVUE–DT	1,658,125	1,658,125	12,932
4329	WVUT	273,293	273,215	2,131
74176	WVVA	1,037,632	722,666	5,636
3113	WVXF	85,191	78,556	613
12033	WWAY	1,208,625	1,208,625	9,426
30833	WWBT	1,924,502	1,892,842	14,762
20295	WWCP–TV	2,811,278	2,548,691	19,877
24812	WWCW	1,390,985	1,212,308	9,455
23671	WWDP	5,792,048	5,564,295	43,396
21158	WWHO	2,762,344	2,721,504	21,225
14682	WWJE–DT	7,209,571	7,084,349	55,251
72123	WWJ–TV	5,562,031	5,561,777	43,376
166512	WWJX	518,866	518,846	4,046
6868	WWLP	3,838,272	3,077,800	24,004
74192	WWL–TV	1,788,624	1,788,624	13,949
3133	WWMB	1,547,974	1,544,778	12,048
74195	WWMT	2,538,485	2,531,309	19,742
68851	WWNY–TV	375,600	346,623	2,703
74197	WWOR–TV	19,853,836	19,615,370	152,980
65943	WWPB	3,197,858	2,775,966	21,650
23264	WWPX–TV	2,299,441	2,231,612	17,404
68547	WWRS–TV	2,324,155	2,321,066	18,102
61251	WWSB	3,340,133	3,340,133	26,050
23142	WWSI	11,269,831	11,098,540	86,558
16747	WWTI	196,531	190,097	1,483
998	WWTO–TV	6,760,133	6,760,133	52,722
26994	WWTV	1,034,174	1,022,322	7,973
84214	WWTW	1,527,511	1,526,625	11,906
26993	WWUP–TV	116,638	110,592	863
23338	WXBU	4,030,693	3,538,096	27,594
61504	WXCW	1,687,947	1,687,947	13,164
61084	WXEL–TV	5,416,604	5,416,604	42,244
60539	WXFT–DT	10,174,464	10,170,757	79,322
23929	WXGA–TV	608,494	606,849	4,733
51163	WXIA–TV	6,179,680	6,035,625	47,072
53921	WXII–TV	3,630,551	3,299,114	25,730
146	WXIN	2,836,532	2,814,815	21,953
39738	WXIX–TV	2,911,054	2,900,875	22,624
414	WXLV–TV	4,364,244	4,334,365	33,804
68433	WXMI	1,988,970	1,988,589	15,509
64549	WXOW	425,378	413,264	3,223
6601	WXPX–TV	4,594,588	4,592,639	35,818
74215	WXTV–DT	20,538,272	20,130,459	156,997
12472	WXTX	699,095	694,837	5,419
11970	WXXA–TV	1,680,670	1,537,868	11,994
57274	WXXI–TV	1,184,860	1,168,696	9,115
53517	WXXV–TV	1,191,123	1,189,584	9,278
10267	WXYZ–TV	5,622,543	5,622,140	43,847
77515	WYCI	35,873	26,508	207
70149	WYCW	3,388,945	3,227,025	25,168
62219	WYDC	560,266	449,486	3,506

TABLE 9—FY 2023 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount
18783	WYDN	2,577,848	2,512,150	19,592
35582	WYDO	1,330,728	1,330,728	10,378
25090	WYES–TV	1,872,245	1,872,059	14,600
53905	WYFF	2,626,363	2,416,551	18,847
49803	WYIN	6,956,141	6,956,141	54,251
24915	WYMT–TV	1,180,276	863,881	6,737
17010	WYOU	2,879,196	2,226,883	17,367
77789	WYOW	91,839	91,311	712
13933	WYPX–TV	1,529,500	1,413,583	11,025
4693	WYTV	4,898,622	4,535,576	35,373
5875	WYZZ–TV	1,042,140	1,036,721	8,085
15507	WZBJ	1,626,017	1,435,762	11,198
28119	WZDX	1,596,771	1,514,654	11,813
70493	WZME	5,996,408	5,544,708	43,243
81448	WZMQ	73,423	72,945	569
71871	WZPX–TV	2,039,157	2,039,157	15,903
136750	WZRB	952,279	951,693	7,422
418	WZTV	2,312,658	2,301,187	17,947
83270	WZVI	76,992	75,863	592
19183	WZVN–TV	1,981,488	1,981,488	15,454
49713	WZZM	1,574,546	1,548,835	12,079

[1] Call signs WIPM and WIPR are stations in Puerto Rico that are linked together with a total fee of $24,175.
[2] Call signs WNJX and WAPA are stations in Puerto Rico that are linked together with a total fee of $24,175.
[3] Call signs WKAQ and WORA are stations in Puerto Rico that are linked together with a total fee of $24,175.
[4] Call signs WOLE and WLII are stations in Puerto Rico that are linked together with a total fee of $24,175.
[5] Call signs WVEO and WTCV are stations in Puerto Rico that are linked together with a total fee of $24,175.
[6] Call signs WJPX and WJWN are stations in Puerto Rico that are linked together with a total fee of $24,175.
[7] Call signs WAPA and WTIN are stations in Puerto Rico that are linked together with a total fee of $24,175.
[8] Call signs WSUR and WLII are stations in Puerto Rico that are linked together with a total fee of $24,175.
[9] Call signs WVOZ and WTCV are stations in Puerto Rico that are linked together with a total fee of $24,175.
[10] Call signs WJPX and WKPV are stations in Puerto Rico that are linked together with a total fee of $24,175.
[11] Call signs WMTJ and WQTO are stations in Puerto Rico that are linked together with a total fee of $24,175.
[12] Call signs WIRS and WJPX are stations in Puerto Rico that are linked together with a total fee of $24,175.
[13] Call signs WRFB and WORA are stations in Puerto Rico that are linked together with a total fee of $24,175.

TABLE 10—FY 2022 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers).	.14.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	590.
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	590.
AM Radio Construction Permits	655.
FM Radio Construction Permits	1,145.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	$.008430. See Appendix G of FY 22 R&O for fee amounts due.
Digital TV Construction Permits	5,200.
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	330.
CARS (47 CFR part 78)	1,715.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS).	1.16.
Interstate Telecommunication Service Providers (per revenue dollar)	.00452.
Toll Free (per toll free subscriber) (47 CFR 52.101 (f) of the rules)	.12.
Earth Stations (47 CFR part 25)	620.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	124,060.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	340,005.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	141,670.

TABLE 10—FY 2022 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed]

Fee category	Annual regulatory fee (U.S. $s)
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	$39.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2022 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤25,000	$1,050	$755	$655	$720	$1,145	$1,310
25,001–75,000	1,575	1,135	985	1,080	1,720	1,965
75,001–150,000	365	1,700	1,475	1,620	2,575	2,950
150,001–500,000	3,550	2,550	2,215	2,435	3,870	4,430
500,001–1,200,000	5,315	3,820	3,315	3,645	5,795	6,630
1,200,001–3,000,000	7,980	5,740	4,980	5,470	8,700	9,955
3,000,001–6,000,000	11,960	8,600	7,460	8,200	13,040	14,920
>6,000,000	17,945	12,905	11,195	12,305	19,570	22,390

FY 2022 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2021)	Fee ratio	FY 2022 Regulatory fees
Less than 50 Gbps	.0625 Units	$8,610
50 Gbps or greater, but less than 250 Gbps	.125 Units	17,215
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	34,430
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	68,860
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	137,715
6,500 Gbps or greater	2.0 Units	275,430

V. Final Regulatory Flexibility Analysis

101. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *Assessment and Collection of Regulatory Fees for Fiscal Year 2023,* Notice of Proposed Rulemaking (*FY 2023 NPRM*) released in June 2023. The Commission sought written public comment on the proposals in the *FY 2023 NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA.

A. Need for, and Objectives of, the Report and Order

102. In the *Report and Order,* we adopt a regulatory fee schedule to collect $390,192,000 in congressionally mandated regulatory fees for FY 2023. Under section 9 of the Communications Act of 1934, as amended, (Act or Communications Act), regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's oversight and regulatory activities in an amount that can be reasonably expected to equal the amount of the Commission's annual appropriation. The objective in adopting the regulatory fee schedule is to comply with the Congressional mandate to recover the total amount of the Commission's annual appropriation, from the various industries for which the Commission provides oversight and/or regulation, with a fair, administrable and sustainable fee framework based on the number of full-time equivalents (FTEs) involved in such oversight and regulation in the licensing bureaus.

103. In the *FY 2023 NPRM,* the Commission sought comment on the methodology for assessing regulatory fees and the FY 2023 regulatory fee schedule, as well as on other issues related to the collection of regulatory fees including: (i) the calculation of television and radio broadcaster regulatory fees, including the modification of the existing grid by adding a new tier for AM and FM radio stations; (ii) defining the category of operations for on-orbit servicing (OOS) and rendezvous and proximity operations (RPO)) (''In-Space Servicing'' Industries) for regulatory fee purposes, including whether a separate regulatory fee category is necessary and how to apply regulatory fees to OOS and RPO spacecraft specifically operating near the geostationary satellite orbit arc; (iii) evaluating how the Commission's proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iv) considering whether to continue in FY 2023 several of the temporary measures the Commission implemented in FYs 2020 through 2022; and (v) whether to permit regulatory fee payors to prepay their regulatory fees in installments. For FY 2023, the Commission adopts, with modification, the regulatory fee schedule set forth in Appendices B and C to the *Report and Order.*

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

104. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA

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

105. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

106. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The following entities may be affected by the Report and Order:

- Incumbent Local Exchange Carriers.
- Telecommunications Carriers.
- Competitive Local Exchange Carriers.
- Interexchange Carriers.
- Operator Service Providers.
- Local Resellers.
- Toll Resellers.
- Satellite Telecommunications.
- All Other Telecommunications. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or Voice over internet Protocol services, via client-supplied telecommunications connections are also included in this industry.
- Television Broadcasting.
- Radio Stations.
- Cable Companies and Systems.
- Cable System Operators.
- Direct Broadcast Satellite Service.
- Responsible Organizations, or RespOrgs (also referred to as Toll-Free Number providers).
- Carrier RespOrgs.
- Wired Telecommunications Carriers.
- Wireless Telecommunications Carriers (except Satellite) engage in operating and maintaining switching and transmission facilities to provide communications via the airwaves.
- Other Management Consulting Services. This industry includes establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.

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

107. The *Report and Order* does not adopt any new reporting, recordkeeping, or other compliance requirements. Small and other regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory fee assessment for small entities is the amount assessed for their regulatory fee category and should not require small entities to hire professionals in order to comply. Small entities that qualify can take advantage of the exemption from payment of regulatory fees allowed under the de minimis threshold. Small entities may request a waiver, reduction, deferral, and/or installment payment of their FY 2023 regulatory fees. The waiver process is an easier filing process for smaller entities that may not be familiar with our procedural filing rules.

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

108. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

109. The *Report and Order* for FY 2023 maintains several approaches from the prior regulatory fee framework which will minimize the significant economic impact for some small entities. Specifically, the FY 2023 regulatory fee framework maintains: (1) the methodology adopted using the population-based calculations for TV broadcasters that was initially adopted because it is a more fair methodology for smaller broadcasters; (2) the flexibility for regulatory payees to request a waiver, reduction, deferral and/or installment payments of their regulatory fees; and (3) the application of the Commission's de minimis threshold rule adopted pursuant to section 9(e)(2) of the Act, which exempts a regulatee from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is $1,000 or less for the fiscal year. The de minimis threshold applies only to filers of annual regulatory fees and provides relief to small and other entities with lower annual regulatory fees.

110. The Commission received comments proposing alternatives to various elements of the methodology for assessing regulatory fees and the FY 2023 regulatory fee schedule that the Commission proposed in the *FY 2023 NPRM,* as well as other issues related to the collection of regulatory fees. Below we discuss a number of these proposals and why they were not adopted.

111. *Methodology for Assessing Regulatory Fees and FTE Allocation.* Satellite Operators suggested that instead of assessing regulatory fees on an annual basis, based on our annual appropriation, we should instead determine the allocation of regulatory fee costs associated with each non-application proceeding and identify its allocation in the document that initiates the proceeding. We rejected this proposal in the *Report and Order* because it is inconsistent with section 9 of the Act. We are required to conduct an annual regulatory fee proceeding each year, and to recover the annual appropriation. Further, this approach would fail to recover the Commission's entire appropriation on an annual basis, and would not be administratively feasible because we cannot assess the duration or impact of a proceeding in a manner that accurately correlates it to the burden of FTE time annually.

112. *Non-High Cost Universal Service Fund FTEs.* The National Association of Broadcasters (NAB) proposed that we reallocate the burden of FTE time dedicated to non-high cost universal service fund issues as direct to a core bureau or bureaus. We declined to adopt NAB's suggested reallocation because it conflates the nature of the work of the Commission's FTEs with the identity of the entities that ultimately receive a subsidy from any particular program. The FTE time devoted to the non-high cost universal service programs is not in oversight and regulation of regulatory fee payors, but is oversight and management of the programs generally. The programs tie funding eligibility to the beneficiary, *i.e.,* a school, a library, a low-income individual or family, or healthcare provider, and not to Commission regulatory fee payors.

113. *Other FTE Allocations: Office of Engineering and Technology, Enforcement Bureau, and Consumer and Governmental Affairs Bureau.* We rejected proposals that suggest that the burden of FTE time dedicated to equipment authorization should have its own fee category or be characterized as direct to any particular category of fee payor. OET FTEs benefit the work of the Commission as a whole and are not specific to any particular regulatory fee category. We also rejected Intelsat's

contention that fraud investigations by the Enforcement Bureau benefit their related industries, finding that the fraud investigations handled benefit consumers in general as well as other entities. Further, these investigations are primarily with respect to federally funded programs, and not specifically to benefit regulatory fee payors for any particular industry. We accepted NAB's proposal that for regulatory fee purposes, the burden of certain FTE time in the Media Bureau should be considered as indirect because it is devoted to enforcement responsibilities of the Commission's political programming rules, the cable and broadcast must carry rules, and the rules related to broadcast retransmission consent, among others. We agree, and in order to be consistent with the manner that we treat other enforcement efforts in the Commission, this FTE time should be reallocated as indirect for regulatory fee purposes.

114. *New Regulatory Fee Categories Discussed by Commenters.* We do not have a sufficient basis, consistent with section 9 of the Act, for the adoption of new regulatory fee categories at this time, and therefore we rejected such proposals. There is no basis for the Commission to change its prior determinations on this issue that such fees would be unworkable and logistically infeasible to collect. Specifically, Satellite Operators proposed that we again seek comment on four fee categories: (i) broadband internet access providers, (ii) database administrators that enable unlicensed operations, (iii) equipment manufacturers, and (iv) experimental licenses. The Commission previously sought comment on these specific issues and as no additional information has been provided in the record to support such proposals, we are not adopting such categories in the *Report and Order* or seeking further comment on them. Although the Commission has adopted new fee categories in the past, in those instances the Commission determined that significant FTE resources of a core bureau were being spent on oversight and regulatory activities with respect to a specific service necessitating a new regulatory fee category. Those circumstances are not present here.

115. Similarly, we rejected Intelsat and Satellite Coalition's proposal to adopt a regulatory fee for holders of experimental licenses. These licenses are approved for a proposed experiment or range of experiments, and not for an actual operational service under established service rules. It is likely we would have to consider multiple regulatory fee categories and multiple ways of allocating proportional fees to such categories. Accordingly, based on the record, we did not adopt a new regulatory fee category for broadband internet access providers, database administrators that enable unlicensed operations, equipment manufacturers, or experimental licenses.

116. *Space Station Regulatory Fees.* We did not adopt a number of proposals to alter the allocated 80% of space station regulatory fees to geostationary orbit space stations (GSO) and 20% of the space station regulatory fees to non-geostationary orbit satellite systems (NGSO). Satellite Operators contended that we should not attribute only 20% of the costs of regulating NGSO systems to ''less complex'' satellite systems (principally Earth Exploration Satellite Service (EESS) systems) and to maintain the dividing line of ''20 or fewer U.S. authorized earth stations'' between ''less complex'' NGSO systems and ''other'' NGSO systems. Kinéis argued that defining only a single category of ''less complex'' systems, and defining them simply as systems designed to communicate with 20 or fewer U.S. authorized earth stations, is inadequate as the sole basis for distinguishing fee liability among myriad types of NGSO satellite systems.

117. We did not find any reason to deviate from our calculation of fees using the 20/80 allocation in our review of the FTE time for space stations and for FY 2023. We used the 20/80 allocation between ''less complex'' and ''other'' NGSO space station fees, respectively, within the NGSO fee category. These allocations continue to accurately reflect the amount of work involved in regulating NGSO systems and the number of reasonably related benefits provided to the payors of each fee category. We are not convinced by the Satellite Operators that the FTE time spent on less complex and other NGSO systems issues has changed sufficiently to warrant a revision in the 20/80 allocation. We also rejected the contention of Space X that we miscalculated the space station regulatory fees because we based our calculations on nine NGSO systems instead of ten. We recognize that there are ten licensed systems; however one of the licensed systems is not yet operational, and hence should not be counted in the unit count.

118. Further, we rejected Spaceflight's proposals for fee assessments for ''In-Space Servicing'' Industries. Due to the somewhat nascent nature of ''in-space servicing'' industries, we currently do not have a regulatory fee category for such spacecraft. As noted in the *FY 23 NPRM,* there have been a limited number of such operations and we tentatively concluded that it was too early to identify exactly where operations, such as those in low-Earth orbit (LEO), might fit into the regulatory fee structure in the future. We accordingly deferred our determination of whether to create a new fee category for such services to a future fiscal year once the regulatory framework under which space stations performing in-space servicing operations, including OOS, RPO, space situational awareness (SSA), and space domain awareness (SDA) operations, and the scope of those operations, is better understood.

119. Kinéis proposed that the Commission adopt a multi-tiered approach to NGSO regulatory fees that would charge each provider an amount commensurate with its demands on Commission resources and the benefits it receives through regulation based on these enumerated factors, consistent with the Act. While we find the proposal to be useful, it requires further comment and evaluation. There is not time to fully consider this proposal prior to the need to adopt regulatory fees before the end of the current fiscal year. It will be more efficient to seek comment on proposals like this together with other proposals that might arise as part of the anticipated reexamination of regulatory fees for space and earth stations in light of the creation of the Space Bureau.

120. *International Bearer Circuit Regulatory Fees—Submarine Cable Systems.* In the Report and Order the Commission rejected the Submarine Cable Coalition's request to revise the Commission's regulatory fee methodology for submarine cable operators, which is based upon the lit capacity of the fiber-optic submarine cable. We disagreed with the Submarine Cable Coalition's contention that the Commission's regulatory fee methodology is contrary to the Communications Act, and that the Commission has not developed regulatory fees that are reasonably related to the benefits provided. Moreover, we did not find persuasive its arguments that the Commission's assessment of these regulatory fees based on capacity is contrary to the Communications Act, and is not reasonably related to the benefits provided. The Commission has long held that capacity is a reasonable basis to assess regulatory costs among the submarine cable regulatory fee payors that benefit from the Commission's work, and find it reasonable to continue to assess higher regulatory fees on licensees with larger facilities that benefit more from the Commission's

work and thus should pay a larger proportion of the Commission's costs.

VI. Ordering Clauses

121. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Report and Order *is hereby adopted*.

122. *It is further ordered* that the FY 2023 section 9 regulatory fees assessment requirements and the rules set forth in the Final Rules section *are adopted* as specified herein.

123. *It is further ordered* that the Report and Order, except for portions containing information collection requirements in § 1.1166 and information collection requirements in § 1.1914, *shall be effective* upon publication in the **Federal Register**.

124. *It is further ordered* that the amendments to § 1.1166 of the Commission's rules, 47 CFR 1.1166, which were approved by the Office of Management and Budget, as required by the Paperwork Reduction Act, on August 17, 2023, *shall be effective* 30 days after publication of this summary in the **Federal Register**. The amendments to § 1.1914 of the Commission's rules, 47 CFR 1.1914, will not become effective until 30 days after publication in the **Federal Register** that the Office of Management and Budget has completed review of any information collection requirements that the Office of Managing Director determines is required under the Paperwork Reduction Act. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these provisions.

Federal Communications Commission.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications, Reporting and recordkeeping requirements, Telecommunications, Telephone, Television.

Marlene Dortch,

Secretary.

Final Rules

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

PART 1—PRACTICE AND PROCEDURE

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

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

■ 2. Revise §§ 1.1152 through 1.1156 to read as follows:

§ 1.1152 Schedule of annual regulatory fees for wireless radio services.

TABLE 1 TO § 1.1152

Exclusive use services (per license)	Fee amount
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90):	
(a) New, Renew/Mod (FCC 601 & 159)	$25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
220 MHz Nationwide:	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
2. Microwave (47 CFR part 101) (Private):	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
3. Shared Use Services—	
Land Mobile (Frequencies Below 470 MHz—except 220 MHz):	
(a) New, Renew/Mod (FCC 601 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(c) Renewal Only (FCC 601 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00
Rural Radio (47 CFR part 22):	
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(b) Renewal, Minor Renew/Mod (Electronic Filing)	10.00
4. Marine Coast:	
(a) New Renewal/Mod (FCC 601 & 159)	40.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	40.00
(c) Renewal Only (FCC 601 & 159)	40.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00
5. Aviation Ground:	
(a) New, Renewal/Mod (FCC 601 & 159)	20.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	20.00
(c) Renewal Only (FCC 601 & 159)	20.00
(d) Renewal Only (Electronic Only) (FCC 601 & 159)	20.00
6. Marine Ship:	
(a) New, Renewal/Mod (FCC 605 & 159)	15.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	15.00
(c) Renewal Only (FCC 605 & 159)	15.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	15.00
7. Aviation Aircraft:	
(a) New, Renew/Mod (FCC 605 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	10.00

TABLE 1 TO § 1.1152—Continued

Exclusive use services (per license)	Fee amount
(c) Renewal Only (FCC 605 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00
8. CMRS Cellular/Mobile Services (per unit) (FCC 159)	[1].16
9. CMRS Messaging Services (per unit) (FCC 159)	[2].08
10. Broadband Radio Service (formerly MMDS and MDS)	700
11. Local Multipoint Distribution Service	700

[1] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.
[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

TABLE 1 TO § 1.1153

Radio [AM and FM] (47 CFR part 73)	Fee amount
1. AM Class A:	
≤10,000 population	$595
10,001–25,000 population	990
25,001–75,000 population	1,485
75,001–150,000 population	2,230
150,001–500,000 population	3,345
500,001–1,200,000 population	5,010
1,200,001–3,000,000 population	7,525
3,000,001–6,000,000 population	11,275
>6,000,000 population	16,920
2. AM Class B:	
≤10,000 population	430
10,001–25,000 population	715
25,001–75,000 population	1,075
75,001–150,000 population	1,610
150,001–500,000 population	2,415
500,001–1,200,000 population	3,620
1,200,001–3,000,000 population	5,435
3,000,001–6,000,000 population	8,145
>6,000,000 population	12,220
3. AM Class C:	
≤10,000 population	370
10,001–25,000 population	620
25,001–75,000 population	930
75,001–150,000 population	1,395
150,001–500,000 population	2,095
500,001–1,200,000 population	3,135
1,200,001–3,000,000 population	4,710
3,000,001–6,000,000 population	7,060
>6,000,000 population	10,595
4. AM Class D:	
≤10,000 population	410
10,001–25,000 population	680
25,001–75,000 population.	
75,001–150,000 population	1,530
150,001–500,000 population	2,300
500,001–1,200,000 population	3,440
1,200,001–3,000,000 population	5,170
3,000,001–6,000,000 population	7,745
>6,000,000 population	11,620
5. AM Construction Permit	620
6. FM Classes A, B1 and C3:	
≤10,000 population	650
10,001–25,000 population	1,085
25,001–75,000 population	1,630
75,001–150,000 population	2,440
150,001–500,000 population	3,665
500,001–1,200,000 population	5,490
1,200,001–3,000,000 population	8,245
3,000,001–6,000,000 population	12,360
>6,000,000 population	18,545
7. FM Classes B, C, C0, C1 and C2:	

TABLE 1 TO § 1.1153—Continued

Radio [AM and FM] (47 CFR part 73)	Fee amount
≤10,000 population	745
10,001–25,000 population	1,240
25,001–75,000 population	1,860
75,001–150,000 population	2,790
150,001–500,000 population	4,190
500,001–1,200,000 population	6,275
1,200,001–3,000,000 population	9,425
3,000,001–6,000,000 population	14,125
>6,000,000 population	21,190
8. FM Construction Permits:	1,085
TV (47 CFR part 73)	
9. Digital TV (UHF and VHF Commercial Stations):	
1. Digital TV Construction Permits	5,100
2. Television Fee Factor	.007799 per pop
10. Low Power TV, Class A TV, FM Translator, & TV/FM Booster (47 CFR part 74)	260

§ 1.1154 Schedule of annual regulatory charges for common carrier services.

TABLE 1 TO § 1.1154

Radio facilities	Fee amount
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159) Carriers	$25.00.
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	$.00540.
2. Toll Free Number Fee	$.13 per Toll Free Number.

§ 1.1155 Schedule of regulatory fees for cable television services.

TABLE 1 TO § 1.1155

	Fee amount
1. Cable Television Relay Service	$1,720
2. Cable TV System, Including IPTV (per subscriber), and DBS (per subscriber)	1.23

§ 1.1156 Schedule of regulatory fees for international services.

(a) *Geostationary orbit (GSO) and non-geostationary orbit (NGSO) space stations.* The following schedule applies for the listed services:

TABLE 1 TO PARAGRAPH (a)

Fee category	Fee amount
Space Stations (Geostationary Orbit)	$117,580
Space Stations (Non-Geostationary Orbit)—Other	347,755
Space Stations (Non-Geostationary Orbit)—Less Complex	130,405
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	575

(b) *International terrestrial and satellite Bearer Circuits.* (1) Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier terrestrial and satellite operators must pay a fee for each active circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for purposes of this paragraph (b) include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not

relevant in determining that they are active circuits.

(2) The fee amount, per active Gbps circuit will be determined for each fiscal year.

TABLE 2 TO PARAGRAPH (b)(2)

International terrestrial and satellite (capacity as of December 31, 2022)	Fee amount
Terrestrial Common Carrier and Non-Common Carrier Satellite Common Carrier and Non-Common Carrier	$26 per Gbps circuit.

(c) *Submarine cable.* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating based on their lit capacity as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year.

TABLE 3 TO PARAGRAPH (c)—FY 2023 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (lit capacity as of December 31, 2022)	Fee ratio (units)	FY 2022 Regulatory fees
Less than 50 Gbps	.0625	$7,680
50 Gbps or greater, but less than 250 Gbps	.125	15,355
250 Gbps or greater, but less than 1,500 Gbps	.25	30,705
1,500 Gbps or greater, but less than 3,500 Gbps	.5	61,410
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	122,815
6,500 Gbps or greater	2.0	245,630

■ 3. Effective October 16, 2023 revise § 1.1166 to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

The fees established by §§ 1.1152 through 1.1156 and associated interest charges and penalties may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of such fees, interest charges and penalties would promote the public interest. Requests to pay fees established by §§ 1.1152 through 1.1156 and associated interest charges and penalties in installments may be granted in accordance with § 1.1914. Requests for waiver, reduction or deferral of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waiver, reduction or deferral of regulatory fees shall be filed electronically, by submission to the following email address: *regfeerelief@fcc.gov.* All requests for waiver, reduction and deferral shall be acted upon by the Managing Director with the concurrence of the General Counsel. All such requests made pursuant to § 1.1166 may be combined in a single pleading.

(b) Deferrals of fees, interest, or penalties if granted, will be for a designated period of time not to exceed six months.

(c) Petitions for waiver of a regulatory fee, interest, or penalties must be accompanied by the required fee, interest, or penalties and FCC Form 159. Submitted fees, interest, or penalties will be returned if a waiver is granted. Waiver requests that do not include the required fees, interest, or penalties or forms will be dismissed unless a request to defer payment due to financial hardship, supported by documentation of the financial hardship, is included in the filing.

(d) Petitions for reduction of a fee, interest, or penalty must be accompanied by the full fee, interest, or penalty payment and FCC Form 159. Petitions for reduction that do not include the required fees, interest, or penalties or forms will be dismissed unless a request to defer payment due to financial hardship, supported by documentation of the financial hardship, is included in the filing.

(e) Petitions for waiver of a fee, interest, or penalty based on financial hardship, including bankruptcy, will not be granted, even if otherwise consistent with Commission policy, to the extent that the total regulatory and application fees, interest, or penalties for which waiver is sought exceeds $500,000 in any fiscal year, including regulatory fees due in any fiscal year, but paid prior to the due date. In computing this amount, the amounts owed by an entity and its subsidiaries and other affiliated entities will be aggregated. In cases where the claim of financial hardship is not based on bankruptcy, waiver, partial waiver, or deferral of fees, interest, or penalties above the $500,000 cap may be considered on a case-by-case basis.

■ 4. Delayed indefinitely, revise § 1.1914 to read as follows:

§ 1.1914 Collection in installments.

(a) Subject to the Commission's rules pertaining to the installment loan program (see *e.g.,* § 1.2110(g)), subpart Q or other agreements among the parties, the terms of which will control, whenever feasible, the Commission shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments. Requests for installment payment of non-regulatory fee debt shall be filed electronically, by submission to the following email address: *installmentplanrequest@fcc.gov.* Requests for installment payment of regulatory fees may be combined with other requests for regulatory fee relief in accordance with § 1.1166(a) and shall be filed electronically by submission to *regfeerelief@fcc.gov.* The Commission will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and which are able to verify independently such representations (see 31 CFR 902.2(g)). The Commission will require and obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement, including, as appropriate, sureties and other indicia of creditworthiness (see Federal Credit Reform Act of 1990, 2 U.S.C. 661, *et seq.,* OMB Circular A–129), and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments will be obtained in appropriate cases. The Commission may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Commission's option.

(d) The Commission may deny the extension of credit to any debtor who fails to provide the records requested or fails to show an ability to pay the debt.

[FR Doc. 2023–19107 Filed 9–14–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 88 Friday,
No. 178 September 15, 2023

Part III

Department of Labor

Employment and Training Administration
Wage and Hour Division

20 CFR Parts 651, 653, 655, et al.
29 CFR Part 501
Improving Protections for Workers in Temporary Agricultural Employment in the United States; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 651, 653, 655, and 658

Wage and Hour Division

29 CFR Part 501

[DOL Docket No. ETA–2023–0003]

RIN 1205–AC12

Improving Protections for Workers in Temporary Agricultural Employment in the United States

AGENCY: Employment and Training Administration and Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (Department or DOL) proposes to amend its regulations governing the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment and the enforcement of the contractual obligations applicable to employers of these nonimmigrant workers. The revisions proposed in this notice of proposed rulemaking (NPRM or proposed rule) focus on strengthening protections for temporary agricultural workers and enhancing the Department's capabilities to monitor program compliance and take necessary enforcement actions against program violators.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before November 14, 2023.

ADDRESSES: You may submit comments electronically by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Instructions: Include the agency's name and docket number ETA–2023–0003 in your comments. All comments received will become a matter of public record and will be posted without change to *https://www.regulations.gov.* Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: For further information regarding 20 CFR parts 651, 653, and 658, contact Kimberly Vitelli, Administrator, Office of Workforce Investment, Employment and Training Administration, Department of Labor, Room C–4526, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–3980 (this is not a toll-free number). For further information regarding 20 CFR part 655, contact Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). For further information regarding 29 CFR part 501, contact Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–5627.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Acronyms and Abbreviations

AEWR Adverse effect wage rate
AIE Area(s) of intended employment
ALJ Administrative Law Judge
AOWL Agricultural Online Wage Library
ARB Administrative Review Board
ARIMA Autoregressive integrated moving average
BALCA Board of Alien Labor Certification Appeals
BLS Bureau of Labor Statistics
CBA Collective bargaining agreement
CDC Centers for Disease Control and Prevention
CFR Code of Federal Regulations
CO Certifying Officer
CY Calendar year
DBA Doing Business As
DHS Department of Homeland Security
DOJ Department of Justice
DOL Department of Labor
DOT Department of Transportation
EEOC Equal Employment Opportunity Commission
E.O. Executive Order
ES Employment Service
ES system Employment Service system
ETA Employment and Training Administration
FEIN Federal Employer Identification Number
FLS Farm Labor Survey
FLSA Fair Labor Standards Act
FR Federal Register
FY Fiscal year
GAO Government Accountability Office
GHSA Governors Highway Safety Association
GVWR Gross vehicle weight rating
H–2ALC H–2A labor contractor
HR Human resources
ICR Information Collection Request
INA Immigration and Nationality Act
IRCA Immigration Reform and Control Act of 1986
MSFW Migrant or seasonal farmworker
MSPA Migrant and Seasonal Agricultural Worker Protection Act
NAICS North American Industry Classification System
NGO Nongovernmental organization
NHTSA National Highway Traffic Safety Administration
NLRA National Labor Relations Act
NLRB National Labor Relations Board
NMA National Monitor Advocate
NOD Notice of Deficiency
NPC National Processing Center
NPRM Notice of proposed rulemaking
OALJ Office of Administrative Law Judges
OEWS Occupational Employment and Wage Statistics
OFLC Office of Foreign Labor Certification
OIG Office of Inspector General
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PRA Paperwork Reduction Act

Pub.L. Public Law
PY Program year
RFA Regulatory Flexibility Act
RIN Regulation Identifier Number
SBA Small Business Administration
Sec. Section of a Public Law
Secretary Secretary of Labor
SOC Standard Occupational Classification
Stat. U.S. Statutes at Large
SWA State workforce agency
TVPA Victims of Trafficking and Violence Protection Act of 2000
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
U.S.C. United States Code
USDA U.S. Department of Agriculture
VSL Value of a statistical life
WHD Wage and Hour Division

II. Background and Overview

A. Legal Authority

The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), establishes an ''H–2A'' nonimmigrant visa classification for a worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services . . . of a temporary or seasonal nature.'' 8 U.S.C. 1101(a)(15)(H)(ii)(a); *see also* 8 U.S.C. 1184(c)(1) and 1188.[1] Permanent, year-round job opportunities cannot be classified as temporary or seasonal. 2022 H–2A Final Rule, 87 FR 61660, 61684 (Oct. 12, 2022); *see also* 8 U.S.C. 1101(a)(15)(H)(ii)(a) (the INA permits only ''agricultural labor or services . . . of a temporary or seasonal nature'' to be performed under the H–2A visa category).

The H–2A nonimmigrant worker visa program enables U.S. agricultural employers to employ foreign workers on a temporary basis to perform temporary or seasonal agricultural labor or services only where the Secretary of Labor (Secretary) certifies that (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and (2) the employment of the foreign worker in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1).[2] The INA prohibits the Secretary from issuing this certification—known as a ''temporary agricultural labor certification''—unless both of the above-referenced conditions are met. The INA further prohibits the Secretary from issuing a temporary agricultural labor certification if any of the conditions in 8 U.S.C. 1188(b) apply concerning strikes or lock-outs, labor certification program debarments, workers' compensation assurances, and positive recruitment.

The Secretary has delegated the authority to issue temporary agricultural labor certifications to the Assistant Secretary for Employment and Training, who in turn has delegated that authority to the Employment and Training Administration's (ETA) Office of Foreign Labor Certification (OFLC). *See* Secretary's Order 06–2010 (Oct. 20, 2010), 75 FR 66268 (Oct. 27, 2010). In addition, the Secretary has delegated to WHD the responsibility under 8 U.S.C. 1188(g)(2) to assure employer compliance with the terms and conditions of employment under the H–2A program. *See* Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014). Pursuant to the INA and implementing regulations promulgated by DOL and the Department of Homeland Security (DHS), DOL evaluates an employer's need for agricultural labor or services to determine whether it is seasonal or temporary during the review of an H–2A Application. 20 CFR 655.161(a); 8 CFR 214.2(h)(5)(i)(A) and (h)(5)(iv).

B. Current Regulatory Framework

Since 1987, the Department has operated the H–2A temporary labor certification program under regulations promulgated pursuant to the INA. The standards and procedures applicable to the certification and employment of workers under the H–2A program are found in 20 CFR part 655, subpart B, and 29 CFR part 501. The majority of the Department's current regulations governing the H–2A program were published in 2010 and many were strengthened in a final rule the Department published in October 2022.[3] The Department incorporated the provisions for employment of workers in the herding and production of livestock on the range into the H–2A regulations, with modifications, in 2015.[4] The provisions governing the employment of workers in the herding and production of livestock on the range are codified at 20 CFR 655.200 through 655.235.[5]

The Department protects against adverse effect on the wages of workers in the United States similarly employed, in part, by requiring at § 655.120(a) that an employer offer, advertise in its recruitment, and pay a wage that is the highest of the adverse effect wage rate (AEWR), the prevailing wage, the agreed-upon collective bargaining wage, the Federal minimum wage, or the State minimum wage. If an updated AEWR for the occupational classification and geographic area is published during the work contract and becomes the highest applicable wage rate, the employer must pay at least the updated AEWR upon the effective date of the updated AEWR, as published in the **Federal Register**. Section 655.120(b)(3). In accordance with § 655.120(b)(2) and (3), the Department publishes the updated AEWR at least once annually in the **Federal Register**. One **Federal Register** notice provides annual adjustments to the AEWRs for the field and livestock workers (combined) occupational grouping based on the U.S. Department of Agriculture's (USDA) publication of the Farm Labor Reports (better known as the Farm Labor Survey, or FLS), effective on or about January 1, and a second **Federal Register** notice will provide annual adjustments to the AEWRs for all other non-range occupations based on the Department's Bureau of Labor Statistics' (BLS) publication of the Occupational Employment and Wage Statistics (OEWS) survey, effective on or about July 1.[6] Each notice specifies the effective date of the new AEWRs, which, in recent notices, has been not

[1] For ease of reference, sections of the INA are referred to by their corresponding section in the United States Code.

[2] Following certification by DOL, the employer must file an H–2A petition (defined at 20 CFR 655.103(b) as the U.S. Citizenship and Immigration Services (USCIS) Form I–129, Petition for a Nonimmigrant Worker, with H Supplement or successor form and/or supplement, and accompanying documentation required by DHS for employers seeking to employ foreign persons as H–2A nonimmigrant workers) with USCIS, requesting one or more workers not to exceed the total listed on the temporary labor certification. Generally, USCIS must approve this petition before the worker(s) can be considered eligible for an H–2A visa or for H–2A nonimmigrant status.

[3] Final Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 75 FR 6884 (Feb. 12, 2010) (2010 H–2A Final Rule); Final Rule, *Temporary Agricultural Employment of H–2A Nonimmigrants in the United States,* 87 FR 61660 (Oct. 12, 2022) (2022 H–2A Final Rule).

[4] Final Rule, *Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States,* 80 FR 62958 (Oct. 16, 2015) (2015 H–2A Herder Final Rule).

[5] Consistent with a court-approved settlement agreement in *Hispanic Affairs Project, et al.* v. *Scalia et al.,* No. 15–cv–1562 (D.D.C.), the Department recently rescinded 20 CFR 655.215(b)(2). Final Rule, *Adjudication of Temporary and Seasonal Need for Herding and Production of Livestock on the Range Applications Under the H–2A Program,* 86 FR 71373 (Dec. 16, 2021).

[6] 2022 H–2A Final Rule; Final Rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States,* 88 FR 12760 (Feb. 28, 2023) (2023 AEWR Final Rule).

more than 14 calendar days after publication.

OFLC currently requires disclosure of information about the identity of employers, agents, and attorneys, the places where work will be performed, and the employer's use of a foreign labor recruiter through the provision of agreements with recruiters when requested by the certifying officer (CO), which is necessary for the Department to assess the nature of the employer's job opportunity, monitor program compliance, and protect program integrity. *See* § 655.135(k); Form ETA–9142A; Form ETA–790A; Form ETA–790A, *Addendum B.* For example, employers must identify in the H–2A Application and job order all places of employment, provide the Department a copy of agreements with foreign labor recruiters that expressly prohibit unlawful fees (upon request by the CO), and provide identifying information like the Federal Employer Identification Number (FEIN) and Doing Business As (DBA) name on the Form ETA–9142A, Form ETA–790A, and Form ETA–790A, *Addendum B.* OFLC may provide any information received while processing H–2A applications, or in the course of conducting program integrity measures to WHD and to any other Federal agency with authority to enforce compliance with program requirements and combat fraud and abuse. Section 655.130(f); 29 CFR 501.2 (providing that WHD and OFLC may share information with each other and with other agencies as appropriate for investigative or enforcement purposes). For example, the Department may refer certain discrimination complaints to the Department of Justice (DOJ) Civil Rights Division, Immigrant and Employee Rights Section, under § 655.185, or refer information related to debarred employers or to employers' fraudulent or willful misrepresentations to DHS under §§ 655.182 and 655.184.

Under § 655.145, an employer may request to amend its application to increase the number of workers or to make minor changes to the period of employment. In addition, an employer may request modifications to its job order under § 655.121(e)(2) before submitting its H–2A Application. Current § 655.145(b) permits the employer to submit a request to the CO to delay the start date of need when the delay is due to unforeseen circumstances and the employer's crops or commodities will be in jeopardy prior to expiration of an additional recruitment period. The employer's request to the CO must explain the circumstances necessitating the request and the employer must include with the request a written assurance that all workers who are already traveling to the place of employment will be provided housing and subsistence, without cost to the workers, until work commences. The regulations do not permit amendments to an application after the CO issues a Final Determination. An employer that experiences changed circumstances after certification is required to submit a new and substantially similar application and job order.

The regulations implementing the Wagner-Peyser Act establish the Agricultural Recruitment System (ARS), through which employers can recruit U.S. workers for agricultural employment opportunities, and which prospective H–2A employers must use to recruit U.S. workers as a condition of receiving a temporary labor certification. Among other things, these regulations require employers to provide notice of delayed start dates and provide protections for workers in cases where the employer's start date is delayed. The ARS uses the term ''anticipated'' in relation to start dates and provides a process close to the start date the employer identified in the job order through which the employer, the State workforce agency (SWA), and referred farmworkers communicate regarding the actual start date of work. *See* § 653.501(c)(1)(iv)(D), (c)(3)(i) and (iv), (c)(5), and (d)(4). These regulations currently require an employer to notify the SWA of start date changes at least 10 business days before the originally anticipated start date and require the SWA to notify farmworkers that they should contact the SWA between 9 and 5 business days before the anticipated start date to verify the actual start date of work. Section 653.501(c)(5) and (d)(4). If an employer fails to timely notify the SWA of a start date change (*i.e.,* at least 10 business days before the anticipated first date identified in the job order), beginning on the first date of need, it must pay eligible workers the specified hourly rate of pay as stated on the clearance order, or if the pay is piece-rate, the higher of the Federal or State minimum wage for the first week or offer alternative work to each farmworker who followed the procedure to contact the SWA for updated start date information. See § 653.501(c)(3)(i) and (c)(5). Under the Department's H–2A regulations at § 655.145(b), if an employer requests a start date delay after workers have departed for the place of employment, the employer must assure the CO that it will provide housing and subsistence to all workers who are already traveling to the place of employment, without cost to the workers, until work commences. If an employer fails to comply with its obligations, the SWA may notify WHD for possible enforcement as provided in § 653.501(c)(5), the SWA may pursue discontinuation of services under part 658, subpart F, or the Department may, either upon referral of the SWA or upon its own initiative, pursue revocation of the labor certification under the procedures at § 655.181, or debarment of the employer under the procedures at § 655.182 or 29 CFR 501.20.

The regulations also currently permit the Department to debar an employer, successor-in-interest to that employer, attorney, or agent from participating in any action under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or 29 CFR part 501 if the employer, agent, or attorney substantially violated a material term or condition of the temporary agricultural labor certification with respect to H–2A workers, workers in corresponding employment, or U.S. workers improperly rejected for employment, improperly laid off or displaced. 20 CFR 655.182(a); 29 CFR 501.20(a). The Department provides the employer with a notice of debarment in these cases and also provides an opportunity to appeal these determinations using the procedures at 20 CFR 655.182(f) and 29 CFR 501.20(e) and 501.33. Similarly, the Wagner-Peyser Act regulations at 20 CFR parts 653 and 658 currently require the SWA to discontinue services if it determines an employer has committed one of several violations enumerated at 20 CFR 658.501(a)(1) through (7), such as misrepresentation of the terms and conditions of employment specified on job orders or failure to comply fully with assurances made on job orders.

As noted above, the Department recently published the 2022 H–2A Final Rule, which strengthened worker protections in the H–2A program, clarified the obligations of joint employers and the existing prohibitions on fees related to foreign labor recruitment, authorized debarment of agents and attorneys for their own misconduct, enhanced surety bond obligations and related enforcement authorization, modernized the prevailing wage determination process, enhanced regulation of H–2A labor contractors (H–2ALCs), and provided additional safeguards related to employer-provided housing and wage obligations. 87 FR 61660 (Oct. 12, 2022). In response to the NPRM published prior to the 2022 H–2A Final Rule, the Department received many comments suggesting changes that were beyond the scope of that rulemaking, such as suggestions relating to increased

enforcement and transparency regarding the foreign labor recruitment process, increased worker protections, revisions to the definition of employer, stronger integrity provisions to account for complex business organizations and for methods used to circumvent the regulations, strengthening provisions related to piece rate pay, and suggestions to revise the Wagner-Peyser Act regulations to ensure stronger protections for workers in the event of harmful last-minute start date delays.

C. Need for Rulemaking

The Department proposes important provisions in this NPRM that will further strengthen protections for agricultural workers and enhance the Department's enforcement capabilities, thereby permitting more effective enforcement against fraud and program violations. The Department has determined the proposed revisions will help prevent exploitation and abuse of agricultural workers and ensure that unscrupulous employers do not financially gain from their violations or contribute to economic and workforce instability by circumventing the law, both of which would adversely affect the wages and working conditions of workers in the United States similarly employed, and undermines the Department's ability to determine whether there are, in fact, insufficient U.S. workers for proposed H–2A jobs. It is the policy of the Department to maintain robust protections for workers and vigorously enforce all laws within its jurisdiction governing the administration and enforcement of nonimmigrant visa programs. This includes the coordination of the administration and enforcement activities of ETA, WHD, and the Department's Office of the Solicitor in the promotion of the hiring of U.S. workers and the safeguarding of wages and working conditions for workers in the United States. In addition, these agencies make criminal referrals to the Department's Office of Inspector General (OIG) in appropriate circumstances, such as when the agencies encounter visa-related fraud. The Department has determined through program experience, recent litigation, challenges in enforcement, comments on prior rulemaking, and reports from various stakeholders that the proposals in this NPRM are necessary to strengthen protections for agricultural workers, ensure that employers, agents, attorneys, and labor recruiters comply with the law, and enhance program integrity by improving the Department's ability to monitor compliance and investigate and pursue remedies from program violators. The recent surge in use of the H–2A program further underscores the need to strengthen protections for this vulnerable population.[7]

The proposed rule aims to address some of the comments that were beyond the scope of the 2022 H–2A Final Rule and concerns expressed by various stakeholders during that rulemaking. It also seeks to respond to recent court decisions and program experience indicating a need to enhance the Department's ability to enforce regulations related to foreign labor recruitment, and to improve accountability for successors-in-interest and employers who use various methods to attempt to evade the law and regulatory requirements, and to enhance worker protections for a vulnerable workforce, as explained further in the sections that follow.[8]

Section D below provides an overview of major proposed changes, followed by an in-depth section-by-section discussion of all proposed changes. The Department is soliciting public comment on all aspects of this proposed rule but has suggested in each section the types of comments that would be most useful to the Department when considering which provisions to include, exclude, or revise in the final rule. Generally, the Department is most interested in comments that cite evidence of the need to remedy through this rulemaking ongoing violations, worker abuse or exploitation, coercion, employer or agent subterfuge to avoid the law or other ways the Department's enforcement of the law may be hindered to the detriment of H–2A workers and workers in the United States impacted by the program and the Department's ability to fulfill its statutory responsibilities. The Department is particularly interested in comments that suggest ways the Department can use this rulemaking to better protect the rights and liberties, health and safety, and wages and working conditions of agricultural workers and best safeguard the integrity of the H–2A program, while continuing to ensure that responsible employers have access to willing and available agricultural workers and are not unfairly disadvantaged by employers that exploit workers and attempt to evade the law.

D. Summary of Major Provisions of This Proposed Rule

1. Protections for Workers Who Advocate for Better Working Conditions and Labor Organizing Activities

The Department proposes revisions to § 655.135 that will provide stronger protections for workers protected by the H–2A program to advocate for better working conditions on behalf of themselves and their coworkers and prevent employers from suppressing this activity. As detailed in Section IV, the Department believes that these proposed protections are necessary to prevent an adverse effect on the working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1). These protections will significantly bolster the Department's efforts to prevent such adverse effect because when H–2A workers and other workers protected under the H–2A program cannot advocate and negotiate with employers on their own behalf, employers are able to impose exploitative working conditions that also leave H–2A workers vulnerable to other abuses, and this unfairly deprives similarly employed agricultural workers of jobs with better working conditions. Specifically, the Department proposes to broaden § 655.135(h), which prohibits unfair treatment, by expanding and explicitly protecting certain activities workers must be able to engage in

[7] *See, e.g.,* Office of Foreign Labor Certification, Performance Data, *https://www.dol.gov/agencies/eta/foreign-labor/performance* (providing disclosure data for the H–2A labor certification program since FY 2008).

[8] The Department's enforcement experience demonstrates that workers in agriculture, particularly H–2A workers, remain highly vulnerable to workplace abuses. In FY 2022, WHD conducted 420 investigations of employers using the H–2A program, resulting in more than $3.6 million assessed in back wages and more than $6.3 assessed in civil money penalties. Recent investigations have demonstrated that H–2A workers continue to be vulnerable to human trafficking; *see, e.g.,* Press Release, U.S. Dep't of Just., *Owner of Farm Labor Contracting Company Pleads Guilty in Racketeering conspiracy Involving the Forced Labor of Mexican Workers* (Sept. 27, 2022), *https://www.justice.gov/opa/pr/owner-farm-labor-contracting-company-pleads-guilty-racketeering-conspiracy-involving-forced;* Jessica Looman, *U.S. Dep't of Lab. Blog: Exposing the Brutality of Human Trafficking* (Jan. 13, 2022), *https://blog.dol.gov/2022/01/13/exposing-the-brutality-of-human-trafficking.* H–2A workers continue to be vulnerable to retaliation when asserting their rights or engaging in self advocacy; *see, e.g.,* Press Release, U.S. Dep't of Lab., *Federal Court Orders Louisiana Farm, Owners to Stop Retaliation After Operator Denied Workers' Request for Water, Screamed Obscenities, Fired Shots* (Oct. 28, 2021), *https://www.dol.gov/newsroom/releases/whd/whd20211028-0;* Press Release, U.S. Dep't of Lab., *U.S. Labor Department Obtains Order Stopping Arizona Agricultural Employer from Abusing Workers, Exposing them to Workplace Dangers* (Oct. 28, 2022), *https://www.dol.gov/newsroom/releases/whd/whd20221028-0.* Additionally, recent vehicle crashes involving agricultural workers demonstrate the need for transportation reform; *see, e.g.,* Press Release, U.S. Dep't of Lab., *U.S. Department of Labor Urges Greater Focus on Safety by Employers, Workers as Deaths, Injuries in Agricultural Transportation Incidents Rises Sharply* (Sept. 20, 2022), *https://www.dol.gov/newsroom/releases/whd/whd20220920-0.*

without fear of intimidation, threats, and other forms of retaliation. For those workers engaged in agriculture as defined and applied in 29 U.S.C. 203(f), who are exempt from the protections of the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.,* the Department also proposes in § 655.135(h) to include some protections that the Department believes will safeguard collective action. The Department also proposes to add new provisions at § 655.135(m) to ensure employers do not interfere with efforts by vulnerable workers under the H–2A program to advocate for better working conditions by including a number of requirements that would advance worker voice and empowerment and further protect the rights proposed under § 655.135(h), and at § 655.135(n) to permit workers to invite or accept guests to worker housing and provide labor organizations a narrow right of access to worker housing, as explained in detail below.

2. Clarification of Justifiable Termination for Cause

The Department proposes to define ''termination for cause'' at § 655.122(n) by proposing six criteria that must be satisfied to ensure that disciplinary and/or termination processes are justified and reasonable, which are intended to promote the integrity and regularity of any such processes. These proposed changes will help to ensure employers do not arbitrarily and unjustly terminate workers, thereby stripping them of essential rights to which they would otherwise be entitled, and will assist the Department in determining whether an individual worker was terminated for pretextual reasons.

3. Immediate Effective Date for Updated AEWRs

The Department proposes to revise § 655.120(b)(2) to designate the effective date of updated AEWRs as the date of publication in the **Federal Register**, and to revise paragraph (b)(3) to state that the employer is obligated to pay the updated AEWR immediately upon publication of the new AEWR in the **Federal Register**. This change is intended to help ensure workers are paid at least the updated AEWR, as soon as it is published, for all work they perform, and thereby help to ensure the employment of H–2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed.

4. Enhanced Transparency for Job Opportunity and Foreign Labor Recruitment

The Department proposes new disclosure requirements to enhance transparency in the foreign worker recruitment chain and bolster the Department's capacity to protect vulnerable agricultural workers from exploitation and abuse, as explained more fully below. The Department proposes a new § 655.137, *Disclosure of foreign worker recruitment,* and a new § 655.135(p), *Foreign worker recruitment,* that are similar to the regulations governing disclosure of foreign worker recruitment in the H–2B program. The proposed provisions would require an employer and its attorney or agent, as applicable, to provide a copy of all agreements with any agent or recruiter that the employer engages or plans to engage in the recruitment of prospective H–2A workers, regardless of whether the agent or recruiter is located in the United States or abroad. The proposed provisions also would require the employer to disclose the identity (*i.e.,* name and, if applicable, identification number) and geographic location of persons and entities hired by or working for the foreign labor recruiter and any of the agents or employees of those persons and entities who will recruit or solicit prospective H–2A workers. As explained more fully below, the Department proposes to gather the additional recruitment chain information when the employer files its H–2A Application and will require the employer to submit a proposed Form ETA–9142A, *Appendix D,* that mirrors the Form ETA–9142B, *Appendix C.* Consistent with current practice in the H–2B program, proposed § 655.137(d) provides for the Department's public disclosure of the names of the agents and foreign labor recruiters used by employers. These additional disclosures of information about the recruitment chain are necessary for the Department to carry out its enforcement obligations, protect vulnerable agricultural workers and program integrity, and ensure equitable administration of the H–2A program for law abiding employers.

The Department also proposes to require the employer to provide the full name, date of birth, address, telephone number, and email address for the owner(s) of each employer, any person or entity who is an operator of the place(s) of employment (including the fixed-site agricultural business that contracts with the H–2ALC), and any person who manages or supervises the H–2A workers and workers in corresponding employment under the H–2A Application. The Department proposes to revise the Form ETA–9142A to require, where applicable, additional information about prior trade or DBA names the employer has used in the most recent 3-year period preceding its filing of the H–2A Application. The Department proposes conforming changes to §§ 655.130 and 655.167 to clarify that the employer would be required to continue to update the information required by the above paragraphs until the end of the work contract period, including extensions thereto, and retain this information post-certification and produce it upon request by the Department. The Department believes the proposed disclosure requirements will increase transparency in the international recruitment chain, aid the Department in assessing the nature of the job opportunity and the employer's need, enhance the Department's ability to enforce the prohibition against recruitment-related fees and to pursue remedies from program violators, assist the Department in identifying potential successors in interest to debarred employers, and better protect agricultural workers from abuse and exploitation in the United States and abroad.

5. Enhanced Transparency and Protections for Agricultural Workers

a. Disclosure of Minimum Productivity Standards, Applicable Wage Rates, and Overtime Opportunities

The Department proposes to revise § 655.122(l) to require employers to disclose any minimum productivity standards they will impose as a condition of job retention, regardless of whether the employer pays on a piece rate or hourly basis. This proposal is intended to help ensure that agricultural workers are fully apprised of the material terms and conditions of employment, including any productivity standards that may serve as a basis for termination for cause. Proposed changes at § 655.122(n) would prohibit the employer from terminating a worker for failure to meet a minimum productivity standard if the employer did not disclose the standard in accordance with § 655.122(l). An existing regulatory provision, § 655.122(b), would require that any such minimum productivity standard be bona fide and normal and accepted among non-H–2A employers in the same or comparable similar occupations and crops.

The Department also proposes to revise §§ 655.120(a) and 655.122(l) to

require employers to offer and advertise on the job order any applicable prevailing piece rate, the highest applicable hourly wage rate, and any other rate the employer intends to pay, and to pay workers the highest of these wage rates, as calculated at the time work is performed. A new proposed § 655.122(l)(4) would explicitly require the employer to specify in the job order any applicable overtime premium wage rate(s) for overtime hours worked and the circumstances under which the wage rate(s) for such overtime hours will be paid. These proposals are intended to help ensure that agricultural workers are fully apprised of the material terms and conditions of employment, including any productivity standards that may serve as a basis for termination for cause, and to aid the Department in its administration and enforcement of the H–2A program.

b. Enhanced Protections for Workers Through the Employment Service System (ES System)

The Department proposes revisions to the Wagner-Peyser Act implementing regulations at 20 CFR 653.501 to clarify an employer's obligations in the event of a delayed start date and to make conforming revisions to the H–2A regulations at 20 CFR 655.145 and a new § 655.175 to clarify pre-certification H–2A Application amendments and employer obligations in the event of post-certification changes to the start date. As noted above, the current regulations require an employer to provide notice to the ES Office holding the job order of delayed start dates and impose obligations on employers that fail to provide the requisite notice, but do not require employers to notify workers directly of any such delay.

The Department proposes revisions to part 658, subpart F, and related definitions at § 651.10, regarding the discontinuation of Wagner-Peyser Act Employment Service (ES) services to employers. The Department proposes to clarify and expand the scope of entities whose ES services can be discontinued to also include agents, farm labor contractors, joint employers, and successors in interest. The Department also proposes revisions to clarify the bases for discontinuation at § 658.501, and to clarify and streamline the discontinuation procedures at §§ 658.502 through 658.504, including the notice requirements for SWAs, evidentiary requirements for employers, when and how employers may request a hearing, and procedures for requesting reinstatement. These changes are designed to increase the reach and utility of the discontinuation of services regulations, which SWAs have underutilized in recent years. These proposed changes are described in more detail below.

c. Enhanced Transportation Safety Requirements

The Department proposes to revise § 655.122(h)(4) to require the provision, maintenance, and wearing of seat belts in most employer-provided transportation, which would reduce the hazards associated with agricultural worker transportation, thus making these jobs more attractive to workers in the United States. Specifically, as explained in detail below, the Department proposes to revise § 655.122(h)(4) to prohibit an employer from operating any employer-provided transportation that is required by the U.S. Department of Transportation (DOT) highway safety regulations to be manufactured with seat belts unless all passengers and the driver are properly restrained by seat belts meeting standards established by DOT. Essentially, if the vehicle is manufactured with seat belts, the proposed rule would require the employer to retain and maintain those seat belts in good working order and ensure that each worker is wearing a seat belt before the vehicle is operated.

d. Protection Against Passport and Other Immigration Document Withholding

The Department proposes a new § 655.135(o) that would directly prohibit an employer from holding or confiscating a worker's passport, visa, or other immigration or government identification documents, independent of the employer's compliance with the Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Public Law 106–386 (2000), 18 U.S.C. 1592(a), which is required under the current H–2A regulations. The proposal is intended to better protect workers from potential labor trafficking, as explained below.

e. Protections in the Event of a Minor Delay in the Start of Work

The Department proposes a new § 655.175 that addresses post-certification changes currently addressed at § 655.145(b) and proposes new obligations and procedures in the event an employer must briefly delay the start of work due to unforeseen circumstances that jeopardize crops or commodities prior to the expiration of an additional recruitment period. Proposed § 655.175 limits minor delays to 14 calendar days or less and would require an employer to notify each worker and the SWA of any delay in the start date of work. Consistent with § 653.501(c), proposed § 655.175 includes new compensation obligations that would require the employer to pay workers the applicable wage rate for each day work is delayed, for a period of up to 14 calendar days, starting with the certified start date, if the employer fails to provide adequate notice of the delay.

6. Enhanced Integrity and Enforcement Capabilities

a. Reduced Submission Periods for Appeal Requests for Debarment Matters and Submittal of Rebuttal Evidence to OFLC

To help protect and uphold program integrity, and to further protect workers in the United States, the Department proposes to increase the speed with which debarments become effective by decreasing the time for parties to submit rebuttal evidence to OFLC, the time for parties to appeal Notices of Debarment to the Office of Administrative Law Judges (OALJ), and the time for parties to appeal debarment decisions to the ARB from the OALJ. This would lead to faster final agency adjudications and thereby better protect and uphold program integrity and agricultural workers by more efficiently and effectively preventing H–2A program violators from accessing the program. As explained more fully below, the Department proposes to amend § 655.182(f)(1) and (2) by reducing the period to file rebuttal evidence from 30 calendar days to 14 calendar days, unless the employer requests an extension of the allowable rebuttal period, in writing, and demonstrates good and substantial cause necessitating an extension. For the same reasons, the Department also proposes to shorten the time to appeal the OFLC Administrator's Notice of Debarment, in lieu of submitting rebuttal evidence; to shorten the time to appeal the OFLC Administrator's final determination, after review of rebuttal evidence; to shorten the time for all parties to request review of OFLC debarments by the ARB from 30 days to 14 calendar days; to shorten the time to request a hearing with the OALJ on any WHD determination involving debarment from 30 calendar days to 14 calendar days; and also to shorten the time for all parties to request review by the ARB of an OALJ determination involving debarment from 30 days to 14 calendar days. Determinations by the WHD Administrator that do not include debarment, but only include, for example, an assessment of civil money

penalties or the payment of back wages, would retain a 30-calendar-day timeframe for appeal to the OALJ and to the ARB.

b. Enhancements to the Department's Ability To Apply Orders of Debarment Against Successors-in-Interest

The Department proposes a new § 655.104 regarding successors in interest, that would clarify the liability of successors in interest for debarment purposes and streamline the Department's procedures to deny labor certifications filed by or on behalf of successors in interest to debarred employers, agents, and attorneys. The Department proposes conforming revisions to §§ 655.103(b), 655.181, and 655.182 and 29 CFR 501.20. These proposed revisions are intended to better reflect the liability of successors in interest under the well-established successorship doctrine, and to better ensure that debarred entities do not circumvent the effects of debarment.

c. Defining the Single Employer Test for Assessing Temporary Need, or for Enforcement of Contractual Obligations

The Department proposes to define the term *single employer* at a new § 655.103(e) and proposes factors to determine if multiple nominally separate employers are acting as one. Defining the term would codify the Department's long-standing practice of using the single employer test (sometimes referred to as an ''integrated employer'' test), or similar analysis, to determine if separate employers are a single employer for purposes of assessing seasonal or temporary need, or for enforcement of contractual obligations. In relation to seasonal or temporary need, the Department has received applications for temporary labor certification that purport to be for job opportunities with different employers when, in reality, the workers hired under these certifications are employed by companies so intertwined that they are operating as a de facto single employer in one area of intended employment for a period of need that is not truly temporary or seasonal. In its enforcement experience, the Department has increasingly encountered H–2A employers that employ H–2A workers under one corporate entity and domestic workers under another, creating the appearance that the H–2A employer has no non-H–2A workers in corresponding employment when actually, the corporate entities are so intertwined that all the H–2A workers are employed by a single H–2A employer, and the non-H–2A workers are engaged in corresponding employment. Some employers have attempted to use these arrangements to avoid the obligation to offer workers in corresponding employment the terms and conditions offered to H–2A workers, including the required wage rate. Codifying the definition of single employer will prevent employers from using their corporate structures to circumvent statutory and regulatory requirements.

III. Discussion of Proposed Revisions to Employment Service Regulations

A. Introduction

In this proposed rule, the Department proposes to revise the ES regulations (20 CFR parts 651 through 654 and 658 and 29 CFR part 75) that implement the Wagner-Peyser Act of 1933. These regulations include the provision of ES services with a particular emphasis on migrant or seasonal farmworkers (MSFWs), as well as provisions governing the discontinuation of ES services to employers. The proposed rule will update the language and content of the regulations to, among other things, improve and strengthen the regulations governing discontinuation of ES services to employers, including the applicable bases and procedures. In some areas, these proposals establish entirely new responsibilities and procedures; in other areas, the proposals clarify and update requirements already established. The proposed revisions make important changes to the following components of the ES system: definitions, requirements for processing clearance orders, and the discontinuation of ES services provided to employers.

The Wagner-Peyser Act of 1933 provided the Department the authority to establish a national ES system to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. Section 3(a) of the Act sets forth the basic responsibilities of the Department, which include assisting in coordinating the State public employment service offices throughout the country and in increasing their usefulness by prescribing standards for efficiency, promoting uniformity in procedures, and maintaining a system of clearing labor between the States.

To that end, the ES system provides labor exchange services to its participants and has undergone numerous changes to align its activities with broader national workforce development policies and statutory requirements. The Workforce Innovation and Opportunity Act, passed in 2014, expanded upon the previous workforce reforms in the Workforce Investment Act of 1998 and, among other things, identified the ES system as a core program in the One-Stop local delivery system, also called the American Job Center network.

In 1974, the case *National Ass'n for the Advancement of Colored People (NAACP), Western Region, et al.* v. *Brennan et al.,* No. 2010–72, 1974 WL 229 (D.D.C. Aug. 13, 1974) resulted in a detailed court order mandating various Federal and State actions consistent with applicable law (referred to as the Judge Richey Court Order, or Richey Order). The Richey Order required the Department to implement and maintain a Federal and State monitoring and advocacy system and set forth requirements to ensure the delivery of ES services, benefits, and protections to MSFWs on a non-discriminatory basis, and to provide such services in a manner that is qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers. In 1977 and 1980, consistent with its authority under the Wagner-Peyser Act, the Department published regulations at 20 CFR parts 651, 653, and 658 to implement the requirements of the Richey Order. Part 653 sets forth standards and procedures for providing services to MSFWs and provides regulations governing the ARS, a system for interstate and intrastate agricultural job recruitment. Part 658 sets forth standards and procedures for the administrative handling of complaints alleging violations of ES regulations and of employment-related laws, the discontinuation of services provided by the ES system to employers, the review and assessment of State agency compliance with ES regulations, and the Federal application of remedial action to State agencies.

Note that on April 20, 2022, the Department issued an NPRM regarding Wagner-Peyser Act staffing (Staffing NPRM). 87 FR 23700 (Apr. 20, 2022). The Staffing NPRM included proposed changes to several sections in 20 CFR parts 653 and 658 that govern the provision of ES services to MSFWs. As relevant here, in the Staffing NPRM, the Department proposed changes to 20 CFR 653.501(b)(4) and (c)(3) (ES office and SWA requirements for processing clearance orders); § 658.501(a)(4), (b), and (c); § 658.502(a) and (b) (notification requirements for discontinuation of ES services); and § 658.504(a) and (b) (procedures for reinstatement of ES services). 87 FR 23717, 23722, 23736, 23740–23741. In this proposed rule, the Department has proposed further changes to these provisions, which in

some instances conflict with changes proposed in the Staffing NPRM. Because the Department has not issued a final Staffing Rule, the Department recognizes that the proposed changes in this rulemaking may generate questions within the regulated community about how the Department ultimately proposes to revise these provisions, including how the proposed changes in this rulemaking affect the proposed changes in the Staffing NPRM, and what the Department might do in finalizing the changes proposed in the Staffing NPRM. Where this NPRM proposes changes that conflict or intersect with changes proposed in the Staffing NPRM, the Department will be using this proposed rule as the operative rulemaking proceeding to provide notice and an opportunity to comment on the proposed changes to the provisions referenced above. Consistent with this approach, the Department does not intend to finalize changes to the above referenced provisions in the Staffing NPRM as part of that rulemaking proceeding. Any changes to the above referenced provisions will be made through this rulemaking. The Department has concluded that the proposed changes to these provisions are better suited for this rulemaking because they are meant to strengthen protections for agricultural workers and, therefore, better align with the overall purpose of this rulemaking. Further, the Department has concluded that this is the most transparent approach to address the overlap, and is the approach that best minimizes confusion within the regulated community while ensuring the public the full opportunity to receive notice and provide comments on the proposed changes.

B. Discussion of Proposed Revisions to 20 CFR Part 651

Part 651 (§ 651.10) sets forth definitions for parts 652, 653, 654, and 658. The Department proposes to add or revise the following definitions primarily to clarify aspects of its discontinuation of Wagner-Peyser Act ES regulation at 20 CFR part 658, including new provisions that it proposes to add in this rulemaking. Where appropriate, as discussed below, the Department has sought to align these new definitions with the same or similar definitions at 20 CFR 655.103.

The Department proposes to add a definition to § 651.10 for *agent* as an entity authorized to act on behalf of employers with respect to ES clearance system activities. The Department has observed that individuals and entities meeting the proposed definition of *agent* often engage the ES clearance system by submitting clearance orders on behalf of *employers,* as defined in part 651, and control many aspects of *employers'* recruitment activities relating to clearance orders. Adding this proposed definition clarifies that *agents* (which include attorneys) are among the entities subject to discontinuation of services as a result of the proposed changes to part 658. Additionally, because an employer's agent for purposes of the ES clearance system is often the same agent that an employer uses for purposes of the H–2A labor certification process, the Department proposes a definition of *agent* at § 651.10 that aligns with the definition of agent in § 655.103.

The Department proposes to add definitions to § 651.10 for *criteria clearance order* and *non-criteria clearance order* because they are terms that are currently used in the ES regulations but were previously undefined. Adding the definitions clarifies that *criteria clearance orders* are those placed in connection with an H–2A Application filed pursuant to part 655, subpart B, while *non-criteria clearance orders* are those not placed in connection with an H–2A Application. By defining these terms, it will be clearer which orders must comply with the requirements at part 653, subpart F, and part 655, subpart B, and which orders do not have to comply with the requirements at part 655, subpart B.

The Department proposes to add to § 651.10 a definition for *discontinuation of services* because it is referenced throughout the ES regulations and is the subject of part 658, subpart F, but was previously undefined. The proposed definition explains what services would be unavailable pursuant to the process described in part 658, subpart F, and the entities subject to discontinuation. Under the proposed *discontinuation of services,* the scope of services to which discontinuation applies includes any Wagner-Peyser Act ES service provided by the ES to employers pursuant to parts 652 and 653. The scope of individuals and entities to whom discontinuation applies includes *employers,* as defined in part 651, and *agents, farm labor contractors, joint employers,* and *successors in interest,* as proposed to be defined in part 651.

The Department proposes to revise the definition of *employment-related laws* to clarify that the term also includes the regulations that implement *employment-related laws* in addition to the laws themselves. Revising the definition clarifies its meaning and scope for ES staff who observe or process complaints relating to violations of employment-related laws, such as outreach workers, complaint system representatives, and those who conduct field checks.

The Department proposes to add to § 651.10 a definition for *farm labor contractor* as an entity, excluding agricultural employers, agricultural associations, or employees of agricultural employers or agricultural associations, that agrees to recruit, solicit, hire, employ, furnish, or transport an MSFW. The Department proposes to add this definition to § 651.10 because the term is used throughout the ES regulations, most notably in part 653, subpart F, which recognizes that *farm labor contractors* use the ES clearance system, but it has never been defined. Adding this proposed definition also clarifies the entities subject to discontinuation of services as a result of the proposed changes to part 658. As with the term *agent,* because many farm labor contractors that use the ES clearance system also seek temporary labor certifications from OFLC as H–2ALCs under part 655, subpart B, the Department proposes a definition of *farm labor contractor* that both aligns with the definition of *H–2A labor contractor* found at 20 CFR 655.103 and with the definition of *farm labor contractor* and *farm labor contracting activity* found at 29 U.S.C. 1802 and 29 CFR 500.20 to maintain consistency between Departmental program areas.

The Department recognizes that joint employment relationships are common in agriculture, and that joint employers are required to comply with the requirements in part 653, subpart F, while filing a joint application for temporary labor certification under 20 CFR part 655, subpart B. *See* § 655.131. The Department therefore proposes to add a definition for *joint employer* to § 651.10 to clarify how the concept will be applied in the ES system and to clarify the entities subject to discontinuation of services as a result of the proposed changes to part 658. The proposed definition is also intended to ensure consistency with recent changes to the Department's H–2A regulation, 87 FR 61660, 61793–61794 (Oct. 12, 2022), and as with the definitions of *agent* and *farm labor contractor,* the proposed definition is modeled on the definition of joint employment at 20 CFR 655.103 because of the connection between the ES system and H–2A labor certification program.

The Department proposes to add to § 651.10 a definition for *successor in interest* that describes the inexhaustive factors that SWAs should use to determine if an entity is a successor in interest to another entity. The proposed

definition allows SWAs and stakeholders to better understand which entities may be subject to discontinuation as a result of the proposed changes to part 658. To maintain consistency between the regulations governing the ES system and the regulations governing the H–2A labor certification program, the Department proposes to adapt the definition of successor in interest as proposed in § 655.104.

The Department proposes to add a definition for *week* to clarify that a week, as used in parts 652, 653, 654, and 658, means 7 consecutive calendar days. Adding the definition allows for SWAs and employers to calculate time periods used in the ES regulations uniformly, including for wage calculations and other time-related procedures.

C. Discussion of Proposed Revisions to 20 CFR Part 653

Part 653 sets forth the principal regulations of the ES concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion and in a way ''that meets their unique needs.'' 20 CFR 653.100(a). Part 653 also describes requirements for participation in the ARS. Subpart F provides the requirements SWAs and employers must follow when employers seek access to the ARS by submitting clearance orders for temporary or seasonal farmwork. Section 653.501 provides the responsibilities of ES Offices and SWAs when they review clearance orders submitted by employers, and the process by which they place approved clearance orders into intra- and interstate clearance. Once the order is approved and placed into clearance, ES Offices and SWAs recruit and refer workers for the position described on the clearance order.

The Department proposes to add a fourth paragraph to § 653.501(b), at § 653.501(b)(4), which would require ES staff to consult the OFLC and WHD H–2A and H–2B debarment lists, and an ETA Office of Workforce Investment discontinuation of services list, before placing a job order into intrastate or interstate clearance. The Department further proposes a new paragraph (b)(4)(i), which states that SWAs must initiate discontinuation of ES services if the employer seeking placement of a clearance order is on a debarment list, and new paragraph (b)(4)(ii), which states that SWAs must not approve clearance orders from employers whose ES services have been discontinued by any State. Finally, the Department proposes a new paragraph (b)(4)(iii) to make clear that the provisions in paragraph (b)(4) would apply to all entities subject to discontinuation under part 658, subpart F, and not just to employers as defined in § 651.10.

The Department's mission is to promote the welfare of workers. Regarding consultation with the H–2A and H–2B debarment lists, the proposed additions are intended to further that mission by ensuring that ES offices do not place U.S. workers with employers who are presently barred from employing nonimmigrant workers via the H–2A and H–2B visa programs. This requirement, and the proposed addition to § 658.501(a)(4), would protect workers by ensuring that the ES system is not used to place a worker with an employer that has failed to comply with its obligation(s) as an employer of foreign workers. As with the H–2A program, employers participating in the H–2B program must first file job orders through the SWA's labor exchange and therefore must comply with ES requirements. As discussed more fully below in the discussion of the proposed changes to § 658.501(a)(4), the proposed inclusion of H–2B programs also recognizes that employers seeking nonimmigrant workers may improperly misclassify H–2A agricultural work as H–2B non-agricultural work. The proposed addition seeks to protect workers who use the ES system from employers who engage in improper misclassification, and to maintain a fair labor system for employers who seek temporary labor certification via the proper channels. Additionally, the H–2A regulations at 20 CFR 655.182 and 29 CFR 501.20, and the H–2B regulations at 20 CFR 655.73 and 29 CFR 503.24, describe the violations that may result in an employer's debarment from receiving future labor certifications under those programs. The potential reasons for debarment include serious violations that could affect worker safety, for example ''[a] single heinous act showing such flagrant disregard for the law'' that future compliance with program requirements cannot reasonably be expected (§ 655.182(d)(1)(x)). Such reasons also include an employer's substantial failure to comply with regulatory requirements, including an employer's failure to pay or provide the required wages or working conditions, an employer's failure to comply with its obligations to recruit U.S. workers, or an employer's failure to cooperate with required audits or investigations. In the Department's view, the employer subject to debarment should also be excluded from participation in the ES system. The Department does not want the ES system to facilitate placement of U.S. workers with employers whom the Department has determined should not be permitted to employ nonimmigrant workers through its H–2A and H–2B programs, particularly where the U.S. workers may perform similar work and, thus, be subject to the same or similar violations giving rise to the employer's debarment.

Regarding consultation with the proposed Office of Workforce Investment discontinuation of services list, as discussed below, the effect of a final decision to discontinue services to an employer would be to prohibit that employer from receiving any services from the ES system, not just from offices in the State that discontinued services. The Department recognizes that SWAs need a mechanism to ensure that they are not providing services, including the processing and placement of clearance orders, to entities whose services have been discontinued, and that any such mechanism should be straightforward for the SWAs to use for it to be effective. The Department believes that maintaining a list of discontinued entities—like the debarment lists maintained by OFLC and WHD—that SWAs could access when reviewing clearance orders is the most straightforward approach to effectuate this goal. In order to avoid unnecessary burden, SWAs and ES offices would consult the Office of Workforce Investment discontinuation of services list and would not provide ES services to any employers on the list, without having to go through the steps described in part 658, subpart F, to discontinue services to the same employer in their specific State. The Department also notes that the proposed changes in part 658, subpart F, discussed below, address the entities subject to discontinuation. Proposed § 658.503(e) would mandate that if the SWA discontinues services to an employer, the employer, which includes successors in interest, cannot participate in or receive Wagner-Peyser Act ES services provided by the ES to employers pursuant to parts 652 and 653; therefore, no SWA would be able to process any future job orders from the employer or a successor in interest, unless services are reinstated under § 658.504.

Section 653.501(c)(3) lists the assurances that each clearance order must include before it can be placed into clearance. Paragraph (c)(3)(i) currently requires that the clearance

order include an assurance that the employer will provide workers referred through the clearance system the number of hours of work, as indicated on the clearance order, for the week beginning with the anticipated date of need unless the employer notifies the order-holding office of a change to the anticipated start date at least 10 business days prior to the original start date, and states that the SWA must make a record of the notification and must attempt to inform referred workers of the change. Section 653.501(c)(3)(iv) currently requires that the clearance order include an assurance that the employer filing the order will promptly notify the order-holding office or SWA that crops are maturing faster or slower than expected or of other events that change the terms of employment. Section 653.501(c)(5) currently provides that if the employer fails to provide the required notice, the employer is obligated to provide eligible (pursuant to paragraph (d)(4) of this section) workers referred through the clearance system the first week's pay at the rate stated on the clearance order or find alternative work, if such alternative work is included in the clearance order. For criteria clearance orders, any alternative work provided to U.S. workers referred through the ARS will be agricultural work, in order to comply with the H–2A program requirements for work offered on such orders. For non-criteria orders, because the order is placed through the ARS, it is anticipated that alternative work provided in these situations also will be agricultural work.

The Department has determined these requirements do not provide adequate notice to workers placed on the clearance order when the terms of their employment change and do not adequately protect workers from the potential consequences of those changes. The current notification requirement, which inadvertently incorporates a requirement on the SWA into the employer assurances, is not sufficient to prevent unnecessary delay because it requires that notification occur in two steps—first from the employer to the SWA, and then from the SWA to the workers. Additionally, given the transient nature of temporary and seasonal farmwork, coupled with increased housing, transportation, and food costs in recent years, the requirement that employers provide 1 week's pay if they fail to satisfy the notification requirement does not sufficiently protect workers from resulting financial hardship. The Department proposes several changes to address these concerns by improving notice and wage protections for workers hired under ARS clearance orders.

Specifically, the Department proposes to revise § 653.501(c) to require that, in the event the employer's date of need changes from the date the employer indicated on the clearance order, the employer must notify the SWA and all workers placed on the clearance order of the change at least 10 business days before the original start date. The proposed revisions clarify that notification is only to workers placed on the clearance order, and not to workers who were referred but not hired. The proposed revisions recognize that employers, rather than the SWA or the order holding office, are in the best position to contact and notify workers placed on the order of changes to the date of need because the employer has already contracted to employ the workers and should have up-to-date contact information for each worker. The requirement to document this outreach is a minimally burdensome means to allow the SWA to assess compliance with this assurance. This proposed change will increase the likelihood that workers will receive timely notification of any change to the start date and that employers maintain accurate records of notices they provide. To ensure consistent protections for workers in the United States who apply to the employer directly, as well as to H–2A workers and workers in corresponding employment who may be impacted by a delayed start date of work, the Department proposes conforming protections at a new § 655.175 of the H–2A program regulations.

The Department further proposes that employers that fail to comply with these notice requirements must provide housing and subsistence to all workers placed on the clearance order who are already traveling to the place of employment, without cost to the workers, until work commences, and must pay all workers placed on the clearance order the applicable wages for each day work is delayed for a period of up to 2 weeks, starting with the originally anticipated date of need. The Department's proposal to require the provision of housing and subsistence would align the protections U.S. workers placed on non-criteria clearance orders receive with protections workers on criteria clearance orders receive under current § 655.145(b) and proposed § 655.175(b). The Department does not anticipate that requiring the provision of housing will burden employers as they are required to have their housing ready and inspected prior to the start date.

The Department's proposal to expand the period during which employers must pay the applicable wage to 2 weeks, from the current 1-week period, will better protect agricultural workers from financial hardship they are likely to experience should they travel or otherwise rely on the job opportunity articulated on the clearance order and find that work is not available to them. Providing up to 2 weeks of wages provides a safety net for workers to support themselves when work is not available. The Department believes 1 week of wages is insufficient to protect workers from the financial hardships associated with a delayed starting date when such delays were not communicated, particularly if a worker traveled for the job. In lieu of paying the 2 weeks' worth of wages, if the employer fails to comply with the notice requirements, employers can provide such workers alternative work if such alternative work is listed on the clearance order. The Department has determined that this alternative effectively addresses the hardship concern by providing the worker a source of income while continuing to allow the employer flexibility to adjust their anticipated start date.

To accomplish these changes, the Department proposes several specific revisions. The Department proposes to revise § 653.501(c)(3)(i) to remove the requirement that the SWA must make a record of the notification and attempt to inform referred workers of the change in the date of need. The current language improperly incorporates a SWA requirement into the employer assurances, and, as discussed below, the Department proposes to shift these responsibilities to the employer which, as discussed below, the Department has determined is better situated to make timely contact with workers. The Department also proposes to move language in this paragraph regarding the employer's notice to the order-holding office to § 653.501(c)(3)(iv), which contains other instructions the employer must follow when giving notice of changed terms and conditions of the opportunity. The proposed regulation at § 653.501(c)(3)(i) would maintain that the employer's notice must comply with paragraph (c)(3)(iv), which would more clearly explain the employer's assurance to comply with the full notice requirements.

The Department proposes to make additional revisions to paragraph (c)(3)(iv). First, the Department proposes to remove a redundancy in the first sentence, which currently states that the

employer must expeditiously notify the order-holding office or SWA immediately. Because immediate notice is expeditious, the use of the word ''expeditiously'' is not necessary. Second, the Department proposes that the assurance on the clearance order require that when there is a change to the start date of need, the employer, rather than the order-holding office or SWA, notify the office or SWA and each worker placed on the order. When there is a change in the date of need it is imperative that workers placed on the order be notified as quickly as possible to allow the worker to change any travel arrangements and otherwise remain informed about the opportunity. As noted above, the Department has determined that the employer, which has already contracted or communicated with the worker, is better positioned to make timely contact with workers and therefore proposes that the employer agree to do so as a condition of the participation in the ARS. Third, the Department, in this assurance and in paragraph (c)(5), proposes to require notification to workers placed on the order rather than eligible workers referred from the order. The Department proposes this change because the obligation to provide housing and subsistence to workers who are already traveling to the place of employment, and to pay wages for up to 2 weeks or provide alternative work is relevant only to workers who were actually placed with the employer rather than to workers referred to the employer through the ARS. Additionally, under current paragraph (c)(5), the obligation to pay or provide alternative work is for eligible workers, meaning those referred workers who contact the ES Office to verify the date of need pursuant to paragraph (d)(4). As discussed below, the Department proposes to remove paragraph (d)(4), which includes this verification requirement. With the proposed change to have employers notify workers of any change in their start date, the requirement that referred workers verify their start date with the ES Office is no longer necessary. Finally, the Department proposes to include the requirement to provide housing and subsistence to all workers who are already traveling to the place of employment, without cost to the workers, until work commences and to pay up to 2 weeks of wages or find alternative work from paragraph (c)(5), as the Department proposes to amend it, in the assurance. This change will make this obligation clear to the employer at the time they complete and sign the clearance order.

The Department also proposes several changes to paragraph (c)(5). First, the Department proposes to specify that the employer must provide notice to the worker placed under the clearance order, which will align this paragraph with paragraph (c)(3)(iv) and the proposed changes to the assurance described therein. For the same reason, the Department proposes to remove language stating employers must pay only workers who are eligible pursuant to paragraph (d)(4).

The Department proposes to further revise paragraph (c)(5) to clarify that the employer would be required to provide housing and subsistence to all workers who are already traveling to the place of employment, without cost to the workers, until work commences and to pay the specified hourly rate of pay on the clearance order, or if the pay listed on the clearance order is a piece-rate, the higher of the Federal or State minimum wage, or if applicable, any prevailing wage.[9] If the order is a criteria clearance order the employer would be required to pay the rate of pay under part 655, subpart B. These proposed edits would align the wage requirement in this paragraph with proposed wage requirements in part 655, subpart B, as applicable. The Department further proposes to require that employers, if they fail to provide the required notice at least 10 business days before the original date of need, must pay the required wage for up to 2 weeks instead of the 1 week currently required. The Department proposes this change because, as discussed above, the Department believes 1 week of wages is not sufficient to ensure workers do not experience the financial hardship that would come with being unable to start work on time, particularly if these workers have traveled for the job.

The Department proposes to revise paragraph (c)(5) to clarify that any alternative work must be in the approved clearance order to help ensure employers do not require workers to perform work at sites not approved by the SWA and, for criteria clearance orders, the Department. The Department proposes to add language to clearly instruct the SWA to process violations of these requirements as apparent violations, which § 658.419 describes as violations that SWAs, ES office staff, or outreach staff observe or of which they have information, and which staff must document and refer for further action. The Department proposes these changes because SWAs have identified many apparent violations where employers caused workers to work at worksites that were not approved in their clearance orders. In some recent cases, the workers were not properly trained and were caused to perform dangerous tasks, which presented serious health and safety risks. It is critically important that all worksites are known and approved by the SWA and, as appropriate, the Department, to avoid workplace injuries, improper wage payments related to performance of non-agricultural work, and potential human trafficking.

Finally, the Department proposes to remove paragraphs (d)(4), (7), and (8) in their entirety because, with the proposed change to have employers notify workers of any change in the start date, the requirement that the applicant holding office notify workers of any changes is no longer relevant or necessary.

D. Discussion of Proposed Revisions to 20 CFR Part 658, Subpart F

This subpart sets forth the regulations governing the discontinuation of Wagner-Peyser Act ES services to employers. In 1977, the Department published regulations at 20 CFR part 658 governing the monitoring of all ES activities and enforcement of ES regulations. Subpart F provided procedures for discontinuation of services where a State agency, through its director, determined that an employer violated ES regulations. Under subpart F, where a complaint alleging an employer violated ES regulations could not be resolved or, in the absence of a complaint, where the State had reason to believe an employer violated ES regulations and could not informally resolve the matter, the State would refer it to the State director for formal investigation. Where the director issued a formal, written determination that an employer violated ES regulations, the determination would include a notification that the State would initiate discontinuation procedures in 30 days unless the employer provided sufficient evidence that it did not violate the ES regulations or had corrected the violation. If the matter was not resolved in 30 days, the State would then notify the employer in writing that it would terminate ES services in 15 days unless the employer requested a hearing or provided sufficient evidence that it did not violate ES regulations. Where the employer did neither, the State would discontinue ES services to the employer until the employer provided sufficient evidence that it did not violate ES

[9] For requirements on costs for workers traveling from abroad, including in the event of a minor delay, see § 655.122 and the discussion of proposed § 655.175 in section IV.E.

regulations or that it corrected the violation.

In 1980, the Department published regulations to clarify and streamline the discontinuation provisions. In addition to violations of ES regulations, the Department set forth several, specific bases for discontinuation (*e.g.,* where the employer is found to have misrepresented the terms and conditions of a job order, or found by an enforcement agency to have violated an employment-related law). The Department also revised the discontinuation procedures to include (1) a notice of intent to discontinue services, (2) an opportunity for employer to respond and/or request a hearing, (3) a final determination, and (4) an opportunity to request reinstatement or a hearing.

The Department proposes revisions throughout this subpart to further clarify the bases and process for discontinuing services because the Department has observed a need for greater clarity among SWAs about the circumstances under which they must discontinue services to employers and the specific requirements they must follow to do so. As discussed below, in the Department's view, SWAs do not utilize the discontinuation process to the fullest extent because of uncertainty regarding the process and requirements to discontinue services.

In this subpart, the Department also proposes to reorganize regulations to more accurately group subjects and to more logically arrange procedural steps, including when and how employers may request a hearing. Finally, the Department proposes to clarify what ES services would be unavailable after discontinuation and the entities subject to discontinuation.

The existing regulations in this subpart require SWAs to discontinue services to employers who meet any of the bases for discontinuation detailed at § 658.501(a), by utilizing the procedures outlined in §§ 658.501 through 658.504. However, the Department has observed hesitancy among SWAs to utilize the existing discontinuation provisions, and SWAs have shared information with the Department that they do not fully understand the requirements to discontinue services to employers and have sought instructions and Departmental review of notifications to employers. The Department's data suggests that this lack of clarity is limiting the SWA's use of discontinuation. For example, a SWA is required to discontinue services if an employer fails to fully comply with assurances made on clearance orders. These assurances include compliance with housing standards, wage payment, contract disclosure, recordkeeping, and other common areas of employer noncompliance. As reported in the National Monitor Advocate's (NMA) Annual Report on Services to MSFWs for program year (PY) 2020, the most recent year for which data is available, Form ETA–5148 (Services to Migrant and Seasonal Farmworkers Reports) documents that SWAs processed 598 ES-related complaints against employers involving non-MSFWs and 94 ES-related complaints against employers involving MSFWs. Of the 2,581 total complaints received, which include ES and non-ES related complaints involving MSFWs and non-MSFWs, SWAs processed, 950 complaints related to wages, 270 complaints involved discrimination, 173 complaints involved health and safety, and 88 complaints involved housing, in addition to other categories. Also, in PY 2020, SWAs reported that they processed 453 apparent violations, as described at § 658.419, including 218 wage-related issues, 175 health and safety related issues, and 51 housing-related issues, in addition to other categories. Despite the number of complaints and apparent violations in these areas, SWAs reported that they discontinued services to only 17 employers in PY 2020. While not every complaint or apparent violation will result in discontinuation of services, the low number of discontinuations relative to the number of complaints and violations may suggest that enhanced clarity in the bases and procedures for discontinuation is needed, and could aid SWAs in better utilizing the discontinuation provisions to hold employers accountable and protect workers from additional violations.

Similarly, SWAs must initiate discontinuation of services when the Department or a SWA receives notification from an appropriate enforcement agency of a final determination that includes a violation of an employment-related law. Applicable enforcement agencies may include any State, Federal, or local agencies that enforce employment-related laws, for example the Department's Occupational Safety and Health Administration (OSHA), WHD, the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission (EEOC), State or local departments of health, and other related agencies. WHD public enforcement data documents thousands of investigations between PY 2012 and PY 2019 that involve employers who used the ES to place criteria clearance orders and violated employment-related laws. However, between PY 2012 to 2019, SWAs reported that they only discontinued services twice (once in PY 2016 and once in PY 2019). Again, the glaring disparity between the number of violations found by WHD and the actual discontinuation of services by the SWAs during the same time period may suggest that the SWAs would benefit from clarifying revisions to the ES regulations governing the discontinuation process.

The Department believes that the increase in discontinuation of services in PY 2020 is likely attributable to the NMA's increased training of SWA staff in this area of the regulation and not due to an increase in the number of employers meeting the conditions for discontinuation of services. While this training provided needed clarity to the SWAs, and therefore produced results, the Department sees the need for additional clarity and support for SWAs to discontinue services and mitigate the possibility of misunderstanding or incorrectly utilizing the discontinuation provisions. As noted above, in recent years, SWAs have shared information with the Department that they do not fully understand the requirements to discontinue services to employers and have sought instructions and Departmental review of notifications to employers. In the Department's review, the Department identified that SWAs have made errors regarding citing applicable bases to discontinue services under § 658.501(a), describing necessary facts to justify the discontinuation, and notifying employers of their right to a hearing. These issues contributed to several instances where SWA were not successful in discontinuing services to employers even though the SWAs believed they had a sufficient basis to discontinue services. The Department believes that revising the regulations, as described below, provides SWAs the needed additional clarity to better implement the discontinuation provisions and would allow ETA, including its regional offices, to better monitor and support SWAs to ensure they initiate discontinuation of services as required by the regulations. This would improve worker protection by preventing noncompliant employers from using the ES service to obtain workers (including H–2A workers, as employers seeking to use the H–2A visa program must first file a clearance order through the ES) which, in turn, aids the Department in ensuring a fair labor exchange system for compliant employers, and meeting its statutory obligations to maintain and increase the

usefulness of the ES system. Additionally, the proposed clarifications and improvements to the discontinuation procedures provide greater certainty to employers seeking to provide information to SWAs in response to a notice of intent to discontinue, or seeking to reinstate services, and protect employers' interests by ensuring that they receive informative and timely determinations from SWAs. Specific proposed changes are discussed below.

The Department proposes to revise § 658.500, which describes the scope and purpose of subpart F, to add language consistent with proposed revisions to § 658.503 that discontinued services include services otherwise available under parts 652 and 653. This revision clarifies the scope of services discontinued to include the labor exchange services—such as recruitment, career, and labor market information services—available to employers under part 652.

The Department also proposes to add paragraph (b) to § 658.500, which would explain that for purposes of this subpart, employer refers to *employers,* as defined at § 651.10, and *agents, farm labor contractors, joint employers,* and *successors in interest,* as proposed to be defined at § 651.10. Proposed paragraph (b) would therefore describe which entities may experience discontinuation of services. Each of these entities may engage in the ES clearance system by creating or submitting clearance orders, or by managing or utilizing workers placed on ES clearance orders. *Agents* and *farm labor contractors* often engage the ES clearance system by submitting clearance orders and controlling many aspects of recruitment activities relating to clearance orders. *Joint employers* may utilize workers placed on clearance orders in the same or similar manner as the *employer,* defined at § 651.10, with whom they jointly employ those workers. A *successor in interest* may have reincorporated itself from an *employer* whose ES services have been discontinued into another business entity that maintains the same operations or interests, allowing that entity to undermine the effect of the discontinuation of the original entity in contravention of the purpose of the discontinuation regulation. The proposed revisions are meant to clarify and expand the entities who engage the ES clearance system and are, thus, subject to discontinuation. Specifically, this change makes it clear that agents, farm labor contractors, joint employers, and any successor in interest to an agent, farm labor contractor, or joint employer, are subject to discontinuation of services. This proposed change addresses a limitation of the current regulation, allowing SWAs to take action that will better protect workers.

Finally, as the proposed *agents, farm labor contractors, joint employers,* and *successors in interest* also seek temporary labor certifications from OFLC under part 655, subpart B, adding these entities here brings the discontinuation regulation in line with the existing H–2A regulations, which permit the debarment of agents, farm labor contractors, joint employers, and successors in interest, as well as fixed-site H–2A employers, and agricultural associations.

Section 658.501 describes eight bases for which SWA officials must initiate discontinuation of services to employers. The Department proposes several edits to paragraphs (a)(1) through (7), except paragraph (a)(3), including a substantive revision to paragraph (a)(4).

In paragraph (a)(1), the Department proposes to state that SWA officials must discontinue services to employers who submit and refuse to correct or withdraw job orders containing terms and conditions contrary to *employment-related laws.* The existing regulation contains the terms *alter* and *specifications.* The Department proposes to change ''alter'' to ''correct'' to more clearly articulate that the employer must specifically correct the noncompliant condition rather than simply changing the condition, which might not result in correction of the noncompliance. This change would also clarify which action will lead to the initiation of the discontinuation process. The Department proposes to change ''specifications'' to ''terms and conditions'' to align the language in paragraph (a)(1) with the language used in § 653.501, and proposes to change this term in the corresponding provision at § 658.502(a)(1) to conform to this proposed change to § 658.501(a)(1).

The Department proposes to reorganize paragraph (a)(2) for clarity by moving the language regarding withdrawal of job orders that do not contain required assurances to earlier in the sentence. The Department also proposes to remove language in paragraph (a)(2) that currently limits this basis for discontinuation to only those assurances involving *employment-related laws.* The Department proposes to remove this language because employers must provide all assurances described at § 653.501(c)(3), which include more than the assurance to comply with *employment-related laws.* The Department has determined that a failure to provide any required assurance should be grounds for discontinuation because each assurance is necessary to ensure workers referred on clearance orders are fully apprised of and protected by the assurances if placed on the order.

The Department proposes to amend paragraph (a)(4) to add that SWA officials must initiate procedures for discontinuation of services for employers who are currently debarred from participating in the Department's H–2A or H–2B foreign labor certification programs. The Department recognizes that many employers who use the ARS also seek temporary labor certifications from OFLC under part 655, subpart B. These employers may attempt to recruit workers through non-criteria orders in the ARS if they are prohibited from using the H–2A program as a result of their debarment. In its experience OFLC has seen many instances where employers who should file H–2B applications because they are seeking to employ workers in non-agricultural occupations instead inappropriately file H–2A applications. Similarly, in its enforcement experience WHD has seen employers that have mischaracterized the nature of their labor needs on their applications for labor certification to obtain labor certification to hire workers from one program to work in job opportunities that are appropriately classified in the other program. Failure to utilize the appropriate H–2 program results in the posting of inaccurate job orders, thereby undermining the labor market test. It also deprives workers of the specific protections available to them under each of the respective programs, such as the right to housing free of cost under the H–2A program. Likewise, it harms law-abiding employers as their competitors gain an unfair advantage by offering fewer benefits to their workforce or by avoiding the H–2B visa cap to which other employers must adhere. In light of these experiences, the Department has determined that it is appropriate for SWAs to initiate discontinuation proceedings against entities debarred from participation in the H–2A or H–2B temporary labor certification programs to protect workers seeking employment through the ES system and to maintain a fair system for law-abiding employers. The Department notes that § 655.73 currently prohibits employers debarred from the H–2B program from participating in any of the Department's other foreign labor programs, including the H–2A program; this proposal reinforces that prohibition.

The Department proposes this requirement to protect workers who use the ARS by ensuring that ES offices do

not place U.S. workers with employers during any such period of debarment. Debarment is a serious sanction that results from substantial violations of a material term or condition of the employer's temporary labor certification, and that is imposed only after an employer has exhausted or forfeited an opportunity to respond to the proposed action as well as substantial appeals procedures. These may include violations related to worker safety, failure to provide required wages or working conditions, failure to comply with recruitment requirements or participate in required investigations or audits, or failure to pay required fees. Entities that have committed such violations should be excluded from participation in the ES, and the Department's proposal will better protect U.S. workers by ensuring that they will not be placed with debarred employers that have substantially violated a material term or condition of their temporary labor certification. The proposed changes would also ensure that law-abiding employers have greater access to ES services and are better able to recruit available U.S. workers for jobs because SWAs would spend less time and resources serving noncompliant employers, and law-abiding employers would receive referrals of qualified U.S. workers that might otherwise go to noncompliant employers.

The Department invites comments on this proposed basis for discontinuation and the inclusion of employers debarred from participation in the H–2B program. In addition, the Department is considering whether to expand this provision to require SWAs to initiate discontinuation proceedings against employers that have been debarred from any of the Department's other foreign labor certification programs—the H–1B, CW–1, and PERM programs. The Department invites comments on whether to expand this provision to all of the foreign labor certification programs, or to some but not all of the other foreign labor certification programs, the scope of employers to whom this may apply, and the effect(s) of expanding this provision.

The Department proposes to amend § 658.501(a)(5) by adding that this basis for discontinuing services includes employers who are found to have violated ES regulations pursuant to § 658.411 or § 658.419. This edit is intended to clarify that ES violations may be found as a result of apparent violations, which are described at § 658.419.

The requirement to accept qualified workers referred through the clearance system applies only to criteria clearance orders filed pursuant to § 655.121; therefore, the Department proposes to amend paragraph (a)(6) by clarifying that discontinuation on the basis of failure to accept qualified workers would be appropriate only for employers placing criteria clearance orders. For non-criteria clearance orders, the regulations at part 653, subpart F, do not require employers to hire all qualified workers referred through the ES, so this basis for discontinuation would not apply.

In paragraph (a)(7), the Department proposes to remove the words *in the conduct of,* which are currently present but do not add meaning and are therefore extraneous and unnecessary.

Current § 658.501(b) explains the circumstances and procedures for immediate discontinuation of services. The Department proposes to move paragraph (b) to §§ 658.502 and 658.503 to clarify that existing paragraph (b) is not an independent basis for discontinuation and to better align it with the discontinuation procedures in §§ 658.502 and 658.503. Additional proposed changes are discussed below.

The Department is redesignating current § 658.501(c), which recognizes the unique interplay between the ES and H visa programs, to § 658.501(b), with revisions. The proposed new § 658.501(b) explains what a SWA must do when it has learned that an employer participating in the ES system may not have complied with the terms of its temporary labor certification under, for example, the H–2A and H–2B programs. The current regulation states that SWA officials must engage in the *procedures* for discontinuation of services to employers pursuant to paragraphs (a)(1) through (8) of § 658.501. The Department proposes to clarify that SWA officials must determine whether the SWA must *initiate* discontinuation of services pursuant to § 658.501(a). The proposed change clarifies that SWAs cannot proceed with discontinuation procedures based solely on information that an employer *may* have violated the terms of its temporary labor certification. Rather, SWAs must take that information and look to paragraph (a) to determine whether one of the bases for discontinuation applies. Once a SWA determines that one of the bases for discontinuation under paragraph (a) does apply, then the SWA *must* initiate discontinuation of services. Finally, as the proposed paragraph (b) would apply to both currently active and previous labor certifications, the Department invites comments on whether it would be appropriate to limit the scope of previous labor certifications or potential violations of a labor certification to a particular time period.

Section 658.502 describes the notification and procedural requirements a SWA must follow when it intends to discontinue services to an employer. The Department proposes several changes throughout § 658.502 to clarify and streamline these requirements. First, the Department proposes to revise the section heading to state that it relates to notification to employers of the SWA's intent to discontinue services. This change clarifies that this section relates only to initial notices proposing discontinuation and not to the final notices described in § 658.503. The Department also proposes to add introductory language to the beginning of paragraph (a) to clarify that these procedures apply where the SWA determines that there is an applicable basis for discontinuation of services under § 658.501(a). The Department proposes additional revisions to paragraph (a) to clarify that the initial notices must provide the reasons for proposing discontinuation and must state that the SWA intends to discontinue services in accordance with this section. The proposed language removes the reference to part 654, to which discontinuation of services does not apply. These proposed revisions are intended to address issues SWAs encountered in PY 2020 and 2021 in initiating discontinuation of services, including insufficient notification to employers of the applicable bases for discontinuation and insufficient factual detail in the notices to support the applicable bases. The Department notes that if more than one basis under paragraph (a) applies, the SWA must initiate discontinuation under all applicable bases.

Paragraphs (a)(1) through (7) of § 658.502 provide specific notification requirements for each of the corresponding bases for discontinuation outlined in § 658.501(a)(1) through (7). The Department proposes to remove language in § 658.502(a)(1) through (7) that describes the applicable bases for discontinuation and instead cross-reference the applicable citations for clarity. For example, the Department proposes to revise § 658.502(a)(1) to state that the paragraph applies where the proposed discontinuation is based on § 658.501(a)(1). This would replace current language that describes § 658.501(a)(1) and more clearly and succinctly direct the SWA to § 658.501(a)(1) as the applicable basis.

The Department also proposes to remove language in § 658.502(a)(1) through (7) that provides employers the

opportunity for a pre-discontinuation hearing. In response to a SWA's notice of intent to discontinue services, the existing language provides an employer the opportunity to submit evidence contesting the proposed discontinuation and/or to request a hearing pursuant to § 658.417. The proposed revisions will better align the hearing procedures for discontinuation of services at part 658, subpart F, with the hearing procedures for the ES Complaint System at §§ 658.411(d) and 658.417, which allow for a hearing by a *State hearing official* only after the SWA issues a final decision on a complaint. As currently written, the discontinuation proceedings at § 658.502(a)(1) through (3) and (5) through (7) allow for a hearing under § 658.417 without the SWA ever issuing a final determination under § 658.503. This prevents SWAs from uniformly issuing final determinations in all discontinuation proceedings. Additionally, it inadvertently allows employers to bypass a formal decision from the SWA anytime they request a hearing and, because State administrative hearings may take several months to complete, inadvertently prolongs any formal determinations. The Department believes that removing the opportunity for a pre-discontinuation hearing—while maintaining the opportunity for employers to submit evidence contesting the proposed discontinuation under § 658.502 and the opportunity for a post-discontinuation hearing in § 658.504—allows SWAs to expeditiously and fairly resolve discontinuation proceedings while providing sufficient due process to employers. The proposed change allows for a more complete record than would result from an immediate appeal of a notice from the SWA proposing discontinuation. This proposed change also better aligns with the ES Complaint System regulations which do not contemplate pre-determination hearings. Moreover, as discussed above, the 1977 discontinuation regulations only allowed for pre-discontinuation hearings and, in an effort to clarify and streamline the discontinuation provisions, the 1980 regulations allowed for both a pre- and post-discontinuation hearing pursuant to § 658.417. In doing so, the pre-discontinuation hearing currently available under § 658.502 is no different than the post-discontinuation hearing available under § 658.504. Removing the identical pre-discontinuation hearing allows for a more efficient process without removing due process protections for employers and ensures that post-discontinuation hearings are decided on a more complete record.

Finally, in § 658.502(a)(1) through (7), the Department proposes changing the language that SWAs must notify employers that all *employment services* will be terminated to state that all *ES services* will be terminated. The proposed language clarifies that the services at issue are specific to the ES.

In addition to the changes described above, the Department proposes revisions to paragraphs (a)(1) through (7) to provide greater detail and specificity regarding the type of information that SWAs must provide to employers when proposing to discontinue services. The proposed changes ensure that SWAs adequately explain their reasons for proposing discontinuation, and that employers have sufficient factual detail to respond to the proposed discontinuation. In these paragraphs, the Department also proposes small changes for clarity, including rewording sentences so they use the active voice.

In paragraph (a)(2), the Department proposes to add language explaining that SWAs must specify the assurances involved and must explain how the employer refused to provide the assurances. The proposed edits ensure that SWAs describe the basic facts that led them to initiate discontinuation of services so employers understand the scope of the alleged violation and have sufficient information to respond. The Department also proposes a revision to paragraph (a)(2)(ii) to align this paragraph with the proposed changes to § 658.501(a)(2), discussed above, regarding the scope of the required assurances.

In paragraph (a)(3), to provide clearer direction to SWAs and better notice to entities receiving a notice, the Department proposes to add language stating that SWAs must specify the terms and conditions the employer misrepresented or the assurances with which the employer did not fully comply, and explain how the employer misrepresented the terms or conditions or failed to comply with assurances on the job order. In paragraph (a)(3)(iii), the Department proposes removing the requirement that employers provide *resolution of a complaint which is satisfactory to a complainant referred by the ES,* replacing it with the requirement that an employer provide *adequate evidence that it has resolved the misrepresentation of terms and conditions of employment or noncompliance with assurance.* Evidence is adequate if the SWA could reasonably conclude that the employer has resolved the misrepresentation or noncompliance. The proposed change removes unnecessary and out-of-place language regarding ES complaints, which are addressed in paragraph (a)(5), and better aligns § 658.502(a)(3) with proposed § 658.501(a)(3). The Department also proposes combining paragraphs (a)(3)(iii) and (iv) to make clear that employers need to provide the information in paragraphs (a)(3)(iii) and (iv) together.

In paragraph (a)(4), the Department proposes to add language that SWAs must provide evidence of the final determination by an enforcement agency of a violation of an *employment-related law* or debarment with the notice of intent to discontinue services. For purposes of discontinuation, a final determination is a decision by an enforcement agency, such as WHD, OSHA, or other Federal, State, or local agency responsible for enforcing employment-related laws, that has become operative under applicable law. For final determinations, the Department proposes adding language clarifying that the SWA must specify—as discussed in the final determination or debarment—the enforcement agency's findings of facts and conclusions of law as to the employment-related law violation(s). For final debarment orders, the Department proposes adding language requiring the SWA to specify the time period for which the employer is debarred from participating in one of the Department's foreign labor certification programs. These proposed revisions ensure the SWA has confirmed that a final determination or debarment exists and that the employer has sufficient information regarding the final determination at issue to respond.

The Department proposes revisions to § 658.502(a)(4)(i) through (iii) to clarify and explain the evidence and assurances that employer may provide to avoid discontinuation of services. In paragraph (a)(4)(i), the Department proposes to remove existing language stating that the employer may provide evidence that the enforcement agency reversed its ruling and that the employer did not violate employment-related laws; and to replace it with language stating that the employer may provide evidence that the determination at issue is not final because, for example, it has been stayed pending appeal, overturned, or reversed. The proposed change clarifies that employers may contest the finality of the determination under paragraph (a)(4) and clarifies that SWAs may not discontinue services where a determination is not, in fact, final. The Department proposes a new paragraph

(a)(4)(ii) which requires employers to submit evidence that their period of debarment is no longer in effect and that they have taken all actions required by the enforcement agency as a consequence of the violation. If the proposed discontinuation is based only on a final determination of a violation of an employment related law, then evidence that the debarment is no longer in effect is not needed; similarly, if the proposed discontinuation is based on a debarment then evidence that the employer has taken necessary remedial actions is not necessary. The proposed addition in paragraph (a)(4)(ii)(A) is necessary to address employer responses to debarment or disqualification. The proposed paragraph (a)(4)(ii)(B) incorporates existing language and is meant to more clearly encompass any and all actions required by final determination but does not substantively change what an employer has to show under current § 658.502(a)(4)(ii).

In paragraph (a)(5), the Department proposes additional language to clarify that the SWA must specify which ES regulation the employer has violated and must provide basic facts to explain the violation. The proposed language ensures that SWAs provide sufficient factual detail regarding the ES violation at issue so the employer can respond.

The Department proposes to revise § 658.502(a)(6) to explain that SWAs must state that the job order at issue was filed pursuant to § 655.121 and specify the name of each worker who was referred and not accepted. The proposed revision is consistent with the proposed change to § 658.501(a)(6) and ensures that SWAs provide sufficient factual detail regarding the workers at issue so the employer can respond. In paragraph (a)(6)(iii), the Department proposes changing *and* to *or* to decouple paragraph (a)(6)(iii) from the assurances required in existing paragraph (a)(6)(iv), as it is not necessary for employers that did not violate the requirement to provide assurances of future compliance. The Department proposes a new paragraph (a)(6)(iv), to add an option for the employer to show that it was not required to accept the referred workers, because the time period under 20 CFR 655.135(d) had lapsed, and a new paragraph (a)(6)(v), to add an option for the employer to show that, after initial refusal, it subsequently accepted and offered the job to the referred workers or to show that it has provided all appropriate relief imposed as a result of the refusal. It is necessary to update this paragraph because the current regulation does not provide for the scenario where an employer subsequently offers employment to qualified workers after first refusing, as the current paragraph (a)(6)(i) is intended to capture scenarios where an employer accepted qualified workers and did not refuse them as found by the SWA. It is also possible that SWAs may attempt to resolve apparent violations involving failure to hire qualified U.S. workers referred through the ES, resulting in employers hiring those individuals. Finally, the Department proposes to move existing paragraph (a)(6)(iv) to paragraph (a)(6)(vi) to maintain the requirement that the employer provide assurances that qualified workers referred in the future will be accepted; and adds new language to clarify the assurance that is required depending on whether the period described in 20 CFR 655.135(d) has lapsed, as after the end of the period the employer would no longer be required to accept referred workers on the particular clearance order involved. This change provides a means of ensuring future compliance with the requirement that the employer submitting criteria clearance orders hires all qualified workers referred to the order.

In paragraph (a)(7), the Department proposes clarifying edits that provide clearer direction to the SWA but that do not change the regulation's meaning, including rephrasing sentences and changing the pronoun used for employers to *it* instead of *he/she*.

The Department proposes to add a new paragraph (a)(8) to explain information the SWA must include in its notice to an employer proposing to discontinue services where the decision is based on § 658.501(a)(8) (repeatedly causes the initiation of discontinuation of services). The Department proposes that the SWA must list and provide basic facts explaining the prior instances where the employer has repeatedly caused initiation of discontinuation proceedings to provide notice of the basis for the SWA's action to facilitate their response. The SWA must notify the employer that all ES services will be terminated unless the employer within that time provides adequate evidence that the SWA's initiation of discontinuation in prior proceedings was unfounded. The proposed paragraph (a)(8) replaces existing paragraph (c), which discusses discontinuation based on § 658.501(a)(8) but does not include clear direction to the SWA and does not provide sufficient notice to employers to allow them to respond.

The Department proposes to remove existing § 658.502(b) and (d) because these paragraphs pertain to the employer's pre-determination opportunity to request a hearing. As described above, the Department proposes to eliminate the opportunity for an employer to request a hearing until after the SWA has provided its final notice on discontinuation of services to the employer.

The Department proposes a new § 658.502(b) to explain the circumstances that warrant immediate discontinuation of services. The proposed addition replaces existing § 658.501(b), in part, and states that SWA officials must discontinue services immediately, in accordance with § 658.503, without providing the notice of intent and opportunity to respond described in this section, if an employer has met any of the bases for discontinuation of services under § 658.501(a) and, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this section would cause substantial harm to workers. The existing § 658.501(b) states that SWA officials *may* discontinue services immediately in these circumstances, whereas the proposed new § 658.502(b) states that SWAs *must* discontinue services immediately. Additionally, existing § 658.501(b) allows for discontinuation when there would be substantial harm to a *significant number* of workers, whereas proposed new § 658.502(b) requires immediate discontinuation when there would be substantial harm to workers. The proposed changes recognize that immediate discontinuation is warranted where the harm at issue would involve only one or a small number of workers, and that where such harm would occur SWAs must be required to initiate discontinuation to prevent the harm from actually occurring to workers. Finally, this proposed paragraph clarifies that immediate discontinuation is appropriate only when a basis under proposed § 658.501 exists *and* the SWA determines that substantial harm would occur; risk of substantial harm alone is not enough for a SWA to immediately discontinue services.

Section 658.503 describes the procedural requirements a SWA must follow when issuing a final determination regarding discontinuation of services to an employer. The Department proposes to revise paragraph (a) to require that within 20 working days of receipt of the employer's response to the SWA's notification under § 658.502, or at least 20 working days after the SWA's notification is received by the employer if the SWA does not receive a response, the SWA must notify the employer of its

final determination. When the SWA sends its notification, it must do so in a manner that allows the SWA to track receipt of the notification, such as certified mail. If the SWA determines that the employer did not provide a satisfactory response in accordance with § 658.502 the SWA's notification must specify the reasons for its determination, state that the discontinuation of services is effective 20 working days from the date of the notification, state that the employer may request reinstatement or a hearing pursuant to § 658.504, and state that a request for a hearing stays the discontinuation pending the outcome of the hearing. The Department is proposing this stay pending appeal and the 20-working-day period to ensure that employers are provided an opportunity to challenge the SWA's determination before losing access to all ES services. Staying the effect of discontinuation during the pendency of an appeal is appropriate to allow for full adjudication and resolution of any issues related to the SWA's findings before they become final and binding on the employer and the ES system, mitigating the risk that an employer is erroneously deprived of access to services, similar to the procedures in § 658.502. Additionally, placing the effective date at the end of the 20-day period, rather than at the issuance of the notification, avoids depriving appealing employers of ES services for a short period of time prior to their request for hearing. This also makes for a more efficient process for SWAs and ETA, as these agencies would otherwise expend time and resources to effectuate a discontinuation that may be premature—if the employer requests a hearing a short time later, agencies would need to use additional resources to then stay the discontinuation they just effectuated. To facilitate implementation and maintenance of the proposed Office of Workforce Investment discontinuation of services list, discussed above, the SWA must also notify the ETA Office of Workforce Investment of any final determination to discontinue ES services, including any decision on appeal upholding a SWA's determination to discontinue services.

The proposed § 658.503(a) removes language regarding pre-discontinuation hearings to correspond with proposed changes to § 658.502. The Department believes that this timeline for SWAs is appropriate because an expeditious resolution of the matter both minimizes the uncertainty an employer faces when a SWA has proposed to discontinue services, and it allows the SWA to deny services to employers that have engaged in impermissible conduct. The effect of an adverse final determination would be, among other things, to protect workers from being placed with those employers and would prevent the employer from seeking a temporary labor certification under part 655, subpart B, of the title. Because of the potential consequences to both employers and workers, the Department has determined that an expeditious process would be necessary.

The Department proposes to add a new § 658.503(b) to explain the procedures for immediate discontinuation of services and to incorporate them into the general discontinuation procedures at § 658.503. The proposed new paragraph (b) replaces existing § 658.501(b), in part, and states that the SWA must notify the employer in writing that its services are discontinued as of the date of the notice. The notification must also state that the employer may request reinstatement or a hearing pursuant to § 658.504, and that a request for a hearing relating to immediate discontinuation does not stay the discontinuation pending the outcome of the hearing. The proposed new § 658.503(b) adds that SWA must specify the facts supporting the applicable basis for discontinuation under § 658.501(a) and the reasons that exhaustion of the administrative procedures would cause substantial harm to workers. The proposed addition ensures that employers have sufficient information regarding the SWA's rationale for immediate discontinuation, and makes clear that employers have recourse to the State administrative hearing process or reinstatement process if a SWA immediately discontinues services. While discontinuation under a determination issued under § 658.503(a) is delayed until the employer's time to appeal the determination has ended, the Department thinks that the circumstances justifying a notice of immediate discontinuation also justify that the discontinuation be effective immediately, irrespective of the employer's opportunity to appeal, and that it remain in effect unless the employer is reinstated or the determination is overturned. Immediate discontinuation is reserved for those situations where the State Administrator determines that substantial harm to workers will occur if action is not immediately taken. For example, State Administrators may determine that immediate discontinuation is justified when they receive information evidencing that employers have made threats or have perpetrated violence against workers, or that involve other substantial harm like human trafficking and other significant health and safety issues. SWA quarterly ETA Form-5148 reports evidence that SWAs processed 36 complaints and four apparent violations involving sexual harassment, coercion, or assault, as well as two complaints and six apparent violations involving trafficking in PY 2020.[10] Additionally, over the last several years, the Department has received information evidencing that employers have made threats of physical violence against workers. In two cases, employers were recorded on video threatening workers with firearms. Delaying the effective date of the discontinuation would undermine the protection that the immediate discontinuation procedure is designed to provide. While the Department recognizes the burden that employers may face if they do not have access to any ES services pending an appeal of an immediate discontinuation, the Department thinks that this burden is outweighed by the interest in protecting workers from harmful, potentially dangerous situations. The Department notes that in lieu of an appeal, an employer subject to immediate discontinuation of services can request reinstatement from the SWA, and that the proposed 20-day timeframe for the SWA to respond to such a request may provide for timely and efficient resolution of an immediate discontinuation. Finally, as with proposed § 658.503(a), to facilitate implementation and maintenance of the proposed Office of Workforce Investment discontinuation of services list, discussed above, the SWA must also notify the ETA Office of Workforce Investment of any final determination to discontinue ES services.

The Department proposes to move current § 658.503(b), which requires the SWA to notify the relevant ETA regional office if services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, to proposed new paragraph (c) and to make minor edits to use active voice and to improve clarity, which do not change the meaning of the requirement. The Department proposes to add paragraph (d) to require SWAs to notify the complainant of the employer's discontinuation of services, if the discontinuation of services is based on a complaint filed pursuant to § 658.411.

[10] See Appendix IV LEARS 5148 Report Part 1 National Data for PY 2020, *https://www.dol.gov/sites/dolgov/files/ETA/mas/pdfs/APPENDIX%20IV%20LEARS%205148%20REPORT%20PART%201%20NATIONAL%20DATA.xlsx.*

This requirement would align with section § 658.411(b)(2) and (d).

The Department proposes to add a new paragraph (e) to explain the effect discontinuation of services has on employers. The proposed new paragraph explains that employers that experience discontinuation of services may not use any ES activities described in parts 652 and 653, and that SWAs must remove the employer's active job orders from the clearance system and must not process any future job orders from the employer for as long as services are discontinued. An employer's loss of access to ES services applies in all locations throughout the country where such services may be available. If the effect of the discontinuation were limited to just the State that discontinued services, it would frustrate the purpose of discontinuation.

This proposed new paragraph responds to common questions the Department receives regarding the effect of discontinuation of services on current and future job orders and, as with proposed revisions to § 658.500, clarifies that the scope of services discontinued to include those ES services available to employers under part 652. Proposed § 658.501(b) would require SWA officials to notify the OFLC National Processing Center (NPC) when an ES office or SWA has information that an employer may not have complied with the terms of its temporary labor certification, under, for example the H–2A and H–2B programs. Therefore, in addition to closing the employer's active clearance orders so that the employer will not receive additional U.S. worker referrals, the NPC would be aware of the alleged noncompliance so that it may investigate and apply appropriate actions to the foreign labor certification. The Department is interested in comments on the effect on both workers and employers of removing active job orders, particularly criteria orders. The Department proposes new paragraph (f) to explain that SWAs must continue to provide the full range of ES and other appropriate services to workers whose employers' services have been discontinued. The proposed new paragraph makes it clear that discontinuation of services to employers does not, and should not, negatively affect workers. SWAs must continue to provide necessary support to workers, including outreach to MSFWs, access to the ES and Employment-Related Law Complaint System, and all available ES services.

Section 658.504 describes the procedural requirements for seeking reinstatement of ES services, which can be done either by requesting that the SWA reconsider its decision or by requesting a hearing. The Department proposes to restructure this section to more clearly explain how services may be reinstated, the timeframes in which the employers and SWA must act, and the circumstances under which services must be reinstated.

The Department proposes to revise paragraph (a) to make clear that employers have two avenues with which to seek reinstatement of services—via a hearing within 20 working days of the discontinuation or a written request to the SWA at any time following the discontinuation. An employer cannot, however, simultaneously appeal a discontinuation and submit a written request to the SWA for reinstatement. The revised paragraph (a) adds the new requirement that an employer who requests a hearing following discontinuation do so within 20 working days of the date of discontinuation. These avenues are available under the current regulation, but the Department has added a requirement that the employer file an appeal within 20 working days of the SWA's final determination because both the employer and the State have an interest in timely and efficient adjudication of disputes.

The Department proposes to revise § 658.504(b) to explain the circumstances and procedures under which SWAs must reinstate services when an employer submits a written request for reinstatement. The Department proposes new paragraph (b)(1), which retains the current 20-day timeline in existing paragraph (b) within which the SWA must notify the employer whether it grants or denies the employer's reinstatement request. The proposed paragraph (b)(1) also requires that if the SWA denies the request, the SWA must specify the reasons for the denial and must notify the employer that it may request a hearing, in accordance with proposed paragraph (c), within 20 working days.

The Department proposes to move current paragraph (a)(2), which describes the evidence necessary for reinstatement, to proposed paragraph (b)(2) to align with the overall restructuring of the section. The Department also proposes to remove the word *any* to require that the employer show evidence that all applicable specific policies, procedures, or conditions responsible for the previous discontinuation are corrected, instead of *any* policies, procedures, or conditions responsible for the previous discontinuation. The Department is concerned that the current language could permit reinstatement despite an employer not correcting all relevant policies, procedures, or conditions, which would be inconsistent with the purpose of discontinuation. Finally, the Department also proposes to change the pronoun used for employers to *it* instead of *his/her.*

The Department proposes to revise § 658.504(c) to explain the circumstances and procedures under which SWAs must reinstate services when an employer submits a timely, written request for a hearing. The proposed revisions maintain the procedures in existing paragraphs (a)(1), (c), and (d), but have reorganized them into the same paragraph for clarity. Finally, the Department proposes to replace the abbreviated term ''Federal ALJ'' in the existing regulation with ''Federal Administrative Law Judge,'' commonly abbreviated as ALJ.

The Department proposes a new paragraph (d) to require that SWAs notify the ETA Office of Workforce Investment of any determination to reinstate ES services, or any decision on appeal upholding a SWA's determination to discontinue services, within 10 working days of the date of issuance of the determination. As discussed above, the Department believes that prompt notification to the Office of Workforce Investment will facilitate implementation and maintenance of the proposed Office of Workforce Investment discontinuation of services list and will ensure that employers whose services have been reinstated may promptly access ES services.

IV. Discussion of Proposed Revisions to 20 CFR Part 655, Subpart B

A. Introductory Sections

1. Section 655.103(e), Defining Single Employer Test

The Department proposes to define a new term ''single employer'' to codify and clarify its long-standing approach to determining if multiple nominally separate employers are operating as one employer for the purposes of the H–2A program. The Department has encountered numerous instances over at least the last decade where it appears separate entities are using their corporate structure—intentionally or otherwise—to bypass statutory and regulatory requirements to receive a temporary labor certification, or to circumvent regulations aimed at protecting workers in the United States. *See, e.g., Lancaster Truck Line,* 2014–TLC–00004, at *3, *5 (BALCA Nov. 26,

2013) (employer was ''frank about separating the legal entities of his operation'' from his father's operation to ''comply with the H–2A program's seasonal permitting restrictions'' and the ALJ held the attempt to divide work did not demonstrate temporary need).

OFLC regularly receives and reviews applications for temporary labor certification that appear to be for job opportunities with different employers when in reality the workers hired under these certifications are employed by companies so intertwined that they are operating as a single employer in one area of intended employment for a period of need that is not temporary or seasonal. The Department has also increasingly encountered H–2A employers that employ H–2A workers under one corporate entity and non-H–2A workers under another, creating the appearance that the H–2A employer has no workers in corresponding employment when actually, the corporate entities are intertwined and all the H–2A workers are employed by a single H–2A employer, and the non-H–2A workers are engaged in corresponding employment. Employers may attempt to use these schemes to evade requirements of the H–2A program, such as paying workers in corresponding employment the required wage rate or abiding by the housing and transportation requirements of the H–2A program.

OFLC currently uses, and has used for more than a decade, some form of a ''single employer'' test to determine if nominally separate employers should be considered as one entity for purposes of assessing temporary or seasonal need (discussed further below under *Temporary or Seasonal Need*). However, because this test is not incorporated into the Department's regulations, it has been criticized and inconsistently applied by the Board of Alien Labor Certification Appeals (BALCA). *Compare Mid-State Farms, LLC,* 2021–TLC–00115, at *16, *25–27 (BALCA Apr. 16, 2021) (noting that the ''single employer test'' has not been subject to public comment, and thus using the ''joint employer test'' instead) (more discussion below) *with K.S. Datthyn Farms, LLC,* 2019–TLC–00086, at *4–6 (BALCA Oct. 7, 2019) (applying the single employer test to determine that two H–2A applicants for temporary labor certification were one single employer with a single labor need). Relying on Federal and BALCA case law, WHD currently also applies the ''single employer'' test to determine the H–2A employer's compliance with program requirements.

The Department's proposal to add a definition of ''single employer,'' which would explicitly permit the use of the single employer test when reviewing applications for temporary labor certification and for purposes of enforcement, is meant to codify the Department's long-standing practice. Doing so would prevent employers from using their corporate structures to circumvent regulatory requirements and would provide notice and clarity to the stakeholder community regarding the Department's single employer analysis. A clearly articulated definition also could serve to deter employers from utilizing practices that appear to circumvent the obligations of H–2A employers by making explicit the obligations of the single employer. This section discusses (1) the single employer definition the Department proposes to add to a new subordinate paragraph (e) within § 655.103, including the factors the Department will consider when determining whether two or more entities satisfy this definition; (2) the use of the single employer test by OFLC when analyzing whether an employer has a temporary or seasonal need; and (3) the use of the single employer test in enforcement of contractual obligations.

a. Definition

As noted, the Department already applies a ''single employer'' test (sometimes referred to as an ''integrated employer'' test) under the H–2A program in certain contexts. OFLC currently uses this test to determine if multiple nominally separate employers should be considered as one entity for the purposes of determining whether an applicant for labor certification has a temporary or seasonal need, and WHD uses this test to determine whether H–2A employers complied with program requirements. This test originated with the NLRB and has been adopted by courts and Federal agencies under a wide variety of statutes. *See S. Prairie Const. Co.* v. *Local No. 627, Int'l Union of Operating Eng'rs, AFL–CIO,* 425 U.S. 800, 802–803 (1975). As the Second Circuit has explained, the single employer test may be used to determine liability for employment-related violations, as well as to determine employer coverage, and the policy underlying the doctrine is ''fairness . . . where two nominally independent entities do not act under an arm's length relationship.'' *Murray* v. *Miner,* 74 F.3d 402, 404 n.1, 405 (2d Cir. 1996).

Consistent with judicial and administrative precedent, the Department has typically looked to four factors to determine whether the entities at issue should be considered a single employer for purposes of temporary need and compliance: (1) common management, (2) interrelation between operations, (3) centralized control of labor relations, and (4) degree of common ownership/financial control. *See, e.g., Sugar Loaf Cattle Co.,* 2016–TLC–00033, at *6 (BALCA Apr. 6, 2016) (citing to *Spurlino Materials, LLC* v. *NLRB,* 805 F.3d 1131, 1141 (D.C. Cir. 2015)). The proposed definition would incorporate the four factors noted above and, as under current practice, the Department would consider the totality of the circumstances surrounding the relationship among the entities, and no one factor would be determinative in the analysis.[11]

The Department's main concern in determining whether two or more entities are operating as one is preventing employers from utilizing their corporate structure(s) to circumvent the program's statutory and regulatory requirements. As such, the Department's focus when examining whether two or more entities are a single employer is both the relationship between the entities themselves and each entity's use of the H–2A program. *See Knitter* v. *Corvias Military Living, LLC,* 758 F.3d 1214, 1227 (10th Cir. 2014) (in a Title VII case, the court noted that ''the single employer test focuses on the relationship between the potential employers themselves''). The Department emphasizes again that no one factor is determinative as to whether entities are acting as one.

Regarding the ''common management'' factor, the ''relevant inquiry is whether there is 'overall control of critical matters at the policy level.' '' *K.S. Datthyn Farms, LLC,* 2019–TLC–00086, at *6 (citations omitted) (quoting *Spurlino Materials,* 805 F.3d at 1142). Shared day-to-day management may also indicate common management. *Spurlino Materials,* 805 F.3d at 1142. For example, where the same president, treasurer, and chief operating officer oversee the actions of multiple entities and resolve disputes, this suggests a common management between entities. *Pepperco-USA, Inc.,* 2015–TLC–00015, at *30–31 (BALCA Feb. 23, 2015).

Regarding the ''interrelation between operations'' factor, the Department may look to whether the entities operate at arm's length. *Id.* It may examine whether companies share products or services, costs, worksites, worker

[11] *See also* Travis Hollifield, *Integrated Employer/Enterprise Doctrine in Labor & Employment Cases, The Federal Lawyer*, December 2017, at 56, 58, *http://www.fedbar.org/wp-content/uploads/2017/12/Labor-and-Empl-pdf-1.pdf.*

housing, insurance, software, or if they share a website, supplies, or equipment. *See, e.g., id.; Sugar Loaf Cattle Co.,* 2016–TLC–00033, at *6–7 (finding an interrelation of operations in part because the work locations were ''fundamentally at the same place''); *David J. Woestehoff,* 2021–TLC–00112, at *11 (BALCA Apr. 2, 2021) (comparing employers' housing locations and worksites to analyze their relationship).

Regarding the ''centralized control of labor relations'' factor, for example, the Department may look to whether the persons who have the authority to set employment terms and ensure compliance with the H–2A program are the same. *K.S. Datthyn Farms,* 2019–TLC–00086, at *5 (noting that the same manager signed different H–2A applications and this was a ''fundamental labor practice [ ], at the core of employer-employee relations for any business'').

Finally, regarding ''common ownership and financial control,'' the Department may look to the corporate structure and who owns the entities, whether it be, for example, a parent company or individuals. *See Pepperco-USA, Inc.,* 2015–TLC–00015, at *30–31 (two nominally distinct entities were owned by one parent company). It may also explore whether the owners of the entities at issue are related in some way. *See, e.g., JSF Enters.,* 2015–TLC–00009, at *13 (BALCA Jan. 22, 2015) (entities owned in varying degrees by members of the same family); *Larry Ulmer,* 2015–TLC–00003, at *3 (BALCA Nov. 4, 2014) (two companies with similar names were owned by father and son); *Lancaster Truck Line,* 2014–TLC–00004, at *2–3 (father and son sought to separate a business in an attempt to meet seasonal need requirements); *see also Overlook Harvesting Co.,* 2021–TLC–00205, at *13 (BALCA Sept. 9, 2021) (the marital relationships between two companies' owners suggested shared control).

These examples of analysis and lines of inquiry related to each of the factors are not exhaustive.

b. Temporary or Seasonal Need

OFLC's COs will use the single employer test to determine if an employer's need is truly temporary or seasonal. Section 101(a)(15)(H)(ii)(a) of the INA permits only ''agricultural labor or services . . . of a temporary or seasonal nature'' to be performed under the H–2A visa category. 8 U.S.C. 1101(a)(15)(H)(ii)(a). Thus, as part of the Department's adjudication of applications for temporary agricultural labor certification, the Department assesses on a case-by-case basis whether the employer has established a temporary or seasonal need for the agricultural work to be performed. *See* 20 CFR 655.103(d), 655.161(a).

As noted above, some nominally distinct employers have intertwined agricultural operations such that when they apply for H–2A workers it appears that two or more separate entities are each requesting a different temporary labor certification. However, in reality, the workers on these certifications are employed by a single enterprise in the same area of intended employment and in the same job opportunity for longer than the attested period of need on any one application. For example, if Employer A has a need for two Agricultural Equipment Operators from February to December, and Employer B has a need for two Agricultural Equipment Operators from December to February at the same worksite, this may reflect a single year-round need for Agricultural Equipment Operators. *See, e.g., Katie Heger,* 2014–TLC–00001, at *6 (BALCA Nov. 12, 2013) (''Considering that the [two entities] appear to function as a single business entity and have identified sequential dates of need for the same work, their 'temporary' needs merge into a single year-round need for equipment operators.''). In these situations, the two nominally separate employers may be applying for certification for, and advertising for, one continuous, sometimes permanent, job opportunity, which calls into question whether either employer has a temporary or seasonal need.

This situation arises only when employers are filing multiple applications for the same or similar job opportunities in the same area of intended employment, such that the combined period of need is continuous or permanent. Applications for job opportunities in different occupations, involving different duties and requirements, or opportunities in different areas of intended employment may not demonstrate one singular continuous need for workers, regardless of whether the two employers would satisfy the single employer test. Furthermore, if the periods of need of two or more entities reflect the same, or similar, need for labor, this is also not necessarily problematic because the need is not continuous. For example, Employer A has a need from January to April, and Employer B has a need from February to April—the two employers may be a single employer, but the need for workers, assuming the required labor levels are far above necessary for ongoing operations, may still be seasonal.

Even if employers have genuine business needs for dividing their business and then separately applying for H–2A workers, this approach to filing labor certification applications is still problematic. It undermines the statutorily required labor market test and the Department's ability to protect workers in the United States as each application, standing alone, does not fully convey the potential job opportunity to any applicant—for example, the job opportunity could be for 12 total months rather than 6 months with one employer, and 6 months with only a nominally separate entity. It is possible that a U.S. worker would be interested in a job that could last a year, or even permanently, rather than only 6 months. More importantly, it is a statutory requirement that the H–2A work be of a temporary or seasonal nature, and therefore employers submitting an application for temporary labor certification are required to establish that they have a temporary or seasonal need for agricultural labor. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 20 CFR 655.103(d), 655.161. Permitting employers with a permanent need to simply divide their business so that multiple entities can establish a temporary or seasonal need, and thereby obtain a labor certification, would violate the statute. *See, e.g., Intergrow East, Inc.,* 2019–TLC–00073, at *5 (BALCA Sept. 11, 2019) (''An employer may not circumvent the temporary need requirement by using a closely related business entity to file an overlapping application . . . .'') (citations omitted). An employer need not be willful in its attempt to circumvent program requirements to nevertheless engage in a business practice that inhibits the Department's ability to protect workers and carry out its statutory mandate.

To address these situations, for years OFLC has used an informal, fact-focused method of inquiry, involving a comparison of case information (*e.g.,* owner and manager names, locations, recruitment information, and other operational similarities across applications). In approximately 2015, OFLC began to frame its single employer analysis using the NLRB's single employer test (see above under *Definition*) to improve consistency and transparency and to address more complex business structures (*e.g.,* corporate organizations) filing H–2A applications through nominally different employers. *See Pepperco-USA, Inc.,* 2015–TLC–00015, at *4–5. Historically, BALCA has affirmed many OFLC denials that either explicitly used the single employer test or used a

similar analysis. *See, e.g., K.S. Datthyn Farms, LLC,* 2019–TLC–00086, at *4–6 (affirming the CO and applying the four-part NLRA and Title VII integrated employer test to determine that two H–2A applicants for temporary labor certification were one integrated employer with a single labor need); *JSF Enters.,* 2015–TLC–00009, at *12 (affirming the CO and finding that ''[t]he four entities . . . fill the same need on a year round basis because of the interlocking nature of the businesses and regardless of the distinction in crops each harvests [sic]''); *Altendorf Transp., Inc.,* 2013–TLC–00026, at *8 (BALCA Mar. 28, 2013) (affirming the CO and noting that Employer's argument ''does not overcome the interlocking nature of the business organizations . . . . The Employer has the burden of persuasion to demonstrate it and [the other entity] are truly independent entities.''); *D & G Frey Crawfish, LLC,* 2012–TLC–00099, at *2, *4 (BALCA Oct. 19, 2012) (affirming the CO and stating that ''[Employer's] ability to separate her operation into two entities does not enable her to hire temporary H–2A workers to fulfill her permanent need . . .'').

However, in more recent decisions, BALCA has sometimes rejected the single employer test, noting that it had not been promulgated through notice and comment rulemaking. *See Mid-State Farms, LLC,* 2021–TLC–00115, at *16 (''This court can find no published instance where the 'Single Employer Test' has been debated openly, subjected to public comment or accepted as official Department policy.''); *Crop Transp., LLC,* 2018–TLC–00027, at *6 n.6 (BALCA Oct. 19, 2018) (noting that the single employer test ''is lamentable'' because of its ''awkward fit to immigration practice and its ambiguity. . . . It would be helpful . . . if meaningful regulatory criteria were promulgated through notice and comment procedures as to when ETA will consider two nominally separate entities as a single applicant for purposes of temporary labor certifications under the Act.'').

In response to these concerns some ALJs have applied the ''joint employer'' test to analyze temporary need because a definition of ''joint employment'' is included in the regulations. *See, e.g., Mid-State Farms, LLC,* 2021–TLC–00115, at *26; *Overlook Harvesting Co.,* 2021–TLC–00205, at *10. Joint employment generally is ''where two or more employers each have sufficient definitional indicia of being a joint employer of a worker under the common law of agency.'' 20 CFR 655.103(b). Joint employment thus takes into consideration the relationship between the employer and the employees, while the single employer test focuses on the relationship between the nominally distinct employers. *See Knitter,* 758 F.3d at 1227 (''Unlike the joint employer test, which focuses on the relationship between an employee and its two potential employers, the single employer test focuses on the relationship between the potential employers themselves.''). Finally, joint employment assumes that the entities are separate while the single employer test asks whether ''two nominally separate entities should in fact be treated as an integrated enterprise.'' *Id.* at 1226–27 (quoting *Bristol* v. *Bd. of Cnty. Comm'rs,* 312 F.3d 1213, 1218 (10th Cir. 2002) (en banc)).

Determining whether two entities are joint employers, contrary to BALCA's assertion in *Mid-State Farms, LLC,* is unhelpful when assessing temporary or seasonal need where, for example, an employer splits their business between two seemingly separate entities to circumvent the requirement to establish a temporary or seasonal need. *See Overlook Harvesting Co.,* 2021–TLC–00205, at *10 (noting modified ''joint employer'' test to analyze temporary or seasonal need was problematic because two related companies could ''manipulate [their] seasonal need'' under this test by splitting one, potentially year-long, season into two seasons with one company working one season, and the other working the other). In those situations, employees are generally not employed by both nominally distinct employers at the same time, though there may be overlap between the periods of need, making the analysis of joint employment largely inapplicable. In assessing temporary or seasonal need, the focus of the Department's analysis is not on the relationship between the employer and the employees, but rather between the employers themselves.

In light of the conflicting BALCA case law, and to codify its long-standing practice, the Department proposes to incorporate the single employer definition into the regulations and also notes that COs will use the definition to analyze the temporary or seasonal need of nominally separate entities.

The Department emphasizes that joint employment can still be useful in analyzing temporary or seasonal need in the H–2A program, and this proposal is not meant to eliminate or undermine appropriate use of the joint employment test. For example, there may be a situation where an employer applies for workers from January to April and then hires an H–2ALC or subcontractor for the months of May to December. It is possible that this subcontracting (or even a parent and subsidiary) relationship could be joint employment as defined in the regulations. If such an employer-applicant hires workers from January to April, and then jointly employs workers in the same occupation in the same area of intended employment from May to December, this employer-applicant would have a year-round need and would therefore be unable to establish the required temporary need for the H–2A program. The use of the single employer test in temporary or seasonal need analysis will cover situations where employees are *not* jointly employed.

Should a CO suspect that an employer-applicant has a true need that stretches longer than their stated need because it is a single employer together with another entity, the COs may issue a Notice of Deficiency (NOD) to clarify the status of said entities. To analyze whether two entities are a single employer, COs may request, via NOD, information necessary for this determination, including, but not limited to: (1) documents describing the corporate and/or management structure for the entities at issue; (2) the names of directors, officers and/or managers and their job descriptions; (3) incorporation documents; or (4) documents identifying whether the same individual(s) have ownership interest or control. The COs may additionally ask for explanation as to: (1) why the businesses may authorize the same person or persons to act on their behalf when signing contracts, or applications, etc.; (2) whether the businesses intermingle money or share resources; (3) whether workspaces are shared; and (4) whether the companies produce similar products or provide similar services. These lists of documentation or evidence are not exclusive, and the COs may request other information or documentation as necessary.

c. Enforcement

The proposed definition of single employer also would explicitly provide that the Department may apply this test for purposes of enforcing an H–2A employer's contractual obligations. The Department has increasingly encountered H–2A employers that employ H–2A workers under one corporate entity and non-H–2A workers under another, such that it appears that the H–2A employer has no non-H–2A workers in corresponding employment when in reality, the companies are so intertwined that all the workers are employed by a single employer, and the

non-H–2A workers are employed in corresponding employment.

As noted above, and consistent with BALCA and Federal case law, WHD already applies the single employer test in certain circumstances to determine whether an H–2A employer has complied with its program obligations. Over the past several years, WHD has increasingly encountered employers employing temporary nonimmigrant workers that utilize multiple, seemingly distinct corporate entities under common ownership. In the H–2A context, these employers have divided their H–2A and non-H–2A workforces onto separate payrolls, such that it appears that the employer has no workers in corresponding employment, and paying the non-H–2A workers less than the H–2A workers. However, the H–2A and non-H–2A workers generally work alongside one another, performing the same work, under the same common group of managers, subject to the same personnel policies and operations. In these circumstances, to determine whether the H–2A employer listed on the H–2A Application employed the non-H–2A workers in corresponding employment, the common law test for joint employment may not be a useful inquiry because the interrelation of operations makes it difficult to determine the relationship between each distinct corporate entity and the workers. The single employer test is a more useful inquiry because it focuses on the relationship between the corporate entities to determine whether they are so intertwined as to constitute a single, integrated employer, such that it is appropriate and ''fair'' to treat them as one for enforcement purposes. Absent application of the single employer test, this burgeoning business practice might be used—whether intentionally or not—to deprive domestic workers of the protections of the H–2A program by superficially circumventing an employment relationship with the H–2A employer as described herein, contrary to the statute's requirements. 8 U.S.C. 1188(a)(1).

While WHD already utilizes the single employer test, the Department believes that explicitly noting in the regulations the potential applicability of this test for purposes of enforcement, and the factors the Department will consider in applying this test, will provide clarity for internal and external stakeholders and also could deter employers from intentionally seeking to circumvent the H–2A program's requirements in this manner. Just as the single employer test is not meant to displace the joint employer test when analyzing temporary or seasonal need, the Department does not propose to replace or supersede the definition of ''joint employment'' under the existing regulations for purposes of enforcement. Rather, depending upon the facts and circumstances of a given case, the Department may apply the single employer test, the joint employment test, or both in the alternative, to determine an H–2A employer's compliance with program requirements.

d. Conclusion

In conclusion, the Department proposes a new paragraph (e) to § 655.103 that grants the Department explicit authority to use the definition of ''single employer'' to determine if nominally separate employers should be considered one single employer for the purpose of determining the applicant's temporary or seasonal need, or for purposes of enforcement. The Department believes that incorporating this single employer test into the regulations would allow for more consistent application of the temporary or seasonal need requirement and improve compliance with program obligations.

The Department recognizes that the adoption of the single employer definition as it relates to temporary need assessments may impact some businesses more than others. Regardless of the impact on certain employers, the Department believes proposing this regulatory text is necessary to ensure compliance with statutory and regulatory requirements and clarify the appropriate standard to assess the nature of the relationship between two or more entities. The Department welcomes comments on these proposed revisions, especially comments relating to the impact this may have on specific industries or types of employers.

2. Section 655.104, Successors in Interest

The Department proposes several revisions to its current regulations to clarify the liability of successors in interest and revise the procedures for applying debarment to successors in interest to a debarred employer, agent, or attorney. Since 2008, the Department's H–2A regulations have made explicit that successors in interest to employers, agents, and attorneys may be held liable for the responsibilities and obligations of their predecessors, including debarment. As the Department explained in the preamble to the H–2A final rule issued in 2008, holding successors liable, particularly in the context of debarment, is necessary ''to ensure that violators are not able to reincorporate to circumvent the effect of the debarment provisions,'' and ''to prevent persons or firms who were complicit in the cause of debarment from reconstituting themselves as a new entity to take over the debarred employer's business.'' 73 FR 77110, 77116, 77188 (Dec. 18, 2008) (2008 H–2A Final Rule). Despite these intentions, the Department's current regulations governing debarment, as interpreted by the ARB and the BALCA, are insufficient to effectively prevent program violators from ''circumvent[ing] the effect of the debarment'' as the Department originally intended. *Id.* at 77110.

Specifically, under the Department's current regulations and controlling administrative precedent, before OFLC may deny an H–2A Application filed by or on behalf of a successor in interest to a debarred employer, agent, or attorney, the Department must first debar the successor in interest pursuant to the full procedures for debarring the original violating employer, agent, or attorney. *See Admin.* v. *Fernandez Farms,* ARB No. 2016–0097, 2019 WL 5089592, at *2–4 (ARB Sept. 16, 2019) (holding that 29 CFR 501.31 requires WHD to issue a new notice of debarment to a successor before subjecting the successor to the original employer's WHD order of debarment); *Gons Go, Inc.,* BALCA Nos. 2013–TLC–00051, –00055, –00063 (BALCA Sept. 25, 2013) (holding 20 CFR 655.182 requires OFLC to first debar a successor of a debarred employer, by completing the full debarment procedures in § 655.182, before it may deny the successor's application for labor certification). These requirements are unnecessary under the principles of the successorship doctrine, and unduly burden the Department's ability to apply debarment to successors in interest, thus allowing those known to have committed substantial H–2A violations to continue to participate in the H–2A program.

Under the successorship doctrine, a putative successor in interest to a debarred employer, agent, or attorney is entitled to notice and an opportunity for hearing prior to denial of a future application only on the question of its status as a successor in interest. *See Golden State Bottling Co., Inc.* v. *NLRB,* 414 U.S. 168, 180 (1973) (discussing due process rights of successors). The Department need not obtain a new order of debarment against the successor directly; that is the ''whole point'' of the successorship doctrine, that the liabilities of the predecessor attach to the successor. *Criswell* v. *Delta Air Lines,* 868 F.2d 1093, 1095 (9th Cir. 1989).

Accordingly, the Department proposes several revisions to its regulations to streamline the procedures by which it may apply a debarment of an employer, agent, or attorney to a successor in interest while affording putative successors due process. First, the Department proposes a new § 655.104, *Successors in interest.* Proposed paragraphs (a) and (b) are similar to the longstanding definition of ''successors in interest,'' currently in § 655.103(b), *Definitions.* However, proposed paragraph (a) omits language in the current regulation stating that liability of successors in interest arises where an employer, agent, or attorney ''has ceased doing business or cannot be located for purposes of enforcement.'' Instead, the Department proposes adding to proposed paragraph (b) a similar—but broader—definition of successors in interest. The new language in proposed paragraph (b) would specify that ''[a] successor in interest includes an entity that is controlling and carrying on the business of a previous employer, agent, or farm labor contractor, regardless of whether such successor in interest has succeeded to all the rights and liabilities of the predecessor entity.'' This proposed revision recognizes that successorship law does not typically limit successor liability to scenarios where an entity has ceased doing business or cannot be located. The Department believes these revisions will more accurately capture successorship scenarios that may arise in the H–2A context. In the same vein, in proposed § 655.104(b) the Department proposes minor revisions to the current definition in § 655.103(b), regarding the nonexhaustive factors that the Department would use in determining successor status. The proposed revisions to the factors would provide that the personal involvement of the successor firm's supervisors and management in the violations underlying the debarment is one of several factors, rather than the ''primary'' factor, to be considered in cases of debarment. In its experience, the Department has found the current regulation's reliance on this factor as the ''primary'' factor to be unduly limiting, and in tension with the general principle in paragraph (i) of the definition of *successor in interest* that no one factor should be dispositive in determining successor status. 20 CFR 655.103(b) (paragraph (i) of the definition of ''successor in interest''). The Department also proposes a corresponding revision to delete the definition of ''successor in interest'' from the *Definitions* at § 655.103(b).

Proposed § 655.104(c) explains that when an employer, agent, or attorney is debarred, any successor in interest to the debarred employer, agent, or attorney is also debarred. Accordingly, applications filed by or on behalf of a putative successor in interest to a debarred employer, agent, or attorney would be treated like applications filed by the debarred employer, attorney, or agent. Specifically, under this proposal, if the CO determines that such an application was filed during the debarment period, the CO would issue a NOD under § 655.142 or deny the application under § 655.164, depending upon the procedural status of the application. The NOD or denial would be based solely on the basis of the applying entity's successor status and would not address (nor would it waive) any other potential deficiencies in the application. If the CO determines that the entity is *not* a successor, the CO would resume with processing of the application under § 655.140. However, if the CO determines that the entity is a successor, the CO would deny the application without further review pursuant to § 655.164. As with any other certification denial, the putative successor could appeal the CO's determination under the appeal procedures at § 655.171; specifically here, the question of whether the entity is, in fact, a successor in interest to a debarred employer, agent, or attorney. However, such appeal would be limited to the entity's status as a successor given the narrow scope of the CO's determination under these provisions. Accordingly, should a reviewing ALJ conclude that the entity is not a successor, the application would require further consideration and thus the ALJ would remand the application to OFLC for further processing.

The Department proposes corresponding revisions to § 655.182, governing debarment, to state clearly that debarment of an employer, agent, or attorney applies to any successor in interest to that debarred employer, agent, or attorney. These proposed revisions would remove references to successors in interest from current paragraphs (a) and (b), would redesignate current paragraph (b) to paragraph (b)(1), and would include a new paragraph (b)(2) that reiterates the procedures for determining successor status as outlined in proposed § 655.104(c).

Similarly, proposed § 655.104(c) also would explain that the OFLC Administrator may revoke a certification that was issued, in error, to a successor in interest to a debarred employer, pursuant to § 655.181(a). The entity may appeal its successor status pursuant to § 655.171. The Department notes that it may revoke a certification issued, in error, to a debarred employer or to a successor of a debarred employer under its current revocation authorities, but the Department proposes revisions to the bases for revocation at § 655.181(a)(1), to clarify that fraud or misrepresentation in the application includes an application filed by a debarred employer (and, by extension, an application filed by a successor to a debarred employer). These proposed changes would simply clarify this existing authority. However, given the impact of revocation on both employers and workers, proposed §§ 655.104(c) and 655.181(a)(1) would not explicitly contemplate revocation of a certification issued, in error, based on an application filed by a debarred agent or attorney, or by successors to a debarred agent or attorney, as distinct from a debarred employer or successor in interest to a debarred employer. The Department invites comment on whether revocation may be warranted in such circumstances.

Finally, the Department proposes corresponding revisions to the procedures governing WHD debarments under 29 CFR 501.20, including a new proposed paragraph (j) that explicitly addresses successors in interest. Under the successorship doctrine, as discussed above, and under this proposed rule, WHD would not be required to issue a notice of debarment to a successor in interest to a debarred employer, agent, or attorney; rather, debarment of the predecessor would apply equally to any successor in interest. However, as provided in proposed paragraph (j), as a matter of expediency WHD could, but would not be required to, name any known successors to an employer, agent, or attorney in a notice of debarment issued under § 501.20(a).

The Department has determined that these proposed revisions would better effectuate the intent of the Department's current successor in interest regulations, which are critically important to ensuring that program violators cannot circumvent a debarment. The proposed procedures would allow OFLC to apply a final order of debarment of an employer, agent, or attorney to any successor in interest to the debarred entity. The proposed procedures also would provide for sufficient due process to putative successors, as the proposed procedures would require OFLC to provide notice to the successor of the basis for the deficiency under § 655.141 or denial under § 655.164 (*i.e.,* its status as a successor), and an opportunity for hearing on its successor status under

§ 655.171. The Department welcomes comments on these proposed revisions.

3. Section 655.190, Severability

The Department proposes to add a severability clause to 20 CFR part 655, subpart B. This clause would explain that if any provision is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of total invalidity or unenforceability, in which event the provision or sub-provision shall be severable from the corresponding subpart or part and shall not affect the remainder thereof. The Department proposes to add this severability clause because generally, each provision within the H–2A regulations is capable of operating independently from one another, including where the Department has proposed multiple methods to strengthen worker protections and to enhance the Department's capabilities to conduct enforcement and monitor compliance. Further, the severability clause demonstrates the Department's intent that the remaining provisions of the regulations should continue in effect if any provision or provisions are held to be invalid or unenforceable. It is the Department's intent that the remaining provisions of the regulations should continue in effect if any provision or provisions are held to be invalid or unenforceable. It is of great importance to the Department and the regulated community that even if a portion of the H–2A regulations were held to be invalid or unenforceable that the larger program could operate consistent with the expectations of employers and workers.

The Department seeks comments both on the substance and scope of this proposed severability clause and requests the public's views on any other issues related to severability, such as whether the rule in general includes provisions amenable to severability; whether specific parts of the rule could operate independently; whether the benefits of the rule would continue to justify the costs should particular provisions be severed; or whether individual provisions are essential to the entire rule's workability.

B. Prefiling Procedures

1. Section 655.120(b), Offered Wage Rate

Currently, § 655.120(b)(2) provides that the Department will update each AEWR at least annually by publication in the **Federal Register**.[12] In addition, paragraph (b)(3) requires employers to adjust workers' pay, if necessary, so that the employer pays workers at least the updated AEWR upon the effective date of the updated AEWRs in the **Federal Register**. However, the present regulatory text does not address when the AEWR published in a **Federal Register** notice becomes effective. The Department therefore proposes to revise paragraph (b)(2) and (3) to designate the effective date of updated AEWRs as the date of publication in the **Federal Register**.

The duty to pay an updated AEWR where it is higher than the other wage sources is not a new requirement, nor is the requirement to pay an increased AEWR immediately upon publication in the **Federal Register**. Between 1987 and January 2018, the Department required employers participating in the H–2A program to offer and pay the highest of the AEWR, the prevailing wage, any agreed-upon collective bargaining wage, or the Federal or State minimum wage at the time the work is performed effective upon the date of publication in the **Federal Register**.[13] Under more recent practice, however, when publishing the **Federal Register** notice containing updated AEWRs, the Department has stated the effective date of the new AEWRs in the notice and generally set the effective date of the new AEWRs at no later than 14 calendar days from the publication of that notice.

In this rule, the Department proposes to revise paragraph (b)(2) to designate the effective date of updated AEWRs as the date of publication in the **Federal Register**. For further clarity, the Department also proposes to revise paragraph (b)(3) to state that the employer is obligated to pay the updated AEWR immediately upon the date of publication of the new AEWR in the **Federal Register**. As noted above, the proposal to remove an effective date which differs from the publication date of the AEWRs represents a return to longstanding prior practice. This change will also ensure that agricultural workers are paid at least the most current AEWR when work is performed, which better aligns with the Department's mandate to prevent adverse effect on the wages of workers in the U.S. similarly employed. To eliminate any potential confusion among either employers or workers as to when the new AEWR will need to be paid, the NPRM also proposes to update the regulatory text, which is currently silent on this issue, to clearly state when the obligation to pay the new AEWRs begins.

While the Department recognizes that this proposal is a departure from more recent practice that allowed a wage adjustment period, the vast majority of employers will still have the opportunity to view and assess the impact of the new AEWR rates prior to their publication by the OFLC Administrator in the **Federal Register** on or around January 1.[14] Prior to that publication, USDA publishes its FLS in late November [15] showing the wage data findings that become the new AEWRs for the field and livestock workers (combined) occupational grouping. Similarly, BLS publishes its OEWS data in March, which contains the wage data that become the new AEWRs on or around July 1 for the small percentage of job opportunities that cannot be encompassed within the six Standard Occupational Classification (SOC) codes and titles in the FLS field and livestock workers (combined) reporting category. The Department will post a notice on the OFLC website when USDA publishes the FLS and when BLS publishes the OEWS data that will direct employers to the publicly available information. The Department recognizes that the employers of the small number of field and livestock workers (combined) job opportunities in

[12] Under 44 U.S.C. 1507, publication in the **Federal Register** provides legal notice of the new wage rates.

[13] *See, e.g.,* 1987 H–2A interim final rule (IFR), 52 FR 20496, 20521; Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States; H–2A Program Handbook, 53 FR 22076, 22095 (June 13, 1988) (''Certified H–2A employers must agree, as a condition for receiving certification, to pay a higher AEWR than the one in effect at the time an application is submitted in the event publication of the [higher] AEWR coincides with the period of employment.'').

[14] *See, e.g.,* 88 FR 12760, 12766 (the Department's program estimates indicate that 98 percent of H–2A job opportunities are classified within the six SOC titles and codes of the field and livestock workers (combined) occupational grouping).

[15] USDA's National Agricultural Statistics Service publishes the Farm Labor report on its website at *https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Farm_Labor/.* OEWS wages for each SOC code and geographic area are available using the Department's search tool or searchable spreadsheet that may be accessed at *https://flag.dol.gov.* BLS publishes OEWS data on its website at *https://www.bls.gov/oes/data-overview.htm.* An overview of the OEWS survey methodology may be accessed at *https://www.bls.gov/oes/current/oes_tec.htm.* An explanation of the survey standards and estimation procedures can be found at *https://www.bls.gov/opub/hom/oews/pdf/oews.pdf.*

States or regions, or equivalent districts or territories, for which the FLS does not report a wage (*e.g.,* Alaska and Puerto Rico) will not have similar direct access to information enabling them to predict the applicable AEWR for planning purposes. However, as the Department noted in the 2010 H–2A Final Rule, ''[as] . . . these wage adjustments may alter employer budgets for the season,'' employers are encouraged ''to include into their contingency planning certain flexibility to account for any possible wage adjustments.'' 75 FR 6884, 6901 (Feb. 12, 2010). The Department believes these proposed revisions will clarify employer wage obligations and ensure that agricultural workers are paid at least the AEWR in effect at the time the work is performed, without new or additional impact to most employers' ability to budget and plan. The Department seeks comments on all aspects of this proposal.

2. Sections 655.120(a) and 655.122(l), Requirement To Offer, Advertise, and Pay the Highest Applicable Wage Rate

The Department proposes revisions to §§ 655.120(a) and 655.122(l) to clarify that where there is an applicable prevailing piece rate, or where an employer intends to pay a piece rate or other non-hourly wage rate, the employer must include the non-hourly wage rate on the job order along with the highest hourly rate. All potential wage rates must be listed on the job order notwithstanding the fact that it may not be possible to determine in advance which of these rates is the highest. Once work has been performed, the employer must then calculate and pay workers' wages using the wage rate that will result in the highest wages for each worker in each pay period.

The Department's current regulations at 20 CFR 655.120(a) and 655.122(l) require an employer to ''offer, advertise in its recruitment, and pay'' the highest of the AEWR, prevailing wage rate, collective bargaining agreement (CBA) rate, or Federal or State minimum wage. While seemingly straightforward, this requirement has been difficult to apply in practice. For instance, where there is an applicable prevailing piece rate, it is usually not possible to determine until the time work is performed whether the prevailing piece rate will be higher than the highest of the applicable hourly wage rates as this will depend on worker productivity.

In such instances, OFLC currently only requires H–2A employers to list a wage offer that is at least equal to the highest applicable hourly wage—usually the AEWR—on job orders, consistent with BALCA decisions dating from 2009 to 2011, which concluded that, under the regulations, OFLC cannot require employers to include an applicable prevailing piece rate on the job order where OFLC does not know at the certification stage whether the prevailing piece rate will be higher than the highest hourly wage. *See, e.g., Golden Harvest Farm,* 2011–TLC–00442, at *3 (BALCA Aug. 17, 2011); *Dellamano & Assocs.,* 2010–TLC–00028, at *5–7 (BALCA May 21, 2010); *Twin Star Farm,* 2009–TLC–00051, at *4–5 (BALCA May 28, 2009). While this has been the Department's longstanding practice, the Department is concerned with the uncertainty this practice can generate as to which rate or rates an employer must include as the required wage in a job order and pay to H–2A workers and workers in corresponding employment. Moreover, because the prevailing piece rate is not included on the job order, in most such instances, WHD is not able to enforce the prevailing piece rate.

In other instances, such as when there is not a prevailing wage, employers may voluntarily elect to pay a piece rate or other non-hourly wage rate but fail to include such rates on the job order, potentially mispresenting the offered wage rate and failing to meet their recruitment obligations.

The Department proposes several changes to the existing regulations to address these issues. First, the Department proposes to retain the current list of wage rates in § 655.120(a), redesignated as § 655.120(a)(1)(i) through (v), and to add to this list, at paragraph (a)(1)(vi), ''[a]ny other wage rate the employer intends to pay.'' This proposed addition will clarify an employer's obligation to include on the job order any wage rate it intends to pay that could end up being the highest applicable wage rate for some workers, in some pay periods. The Department also proposes to add at § 655.120(a)(2) an explicit requirement that, where the wage rates in paragraph (a)(1) are expressed in different units of pay, the employer must list the highest applicable wage rate for each unit of pay in its job order and must advertise all of these wage rates in its recruitment. Under this proposal, where one of the wage rates in paragraph (a)(1) is expressed as a piece rate and the others are expressed as hourly wage rates, the employer must list both the piece rate and the highest hourly wage rate on the job order. Where more than one of the wage rates in paragraph (a)(1) are expressed as non-hourly wage rates the employer would be required to list the highest applicable wage rate for each potential unit of pay on the job order.

Next, the Department proposes corresponding changes at § 655.122(l), including replacing the list of wage rates with a cross-reference to § 655.120(a)(1), removing the current language in § 655.122(l)(1) which would be made redundant by the changes to § 655.120(a), and making other technical edits. In addition, the Department proposes to remove the current language at § 655.122(l)(2)(i) and (ii), which requires an employer to supplement workers' pay where a worker is paid by the piece and does not earn enough to meet the required hourly wage rate for each hour worked, but does not include an analogous requirement that an employer supplement workers' pay when a worker who is paid by the hour does not earn enough to meet the applicable prevailing piece rate. The Department proposes to replace this language with a new provision at paragraph (l)(1) explaining that the employer must always calculate and pay workers' wages using the wage rate that will result in the highest wages for each worker, in each pay period. Because employers would be required to pay whichever wage rate will result in the highest wages in a particular pay period, supplementing workers' pay to ensure that the required hourly wage is met will no longer be necessary. Proposed new paragraph (l)(2) explains that, where the wage rates set forth in § 655.120(a)(1) include both hourly and non-hourly wage rates, the employer must calculate each worker's wages in each pay period using the highest wage rate for each unit of pay and must pay the worker the highest of these wages for that pay period. Under this proposal, the employer is responsible for evaluating the different wage rates applicable in each pay period of the growing season, including any mid-season increases in wage rate(s) that might not be reflected in the job order. Proposed paragraphs (l)(1) and (2) also make clear that the wages actually paid cannot be lower than the wages that would result from the wage rate(s) guaranteed in the job order, so that, if there is a mid-season decrease in wage rate(s), the workers are still entitled to the higher wage rate(s) listed on the job order.

Under this proposal, where an employer includes multiple activities or tasks, each of which have different applicable wage rates, in a single job order, the employer must engage in the analysis set forth above with respect to each activity or task. For example, if a job order includes harvesting several varieties of apples, each with a different

prevailing wage rate, the employer must list on the job order, for each variety, both the highest applicable hourly wage rate and the highest applicable wage rate for any other unit of pay, including any piece rates. The employer would then be responsible for evaluating, with respect to each activity or task performed in the pay period, which of the applicable wage rates would result in the highest wage for the worker for the work performed and to pay the worker the highest wage with respect to each activity or task performed.

The Department believes that these proposed changes would help ensure that employers' recruitment efforts reflect the correct applicable wage rates so as to more accurately determine whether there are U.S. workers who would be available and willing to accept the employment. They also would help ensure that H–2A workers and workers in corresponding employment are paid the wages to which they are entitled (*i.e.,* the highest of the AEWR, prevailing hourly wage or piece rate, CBA rate, Federal minimum wage, State minimum wage, or any other wage rate the employer intends to pay). Because H–2A employers are already required to accurately track and record both hours worked and field tallies pursuant to § 655.122(j), the Department believes that employers should already have processes in place to accurately record information needed for compliance with the proposed changes to §§ 655.120(a) and 655.122(l), minimizing any additional administrative burden these proposed changes would place on employers.

The Department welcomes comments on this proposal. In particular, the Department is interested in examples of how this proposal would work in practice, whether there are circumstances, such as when an employer includes multiple activities or tasks in a single job order, where further clarification is needed on which wage rates must be listed in the job order and how to calculate the worker's wages, and whether corresponding changes to the recordkeeping requirements at § 655.122(j) and (k) or to the requirements for SWAs' review of job orders at part 653, subpart F, are needed. In addition, the Department seeks comments on whether the requirement to list the highest applicable wage rate for each unit of pay on job orders placed in connection with an H–2A application renders unnecessary the requirement at 20 CFR 653.501(c)(2)(i) that an employer that pays by the piece or other non-hourly unit calculate and submit an estimated hourly wage rate with the job order. Under the proposed rule, the job order in such cases should guarantee payment of the highest of the applicable hourly or non-hourly wage rates. The Department welcomes comment on whether the calculation of an estimated hourly wage would still be necessary to prevent adverse effect on similarly employed workers in the United States and/or on agricultural workers generally.

The Department is considering making similar revisions to the regulations at §§ 655.210(g) and 655.211, governing the rates of pay and contents of job orders for herding and range livestock production occupations, to require an employer to disclose all potentially applicable rates of pay in the job order. Under such a proposal, for example, an employer would be required to disclose on the job order both the monthly AEWR and a State minimum hourly wage rate applicable to the job opportunity that could potentially result in higher earnings based on hours worked. As explained above, the Department believes that such disclosure would likely benefit potential applicants to better understand the potential earnings for a job opportunity, and would assist the Department with more efficient program administration and enforcement. The Department welcomes comment on whether it should include these similar revisions in any final rule.

The Department is also considering making similar revisions to the regulations at 20 CFR 653.501(c), governing the requirements for SWAs' review of clearance orders, to require an employer to disclose all potentially applicable rates of pay in a non-H–2A (or non-criteria) clearance order. Under such a proposal, an employer would be required to disclose on the clearance order the highest applicable hourly wage rate, if any (*i.e.,* the highest of any applicable prevailing hourly wage rate, the Federal or State minimum wage, or an hourly wage rate the employer intends to pay), as well as any piece rate or other non-hourly wage rate applicable to the job opportunity that could potentially result in higher earnings, and to pay workers the highest of these rates. The Department believes that such disclosure would likely benefit potential applicants to better understand the potential earnings for a job opportunity, and that it would minimize confusion to require similar information for both criteria and non-criteria clearance orders. The Department welcomes comment on whether it should include these similar revisions in any final rule.

3. Section 655.122, Contents of Job Offers

a. Paragraph (h)(4) Employer Provided Transportation

The Department proposes to revise § 655.122(h)(4) to require the provision, maintenance, and wearing of seat belts in most employer-provided transportation. The Department believes that existing vehicle safety standards provide important safeguards for workers, but that they are insufficient to adequately address transportation safety challenges. The inclusion of regulations related to seat belts would reduce the hazards associated with agricultural work, thus making these H–2A jobs more attractive to workers in the United States.

Studies have shown that seat belt use dramatically decreases occupant fatalities and injuries in the event of a vehicle crash. Seat belts reduce fatalities and serious injuries by keeping occupants inside the vehicle and close to their original seating position, gradually decelerating the occupant as the vehicle deforms, and prevents occupants from hitting the vehicle interior or other passengers.[16] DOT's National Highway Traffic Safety Administration (NHTSA), which regulates vehicle manufacturing standards and studies the efficacy of safety enhancements, began to require seat belts in at least some vehicles beginning in 1968, and identifies seat belt technology and usage as one of the most significant safety enhancements of the past 60 years. NHTSA estimates that using a seat belt in the front seat of a passenger car can reduce fatal injury by 45 percent and reduce moderate to critical injury by 50 percent.[17] The safety effect increases in a light truck, where seat belts reduce fatal injury by 60 percent and reduce moderate to critical injury by 65 percent.[18] Between 1960 and 2012, NHTSA estimates that seat belts have saved 329,715 lives, which constitutes more than half of the estimated lives saved by safety improvements in this time period

[16] *See* Nat'l Highway Traffic Safety Admin., Dep't of Transp., DOT HS–812–069, Lives Saved By Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012—Passenger Cars and LTVs—With Reviews of 26 FMVSS and the Effectiveness of Their Associated Safety Technologies in Reducing Fatalities, Injuries, and Crashes 89 (2015) (2015 NHTSA Report), *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812069.*

[17] *Id.* at 107–11. *See also Seat Belts,* Nat'l Highway Traffic Safety Admin., *https://www.nhtsa.gov/risky-driving/seat-belts#resources* (''*Seat Belts*'').

[18] 2015 NHTSA Report at 107–11.

(613,501).[19] In 2020, estimated average passenger vehicle seat belt use in the United States was 90.3 percent,[20] but between 46 and 51 percent of those killed in passenger vehicle crashes were not wearing seat belts.[21]

Individual State laws have significantly contributed to increased seat belt usage in the United States.[22] New York passed the first law requiring the use of seat belts in 1984.[23] Between 1984 and 1987, State legislatures passed seat belt laws in 29 States.[24] Today, all States except New Hampshire require seat belt usage in the front seats, and 40 of these States, as well as the District of Columbia and two territories, also require seat belt usage in the rear seat.[25] These laws, in conjunction with sustained national campaigns to encourage seat belt use (*e.g.,* ''Click It or Ticket''), have increased seat belt usage dramatically; estimated seat belt use in 1990 was 49 percent, but, as mentioned, the estimated seat belt use in 2020 was 90.3 percent.[26]

However, seat belt use in rural areas lags behind other parts of the United States, and rural vehicle crashes are disproportionately deadly. An analysis completed by the Centers for Disease Control and Prevention (CDC) revealed that in 2014, age-adjusted passenger vehicle occupant death rates per 100,000 population increased with increasing rurality. For example, in the southern United States, the age-adjusted death rate in vehicle crashes per 100,000 population in rural counties was more than four times as high as those in urban counties (6.8 deaths per 100,000 population in the most urban counties as compared to 29.2 deaths per 100,000 population in the most rural counties); this same study showed that self-reported seat belt use in 2014 for the most rural counties was only 74.7 percent, compared to 88.8 percent in the most urban counties.[27] As most agriculture is in rural areas, agricultural workers are more likely to be exposed to dangers inherent in rural transportation. The CDC also acknowledges that agriculture itself is one of the most hazardous industries in the United States. In 2021, workers in the agriculture, forestry, fishing and hunting industry experienced one of the highest fatal injury rates at 20 deaths per 100,000 full-timeworkers—and nearly half of those deaths resulted from transportation incidents.[28] The Occupational Injury Surveillance of Production Agriculture survey demonstrated that, in surveyed years between 2001 and 2014, transportation related accidents (including tractor rollovers) constituted approximately 12.7 percent of all agricultural work-related injuries to adults 20 years and older.[29]

The Department's enforcement experience is consistent with the statistics described above. Of the agriculture-related injuries and fatalities that the Department has investigated in the last 5 years, more than 60 percent related to farmworker transportation. Additionally, some of the most significant injuries and fatalities resulted when workers were not wearing seat belts. For example, in calendar year (CY) 2022 alone, WHD investigated eight incidents involving serious injury or death of farmworkers. Of these incidents, seven involved agriculture-related vehicle crashes and only one involved other safety issues. Of the crashes investigated in 2022, all involved at least some workers who were not restrained by seat belts, sometimes with fatal or serious consequences. For example, on May 31, 2022, in Indiana, a vehicle being driven by one H–2A worker and carrying another H–2A worker collided with a semi-truck. The two workers were ejected from the vehicle, as neither was wearing a seat belt. The driver died and the passenger was air-lifted to the hospital with life-threatening injuries. In another example, on April 15, 2022, a vehicle carrying eight farmworkers in California ran a stop sign and collided with an SUV. One occupant was not wearing a seat belt and was ejected. The ejected passenger died, and seven other workers suffered minor to moderate injuries.

Despite the statistics showing the dangers related to rural transportation, agricultural transportation, and the failure to use seat belts, as well as its own enforcement experience, the Department has limited tools to address seat belt use in employer-provided transportation. Current § 655.122(h)(4) requires employers to comply with all applicable local, State, or Federal laws and regulations and, at a minimum, the same transportation safety standards, driver's licensure, and vehicle insurance required under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). However, MSPA vehicle safety regulations were promulgated in 1983 when seat belt use was less common, and they do not mandate that seat belts be provided or worn.[30] When State law requires the wearing of seat belts, the Department may enforce the provision and wearing of seat belts through State law under current § 655.122(h)(4). However, not all States require the provision and wearing of seat belts in all seats,[31] and other States exclude certain vehicles from seat belt provisions.[32] Even where States have farmworker-specific laws requiring seat belts, such as in Florida, California, and Maine, these laws often do not cover all vehicles used to transport farmworkers.[33] Finally, many State seat

[19] *Id.* at xxxi–xxxii.

[20] *See* Nat'l Highway Traffic Safety Administration, U.S. Dep't of Transp., DOT HS 813–072, Traffic Safety Facts Research Note: Seat Belt Use in 2020—Overall Results (2021) (2021 NHTSA Report), *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813072.*

[21] Nat'l Highway Traffic Safety Administration, U.S. Dep't of Transp., DOT HS 813–266, Overview of Motor Vehicle Crashes in 2020 11, 13 (2022), *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813266.* NHTSA appears to estimate overall fatality rates of unrestrained passengers compared only to other fatalities where seat belt use was known and estimates that 51% of vehicle occupants who are killed were not wearing seat belts. *See id.* at 13. On the other hand, the Governors Highway Safety Association (GHSA) cites the same data, but computes instead that 46% of occupants killed were unrestrained, which likely reflects that GHSA compared unrestrained fatalities with total fatalities, including where seat belt use was unknown. *See Seat Belts,* Governors' Highway Safety Ass'n, *https://www.ghsa.org/issues/seat-belts.*

[22] *See* 2015 NHTSA Report at 103–105.

[23] *See* Nell Henderson, *N.Y. Is First State to Get Seat Belt Law,* Wash. Post (July 13, 1984), *https://www.washingtonpost.com/archive/business/1984/07/13/ny-is-first-state-to-get-seat-belt-law/b86fd522-bb32-4286-980a-caefdb3edfa5.* This law, however, only required the use of seat belts in the front seat.

[24] *See* 2015 NHTSA Report at 105.

[25] *See Seat Belts.*

[26] *See* 2015 NHTSA Report at 105; 2021 NHTSA Report at 1.

[27] Laure F. Beck, et al., Ctrs. for Disease Control & Prevention, *Rural and Urban Differences in Passenger-Vehicle-Occupant Deaths and Seat Belt Use Among Adults,* CDC Morbidity and Mortality Weekly Report, Sept. 22, 2017, at 4, 6 *https://www.cdc.gov/mmwr/volumes/66/ss/ss6617a1.htm.*

[28] *See Table A–1, Fatal Occupational Injuries by Industry and Event or Exposure, All United States, 2021,* Bureau of Lab. Stats. (Dec. 16, 2022), *https://www.bls.gov/iif/fatal-injuries-tables/fatal-occupational-injuries-table-a-1-2021.html.* However, this category includes tractor rollovers, which may not qualify as employer-provided transportation as it is being discussed in this section.

[29] Out of 334,606 injury events recorded, 42.527 of those injury events (12.7 percent) were related to transportation. *See Table AI–11, National Estimates of Agricultural Work-Related Injuries to Adults (20 Years and Older) on US Farms By Injury Event,* Nat'l Inst. for Occupational Safety & Health, Ctrs. for Disease Control & Prevention (Apr. 10, 2018), *https://www.cdc.gov/niosh/topics/aginjury/oispa/pdfs/AI-15-508.pdf.*

[30] *See* 29 CFR 500.104 and 500.105. *See also* 48 FR 15800 (Apr. 12, 1983); 48 FR 36736 (Aug. 12, 1983).

[31] *See, e.g.,* Ga. Code Ann. 40–8–76.1 (only requiring the use of seat belts in the front seat).

[32] *See, e.g.,* N.C. Gen. Stat. 20–135.2A (exempting any vehicle registered and licensed as a property-carrying vehicle in accordance with North Carolina General Statutes section 20–88, while being used for agricultural purposes in intrastate commerce, from seat belt requirements).

[33] *See* Cal. Veh. Code sec. 31405 (applying only to farm labor vehicles); Fla. Stat. sec. 316.622

belt laws apply only on public roads and highways,[34] but some vehicle crashes involving H–2A or corresponding workers occur on private property. Therefore, the Department is regularly unable to cite a violation for an H–2A employer's failure to provide seat belts to workers.

The Department has periodically considered the inclusion of seat belt requirements in farmworker transportation safety regulations. In 1983, the Department promulgated MSPA transportation safety regulations pursuant to its authority under MSPA (29 U.S.C. 1801–1872) establishing vehicle safety, drivers' licensure, and insurance standards for vehicles transporting MSFWs, a category that excludes H–2A workers but may include workers in corresponding employment (*see* 29 CFR 500.20). *See* 48 FR 15800 (Apr. 12, 1983); 48 FR 36736 (Aug. 12, 1983). In these regulations, the Department declined to require seat belts, stating that requiring seat belts could place an unreasonable economic burden on employers and lead them to discontinue transporting migrant workers at short distances.[35] *See* 48 FR 36736, 36738. Beginning in 2010, the Department required all employer-provided transportation in the H–2A program to comply with MSPA standards for vehicle safety, drivers' licensure, and insurance. *See* 20 CFR 655.122(h)(4); 75 FR 6884, 6965 (Feb. 12, 2010). Seat belts were not discussed in the 2010 rulemaking. Prior to the 2010 H–2A Final Rule, H–2A regulations required only that all employer-provided transportation comply with all applicable laws and regulations. In an NPRM published in 2019, the Department solicited comments on additional transportation-related provisions to help protect workers against driver fatigue and other unsafe driving conditions. *See* 84 FR 36168, 36195 (Jul. 26, 2019). In the corresponding final rule, the Department declined to include any additional vehicle safety standards at the time, including seat belts, but noted that employers must comply with State laws, many of which required seat belts. *See* 87 FR 61660, 61719 (Oct. 12, 2022).

Much has changed with respect to seat belts since the MSPA vehicle safety standards were first developed in 1983. Many of the regulations requiring the inclusion of seat belts when manufacturing vehicles and incorporating new technologies to increase safety have been published since 1983. Additionally, since 1983, seat belt use has become significantly more common, increasing from 14 percent to 90.3 percent in 2020.[36] Research completed since 1983 has emphasized the importance of seat belts as a lifesaving and injury-reducing essential technology, and every State except one has passed seat belt laws since the MSPA vehicle safety regulations were promulgated. Although the Department does not propose to amend the MSPA regulations at this time, it seeks to apply the knowledge gained regarding the importance of seat belts to the rapidly growing H–2A program.

Therefore, pursuant to its authority to determine the minimum terms and conditions of employment acceptable under the H–2A program, 8 U.S.C. 1188(a)(1), the Department proposes to revise § 655.122(h)(4) to prohibit an employer from operating any employer-provided transportation that is required by DOT NHTSA regulations at 49 CFR 571.208 to be manufactured with seat belts unless all passengers and the driver are properly restrained by seat belts meeting standards established by 49 CFR 571.209 and 571.210. Essentially, if the vehicle is manufactured with seat belts, the employer would be required to retain and maintain those seat belts in good working order and ensure that each worker is wearing a seat belt before the vehicle is operated.

By relying on DOT's regulations to determine which vehicles pose an unreasonable risk of death or injury in a vehicle crash without seat belts, the Department intends to depend on DOT's considerable research and expertise to identify which types of vehicles require seat belts for sufficient occupant protection and which types of vehicles have sufficient occupant protection even without seat belts. The most common vehicles that the Department encounters in its enforcement are passenger cars,[37] 15-passenger vans (which would constitute a bus per the NHTSA definition),[38] and buses (both school buses [39] and over-the-road buses [40]). Currently, 49 CFR 571.208 requires that all passenger cars and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or fewer (such as most 15-passenger vans), be manufactured with seat belts.[41] Therefore, the Department would require that these vehicles maintain seat belts in good working order when transporting workers (*e.g.,* replace the seat belt when it is cut or broken). However, 49 CFR 571.208 does not currently require that school buses with a GVWR of 10,000 pounds or more, or an over-the-road bus with a GVWR between 10,000 pounds and 26,000 pounds GVWR, be manufactured with seat belts for passengers.[42] Currently, NHTSA does not consider these vehicles to constitute an unreasonable safety risk to the public without seat belts.[43] Therefore, at this time the

(same); Me. Rev. Stat. tit. 26, sec. 643, tit. 29, sec. 2088. Both California and Florida law define a ''farm labor vehicle'' as a vehicle used for the transportation of nine or more farmworkers, in addition to the driver. See Cal. Veh. Code sec. 322; Fla. Stat. sec. 316.003(26).

[34] *See, e.g.,* Cal. Veh. Code sec. 31405(d) (stating that ''no person shall operate a farm labor vehicle *on a highway*'') (emphasis added); Cal Veh. Code sec. 360 (defining highway as ''a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel''). *See also, e.g.,* N.C. Gen. Stat. sec. 20–125.2A(a) (stating that ''each occupant of a motor vehicle . . . shall have a seat belt properly fastened about his or her body at all times when the vehicle is in forward motion on a *street or highway* in this State'') (emphasis added); N.C. Gen. Stat. sec. 20.4.01(13) (providing that a highway is ''[t]he entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic'' and that ''[t]he terms 'highway' and 'street' and their cognates are synonymous'').

[35] 29 U.S.C. 1841(2)(B) explicitly requires the Department to consider the extent to which a proposed transportation standard under MSPA would cause an undue burden on agricultural employers, agricultural associations, or farm labor contractors, a standard not included in the H–2A provisions of the INA. Also, unlike the H–2A program, MSPA does not require employers to provide transportation between living quarters and the worksite, or inbound or outbound transportation (unless disclosed that such transportation would be provided). Additionally, the Department reached this conclusion nearly four decades ago, when seat belts were less commonly used.

[36] *Compare* 2021 NHTSA Report at 1 (estimating that seat belt use by adult front-seat passengers was about 90.3 percent in 2020), *with* Transp. Research Bd. of the Nat'l Acads. Buckling Up: Technologies to Increase Seat Belt Use 5 (2003) (estimating that seat belt use was about 14 percent in 1984).

[37] NHTSA defines a passenger car as a motor vehicle with motive power, except a low-speed vehicle, multipurpose passenger vehicle, motorcycle, or trailer, designed for carrying 10 persons or less. 49 CFR 571.3(c).

[38] A 15-passenger van would constitute a bus as defined by NHTSA. NHTSA defines a bus as a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons. 49 CFR 571.3(c).

[39] NHTSA defines a school bus as a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation. 49 CFR 571.3(c).

[40] NHTSA defines an over-the-road bus as a bus characterized by an elevated passenger deck located over a baggage compartment, except a school bus. 49 CFR 571.136, S4.

[41] *See* 49 CFR 571.208, S4.4.3.

[42] *See* 49 CFR 571.208, S4.4.4.

[43] *See* 78 FR 70416, 70422–23 (Nov. 25, 2013) (discussing over-the-road buses between 10,000 pounds and 26,000 pounds GVWR); 73 FR 62744 (Oct. 21, 2008) (upgrading school bus passenger crash protection requirements). *See also* Nat'l Highway Traffic Safety Admin., School Bus Safety:

Continued

Department would not require that school buses exceeding 10,000 pounds GVWR and over-the-road buses between 10,000 pounds and 26,000 pounds GVWR install and maintain seat belts. However, if, at a later date, NHTSA were to amend 49 CFR 571.208 to require these vehicles to be manufactured with seat belts, the Department's proposed regulation would automatically, without further revision, similarly require the employer to require occupants of those vehicles to wear seat belts. The Department believes that reliance on NHTSA's standards for vehicle manufacturing strikes a reasonable balance between safety measures intended to protect vulnerable workers and significant costs associated with retrofitting relatively safe vehicles with seat belts when such vehicles were not engineered for seat belt installation.[44] Additionally, these regulations would be consistent with those issued by OSHA for motor vehicles used in the construction industry and in shipyard employment, which include similar exemptions from providing seat belts for vehicles not manufactured with seat belts.[45]

The Department welcomes comments on this proposal, including if there are any other factors or types of vehicles that it should consider in promulgating these regulations. The Department also seeks comments as to whether employers ever retrofit vehicles with additional seats (or any seats, if the vehicle was manufactured without passenger seats) in such a way that complies with existing vehicle safety standards under 20 CFR 655.122(h)(4), and how these vehicles should comply with proposed seat belt standards.

The Department further proposes that the seat belts must comply with NHTSA regulations for seat belt assembly and anchorages at 49 CFR 571.209 and 571.210. The Department believes that referencing these standards in regulations would ensure that seat belts meet existing standards for manufacture and clarify to the regulated community that makeshift or jerry-rigged restraints would not constitute a seat belt.

The proposed regulation also would prohibit the employer from operating any employer-provided transportation unless all passengers and the driver are properly restrained by a seat belt. The Department often finds that workers do not use seat belts even when they are provided. As demonstrated by NHTSA's research referenced above, the provision of seat belts is often insufficient to increase seat belt usage without enforcement and public awareness campaigns. Therefore, the Department believes this regulation would be most effective if the employer requires workers to wear seat belts. Additionally, while the proposed regulation refers specifically to the employer not operating the transportation, the Department understands that driving vehicles is often delegated to supervisors or workers. An employer would be responsible for ensuring that all drivers, including employees or agents of the employer, do not operate the vehicle until all occupants are properly restrained. The Department seeks comment as to whether, and how, it should require employers to enforce the wearing of seat belts, or whether it should require employers only to provide seat belts.

Finally, the Department seeks comment as to how this requirement for seat belts should interact with vehicles subject to the limited exemption from seat requirements found in MSPA regulations at 29 CFR 500.104(l), which is also applicable to some H–2A employer-provided transportation. Transportation subject to this exemption is limited to those vehicles that are subject to the vehicle safety standards in 29 CFR 500.104 when those vehicles are primarily operated on private farm roads when the total distance traveled does not exceed 10 miles, so long as the trip begins and ends on a farm owned or operated by the same employer.[46] As a vehicle without seats cannot be equipped with seat belts, the Department is considering whether vehicles subject to this limited exemption also should be exempted from seat belt requirements during these same trips, or, alternatively, whether this exemption should be inapplicable to H–2A employers. The Department seeks comment on this issue, including the circumstances in which employers use the limited exemption from seats found in 29 CFR 500.104(l) and the import of this limited exemption to business practices. The Department also seeks comment on known vehicle crashes or other safety hazards that have resulted or been exacerbated due to the use of this limited exemption and any anticipated hazards.

The Department also proposes non-substantive changes to § 655.122(h)(4) to divide this paragraph into separate paragraphs (h)(1)(i) through (iv).

b. Paragraphs (i)(1)(i) and (ii) Shortened Work Contract Period

The Department proposes to remove the language at § 655.122(i)(1)(i) and (ii) that explains the work contract period can be shortened by agreement of the parties with the approval of the CO. These minor conforming changes will ensure these paragraphs are consistent with proposed changes to delayed start of work requirements at proposed § 655.175(b), which permits only minor delays to the start date of work and requires notice to workers and the SWA, but not CO approval, as discussed in the preamble explaining changes in proposed § 655.175.

c. Paragraph (l)(3) Productivity Standards as a Condition of Job Retention

The Department proposes revisions to the regulations governing productivity standards at § 655.122(l). Current § 655.122(l)(2)(iii) requires the employer to disclose productivity standards in the job offer only when the employer pays on a piece rate basis and requires one or more productivity standards as a condition of job retention. The Department proposes to redesignate § 655.122(l)(2)(iii) as § 655.122(l)(3) and require all employers with minimum productivity standards as a condition of job retention to disclose such standards in the job offer, regardless of whether the employer pays on a piece rate or hourly basis.

The Department believes that this revision is necessary so that workers fully understand the material terms and conditions of employment, including any productivity standards that may serve as a basis for termination for cause, at the time the offer of

Crashworthiness Research (April 2002) (discussing school bus occupant safety), *https://www.nhtsa.gov/sites/nhtsa.gov/files/sbreportfinal.pdf.*

[44] NHTSA has provided guidance for retrofitting school buses with seat belts. *See* Guideline for the Safe Transportation of Pre-school Age Children in School Buses, Nat'l Highway Traffic Safety Admin. (February 1999). Cost estimates for retrofitting a school bus with seat belts vary, but are generally around $15,000 per bus, with one estimate as high as $36,000 per bus. *See* Stephen Satterly, *School Bus Seat Belts: Opening a Dialogue,* Safe Havens Int'l (Dec. 5, 2016), *https://safehavensinternational.org/school-bus-seat-belts-opening-dialogue,* Matthew Simon, *Report: Adding Seatbelts Could Cost $15k per school bus,* WSAW–TV (Sept. 1, 2016), *https://www.wsaw.com/content/news/NewsChannel-7-Investigates--Report-Adding-seat-belts-could-cost-15K-per-school-bus-392104851.html;* Mike Chouinard, *Island District Holds Off School Bus Seatbelt Retrofits,* N. Island Gazette (Oct. 7, 2020), *https://www.northislandgazette.com/news/island-district-holds-off-school-bus-seatbelt-retrofits-1407935.*

[45] *See* 29 CFR 1915.93(b) (seat belt standards in shipyard work); 29 CFR 1926.601(b)(9) (seat belt standards for construction work); Occupational Safety & Health Admin., Standard Interpretation No. 1926.601(b)(9) on Seat Belts (Jan. 19, 1994) (explaining that seat belt standards in construction work refer to DOT regulations).

[46] *See* 29 CFR 500.102; 29 CFR 500.104(l). *See also* Wage & Hour Div., Dep't of Lab., Fact Sheet #50, Transportation Under the Migrant and Seasonal Agricultural Worker Protection Act (2016), *https://www.dol.gov/agencies/whd/fact-sheets/50-mspa-transportation.*

employment is made. The revisions proposed in this section conform with those proposed in § 655.122(n)(2)(i), where the Department proposes that termination for cause for failure to comply with a productivity standard would only be permissible when such productivity standard is included in the job offer (among other conditions).

As explained further in the preamble section addressing proposed § 655.122(n), the Department proposes that, among other conditions, termination for cause for failure to meet a productivity standard may only be invoked by an employer when workers were informed of, or reasonably should have known, the productivity standard; the productivity standard is listed in the job offer; and the productivity standard is reasonable and applied consistently. The disclosure in the job offer of any productivity standards required as a condition of job retention helps to achieve these other requirements. Specifically, it ensures that workers are aware of the productivity standard, and that all workers are held to the same productivity standard. The disclosure in the job offer also ensures that productivity standards do not change after the employer communicates those standards to the worker. Different productivity standards for different crops, grades of crops, or job duties are permissible so long as all are disclosed in the job offer. Consistent with current guidance, productivity standards must be static, objective, and specifically quantify the expected output per worker required for job retention in the specific crop or agricultural activity. Vague standards, such as requiring workers to ''perform work in a timely and proficient manner,'' ''perform work at a sustained, vigorous pace,'' or ''keep up with the crew,'' are not acceptable productivity standards as they lack objectivity, quantification, and clarity. Failure to meet such vague standards will not be accepted by the Department as termination for cause. See preamble section corresponding with proposed § 655.122(n) for further discussion.[47]

Current § 655.122(l)(2)(iii) also requires that productivity standards listed in the job offer be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum, or if the employer first applied for temporary agricultural labor certification after 1977, productivity standards listed in the job order must be no more than those normally required (at the time of the first H–2A Application*)* by other employers for the activity in the area of intended employment. In other words, without OFLC's approval, an employer cannot increase productivity standards beyond those normally required by other employers when it first used the H–2A program, unless the employer first used the H–2A program in 1977 or earlier, in which case the employer cannot increase productivity standards beyond those it required in 1977. Proposed § 655.122(l)(3) would mandate that all productivity standards required as a condition of job retention be disclosed in the job offer regardless if the worker is paid a piece rate or an hourly wage. The proposal would broaden this requirement to workers paid on an hourly basis, not only those paid on a piece rate basis.

The Department believes this revision is appropriate because pressure for increased worker productivity exists regardless of how workers are paid. As stated in the preamble to the 2010 H–2A Final Rule, the regulations have reflected concerns about productivity standards for more than 30 years. Initial concerns focused on employers paying piece rates; the Department found that, when faced with an increased hourly guarantee, some employers simply required workers to work faster instead of increasing piece rates, which may have adversely affected the wages of similarly employed workers in the United States. *See* 43 FR 10306, 10309 (Mar. 10, 1978). Therefore, H–2A regulations published in 1987 froze productivity standards at the 1977 level (unless a higher rate was approved) or, if the employer began using the program after 1977, to those normally required by other employers for the activity in the area of intended employment at the time the employer first used the program (unless a higher rate was approved). *See* 52 FR 20496–01, 20515 (June 1, 1987). The 2010 H–2A Final Rule instituted the same standards as the 1987 rule, and these standards remained unchanged in the 2022 rule. *See* 75 FR 6884, 6913–6914 (Feb 12, 2010); 87 FR 61660–01, 61801 (Oct. 12, 2022).

Although the Department has historically recognized this issue as affecting workers paid on a piece rate basis, workers paid on an hourly basis may also be subject to productivity standards as a condition of job retention, which may adversely affect the working conditions of similarly employed workers in the United States and inhibit the ability to determine if there are sufficient workers who are able, willing, qualified, and available to perform the work. Advocacy organizations have identified that some employers may set productivity standards so high that workers in the United States are reluctant to accept or keep these jobs without a pay increase.[48] Without a ceiling on excessively high productivity standards for hourly employees, working conditions for both H–2A and domestic workers may be adversely affected as productivity demands rise, and domestic workers may leave the agricultural workforce. To prevent this adverse effect, this proposed rule would require all employers establishing productivity standards as a condition of job retention to refrain from setting such productivity standards above the permitted levels, which were previously required only if the employer was paying on a piece rate basis.

d. Paragraph (l)(4); 655.210(g)(3) Disclosure of Available Overtime Pay

The Department proposes a new § 655.122(l)(4) that would explicitly clarify that the employer must specify in the job offer any applicable overtime premium wage rate(s) for overtime hours worked and the circumstances under which the wage rate(s) for such overtime hours will be paid. The H–2A program does not mandate the payment of an overtime premium wage rate for hours worked exceeding a certain number in the day, week, or pay period. However, the Fair Labor Standards Act's (FLSA) overtime requirements, as well as various State and local laws that require overtime pay, apply independently of the H–2A program's wage requirements. Some H–2A workers and workers in corresponding employment may be entitled to overtime pay under one or more of these laws.

Under the Department's longstanding regulations, an H–2A employer must assure that it will comply with all applicable Federal, State, and local laws, including any applicable overtime laws, during the work contract period. *See* § 655.135(e).[49] In addition, an H–2A employer must accurately disclose the actual, material terms and conditions of employment, including those related to wages, in the job order. *See* §§ 655.103(b), 655.121(a)(3), and 655.122(l); *see also* § 655.210. Pursuant to these authorities, an H–2A employer already must disclose in the job order any available overtime pay, whether required under Federal, State, or local

[47] *See* OFLC, Frequently Asked Questions, H–2A Temporary Agricultural Foreign Labor Certification Program, 2010 Final Rule, Round 9 (October 30, 2015), *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_FAQ_Round9.pdf.*

[48] *See* Farmworker Justice, No Way to Treat a Guest: Why The H–2A Visa Program Fails U.S. and Foreign Workers 21, 25 (2012) (Farmworker Justice Report).

[49] *See, e.g.,* Cal. Lab. Code secs. 500–556, 558.1; Cal. Indus. Welfare Comm'n Order No. 14–2001.

law, or otherwise voluntarily offered by the employer. Despite these existing authorities, OFLC and WHD frequently encounter job orders filed in connection with H–2A applications that either omit disclosure of or fail to accurately describe applicable overtime pay. Failure to clearly and fully disclose any available overtime pay in the job order harms prospective workers, who may be more interested in the job opportunity if aware of the availability of overtime. Incomplete or nonexistent disclosures also hamper the Department's administration and enforcement of the H–2A program requirements.

Therefore, the Department proposes to revise the current wage disclosure requirements found at § 655.122(l) to expressly clarify in a new paragraph (l)(4) that an employer must disclose in the job order any applicable overtime pay. Specifically, under proposed § 655.122(l)(4), whenever overtime pay is required by law or otherwise voluntarily offered by an employer, an employer would be required to disclose in the job order: the availability of overtime hours; the wage rate to be paid for any overtime hours; and the circumstances under which overtime will be paid; and, where the overtime is required by law (rather than voluntarily offered by the employer), the applicable Federal, State, or local law governing the overtime pay. The proposed subordinate paragraph (l)(4)(iii) provides examples of circumstances that might apply, such as after how many hours in a day, week, or pay period the overtime premium wage rate will be paid, or if overtime premium wage rates will vary between places of employment. This proposed list is intended to be illustrative only; an employer must accurately disclose the actual circumstances under which overtime would be paid. The disclosures required under proposed § 655.122(l)(4) are similar to the overtime disclosure requirement under the H–2B program regulations at § 655.18(b)(6). *See also* U.S. Dep't of Lab., Wage & Hour Div., Field Assistance Bulletin No. 2021–3, Overtime Obligations Pursuant to the H–2B Visa Program (Dec. 7, 2021).[50] Where multiple overtime laws apply, the employer must comply with the law that provides the greatest benefit to the employee. For example, if an employer is required by Federal law to pay time and a half after 40 hours in a week, but is required by State law to pay overtime at time and a half after 46 hours in a week, the employer must comply with the Federal law as it is more beneficial to the employee. The Department has also proposed corresponding amendments to the Forms ETA–790A and ETA–9142A to include dedicated spaces for disclosure of any applicable overtime pay. The Department believes these proposed revisions would improve the frequency and accuracy of disclosures of available overtime pay, thereby improving notice to prospective workers of the actual terms and conditions of the job opportunity and improving the Department's enforcement of any applicable overtime pay requirements.

Similarly, the Department proposes to amend the pay disclosure requirements at § 655.210(g), governing the contents of job orders for herding and range livestock production occupations, to include a new paragraph (g)(3) that would require employers to disclose any available overtime pay, whether voluntarily offered by the employer or required by State or Federal law, and the details regarding such pay.

The Department welcomes comment on this proposal.

e. Paragraph (n) Termination for Cause or Abandonment of Employment

The Department proposes revisions to § 655.122(n), regulating employer obligations when an employer terminates an employee for cause or an employee has abandoned employment, to define termination for cause. By proposing a definition of termination for cause, the Department seeks to ensure that disciplinary and/or termination processes be justified and reasonable. The Department believes it is necessary to clarify the definition of termination for cause because workers terminated for cause under the H–2A program are stripped of essential rights to which they would otherwise be entitled. This proposed definition is also necessary because the termination without cause of one or more workers may constitute a layoff for lawful, job-related reasons, and particular employer obligations apply to layoffs of U.S. workers. *See* § 655.135(g).

The current regulations specify when job abandonment occurs, outline procedures for notifying the NPC and DHS, and require the maintenance of records of this notification, but they do not define termination for cause. A worker who abandons employment or is terminated for cause is not entitled to payment for outbound transportation under § 655.122(h)(2) or the three-fourths guarantee under § 655.122(i), and a U.S. worker who abandons employment or is terminated for cause need not be contacted for employment in the subsequent year as required by § 655.153. On the other hand, a worker who is terminated without cause is entitled to outbound transportation (§ 655.122(h)(2)), the three-fourths guarantee (including meals and housing until the worker departs for other H–2A employment or to the place outside the United States from which the worker came) (§ 655.122(i)), and, if a U.S. worker, to be contacted for work in the next year (§ 655.153), with one limited exception. An employer is not liable for the payment of the three-fourths guarantee to an H–2A worker whom the CO certifies is displaced because of the employer's fulfillment of its obligation to hire U.S. workers in compliance with the 50-percent rule described in § 655.135(d). *See* § 655.122(i)(4). Therefore, such H–2A worker would be terminated without cause but would not be entitled to the three-fourths guarantee. However, this displaced H–2A worker remains entitled to payment for outbound transportation pursuant to § 655.122(h)(2).

The Department has long acknowledged that employers need not cover some obligations for workers terminated for cause. *See, e.g.,* 43 FR 10306, 10315 (Mar. 10, 1978) (employer need not pay outbound transportation for H–2 workers terminated for cause); 52 FR 20496–01, 20501, 20515 (June 1, 1987) (where an H–2A worker is terminated for cause, the worker is not entitled to the three-fourths guarantee and the employer need not pay outbound transportation). But the Department has also recognized that some employers may abuse this provision in order to avoid those obligations. *See, e.g.,* 73 FR 77110–01, 77135 (Dec. 18, 2008) (requiring employers to contact former U.S. workers except for those dismissed for cause and noting that if employers were ''allowed . . . to reject former workers who completed their previous term on the alleged ground that the workers were actually poor performers, it would open the door to bad actor employers to reject former workers on the basis of essentially pretextual excuses'').

Given the serious consequences associated with a designation of termination for cause, and the potential for misuse, the Department believes that a clear, regulatory definition of termination for cause would benefit employers, associations, agents, workers, advocates, and the public in general and therefore proposes to insert one. Providing a clear definition of termination for cause would not only provide structure and clarity to both workers and employers, but also make

[50] *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2021_3.pdf.*

it easier for the Department to identify pretextual terminations.

The Department's enforcement experience also supports the need for a specific and clear definition of termination for cause. Some employers, in seeking to evade responsibilities under § 655.122(h)(2), § 655.122(i), § 655.153, or all three, have terminated workers ostensibly ''for cause.'' For example, one employer terminated 114 H–2A workers, out of a total of 240 H–2A workers employed, and an additional 20 workers in corresponding employment, for failing to meet production quotas. The employer alleged that workers were not eligible for the three-fourths guarantee because they were terminated for cause. However, the Department's investigation revealed that the employer had employed, in some weeks, more than 100 more workers than it employed the previous year without a proportional increase in acres planted. With the surplus in employees, worker productivity decreased significantly. An analysis of one crew showed that workers, who were paid a consistent piece rate, earned an average of $12.32 per hour when the crew consisted of 39 employees, but earned only $6.72 per hour on average when the crew consisted of 123 employees. Once crew sizes were again proportional to prior years, worker productivity increased. A different crew, also paid a consistent piece rate, earned an average of $8.14 per hour when the crew consisted of 121 workers, but, following terminations, earned an average of $12.43 per hour when the crew consisted of 91 workers. The employer terminated workers assigned to the less productive fields, even when their production rates matched those of their coworkers working the same fields. The terminations were unequally applied to workers and were for conditions outside the workers' control. The three-fourths guarantee is intended to safeguard against this very situation—employers overstating their labor needs—but the employer attempted to evade its three-fourths guarantee obligations by terminating employees without cause.

In light of this enforcement experience, the Department believes it needs stronger regulatory requirements to more easily prevent or detect attempts to evade these important worker protections. This is necessary in order for the Department to fulfill its statutory mandate to ensure that H–2A workers are employed only when there are not sufficient workers who are able, willing, qualified, and available to perform the labor or services involved in the petition and when the employment of H–2A workers will not adversely affect the wages and working conditions of similarly employed workers in the United States. *See* 8 U.S.C. 1188(a)(1). The proposed regulations would achieve this goal by protecting worker access to the three-fourths guarantee (including meals and housing until the worker departs for other H–2A employment or to the place outside the United States from which the worker came) (§ 655.122(h)(2)), outbound transportation (§ 655.122(i)), and/or, if a U.S. worker, to be contacted for work in the next year (§ 655.153), unless a reasonable and justified disciplinary process results in a termination for cause and thus nullifies the worker's entitlement to these rights. An unreasonable or unjustified termination that an employer ostensibly describes as being ''for cause'' undoubtedly has an adverse effect on similarly employed workers in the United States and interferes with the Department's ability to determine that there are not sufficient workers to perform the labor or services. For example, where an employer denies an H–2A worker payment for outbound transportation under § 655.122(h)(2) on the grounds that the worker was terminated, ostensibly ''for cause,'' but for unjustified and unreasonable reasons, the worker would be required to pay for their own transportation to return to their country of origin. The Department has long recognized that inbound and outbound transportation expenses for H–2 workers are an inescapable consequence of using the H–2 programs and are primarily for the benefit of the employer under the FLSA. H–2A regulations (and, prior to 1987, H–2 regulations) have reflected this reality by requiring these expenses to be borne by employers. *See* 43 FR 10306 (Mar. 10, 1978); 52 FR 20496–01 (June 1, 1987); 73 FR 77110–01 (Dec. 18, 2008); 75 FR 6884 (Feb. 12, 2010); 87 FR 61660 (Oct. 12, 2022); U.S. Dep't of Lab., Wage & Hour Div., Field Assistance Bulletin No. 2009–2, Travel and Visa Expenses of H–2B Workers Under the FLSA (Aug. 21, 2009); [51] *Arriaga* v. *Florida Pacific Farms, L.L.C.,* 305 F.3d 1228 (11th Cir. 2002). An employer who unreasonably and unjustifiably requires a worker to pay for their own outbound transportation has artificially reduced its cost to use the H–2A program by shifting outbound transportation costs to the workers themselves, which may reduce the worker's earnings below the amount required by § 655.122(l) in the worker's last workweek. As the wage required by § 655.122(l) is the minimum amount required to prevent adverse effect, any cost-shifting that reduces wages below this amount may adversely affect wages and working conditions of similarly employed workers in the United States. Clarifying that workers are terminated for cause only where the termination is reasonable and justified would minimize such adverse effect.

Similarly, adverse effects on similarly employed workers in the United States may result when an employer denies the three-fourths guarantee required by § 655.122(i) to a worker who is unjustly and unreasonably terminated, ostensibly ''for cause.'' The three-fourths guarantee is an essential protection that requires employers to provide an accurate description of the amount of work available and the periods in which work is available, which gives workers an opportunity to evaluate the desirability of the offered job. An employer that fails to provide the work promised during recruitment must pay workers for work hours equivalent to three-fourths of the workdays offered, which disincentivizes employers from hiring workers without sufficient work. The Department has long held that the three-fourths guarantee is an essential protection to prevent adverse effect on similarly employed workers in the United States. *See* 43 FR 10306, 10308 (Mar. 10, 1978); 73 FR 77110–01, 77152 (Dec. 18, 2008). A job with insufficient work creates undesirable conditions because the workers may not earn sufficient wages to pay bills and support their families. In this situation, both H–2A and U.S. workers may be induced to seek work elsewhere if the promised work does not materialize. The employer has therefore failed to determine if there are sufficient U.S. workers able, willing, and qualified to perform the work, and the wages and working conditions of similarly employed workers in the United States may be adversely affected if H–2A workers seek work outside the terms of their H–2A nonimmigrant status because the job they were promised does not actually exist. *See* 80 FR 24042–01, 24066 (Apr. 29, 2015).

Finally, where an employer declines to rehire a U.S. worker under § 655.153 on the grounds that the worker was terminated, ostensibly ''for cause,'' but the termination was unreasonable and unjustified, the employer fails to adequately test the labor market for able, willing, and qualified workers because it has unreasonably and unjustly removed this worker from the labor pool.

In addition, the proposed definition of termination for cause will assist the Department in identifying terminations

[51] *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FieldAssistanceBulletin2009_2.pdf.*

for pretextual reasons. These pretextual reasons may attempt to mask violations of other provisions, such as the prohibitions on layoffs of U.S. workers (§ 655.135(g)) and retaliatory termination (§ 655.135(h)), for which the appropriate remedy may be reinstatement or make-whole relief. *See* 29 CFR 501.16. Workers also would be protected from terminations for pretextual reasons for actions that may not be otherwise protected by the current H–2A regulations. Even if the underlying activity is not protected by the H–2A protections, the Department retains an interest in ensuring that reasonable activities and communications are not misused or mischaracterized as a basis for termination for cause. This ensures that a worker may advocate on their own behalf without fear of being terminated, ostensibly ''for cause.'' This additional safeguard on the ability to engage in self-advocacy would prevent adverse impact on working conditions for similarly employed workers in the United States by ensuring that employers cannot evade their obligations with respect to workers engaged in self-advocacy.

Finally, the Department believes that its proposed definition of termination for cause will also benefit employers by providing regulatory certainty and increasing the quality and desirability of agricultural jobs. Employers will have clear guidelines as to how the Department will define termination for cause. Where there are farm labor shortages, employers may experience improved ability to recruit agricultural workers where workers are assured that they will be entitled to the three-fourths guarantee and outbound transportation costs unless they are terminated for cause or they abandon their employment.

For these reasons, the Department proposes to clarify in the regulations that a worker is terminated for cause only when the employer terminates the worker for failure to meet productivity standards or failure to comply with employer policies or rules. This definition is substantively similar to current enforcement guidance that appears in U.S. Department of Labor, Wage and Hour Division, Field Assistance Bulletin No. 2012–1, H–2A ''Abandonment or Termination for Cause'' Enforcement of 20 CFR 655.122(n) (Feb. 28, 2012).[52] There, WHD stated that termination for cause refers to termination based on a specific act of omission or commission by the employee, and that, for example, insubordination, deliberately violating company policies or rules, lying, stealing, breaching the employment contract, and other job-related misconduct are all possible bases for termination for cause. *Id.* at 6.

Further, the Department proposes that an employer may terminate a worker for cause only if six conditions listed in proposed § 655.122(n)(2)(i) are met. Importantly, the employer must comply with all six conditions for the employer's actions to qualify as termination for cause. These proposed conditions, explained in the following paragraphs, clarify that termination for cause exists only where disciplinary and/or termination processes are justified and reasonable; it does not exist where rules, policies, and/or standards are arbitrary, unknown, or selectively enforced. These conditions serve to promote the integrity and fairness of any disciplinary and/or termination process, and help to reduce the possibility that an employer may, purposefully or subconsciously, discriminate against a worker for reasons that are unrelated to work. These proposed conditions reflect common-sense personnel practices, and some of these conditions may also be found in State and local laws or bills prohibiting wrongful discharge.[53] The Department believes that many agricultural employers already follow similar standards when terminating a worker for cause, as records of these types are often essential in responding to discrimination complaints investigated by the EEOC or DOJ's Immigrant and Employee Rights Section, claims filed pursuant to State unemployment insurance programs, or the Department when investigating retaliatory termination under the laws that it enforces (including the H–2A program). These requirements would apply to H–2A workers and workers in corresponding employment. Accordingly, these proposed conditions would preserve worker access to outbound transportation (§ 655.122(h)(2)), the three-fourths guarantee (§ 655.122(i)), and/or, if a U.S. worker, to be contacted for work in the next year (§ 655.153) unless a reasonable and justified disciplinary process has resulted in termination for cause, which prevents adverse effect on similarly employed workers in the United States and ensures that jobs are available to workers in the United States who are able, willing, and qualified to perform the work.

First, proposed § 655.122(n)(2)(i)(A) would require that the employees were informed (in a language understood by the employee) of, or reasonably should have known of, the policy, rule, or productivity standard that is the basis for the termination for cause. Basic concepts of fairness preclude the termination of a worker for cause if that worker was not informed, or had no reasonable basis for knowing, that the infraction or performance issue constituted grounds for termination. Policies and rules are not required to be listed in the job offer but must be clearly communicated to and understood by the workers. Ways in which the employer may communicate policies and rules to workers include employee handbooks, posters, trainings, staff meetings, and verbal instruction. If the policy or rule is not explicitly communicated, the Department will review whether a reasonable person would know that the policy or rule exists. For example, a reasonable person would know that conduct that is obviously illegal, such as unlawful sexual harassment or assault, can be a basis for discipline or termination. Similarly, a reasonable person would know that purposefully damaging the crop would be a basis for discipline or termination.

Second, the Department proposes in § 655.122(n)(2)(i)(B) that, if the termination is for failure to meet a productivity standard, such standard must be disclosed in the job offer. The Department has long held that if an employer pays a piece rate and requires a productivity standard, such productivity standard must be disclosed in the job offer. *See* current § 655.122(l)(2)(iii). In this proposed rule, the Department proposes that any productivity standard must be disclosed in the job offer regardless of whether the worker is paid on a piece rate or hourly basis. *See* proposed § 655.122(l)(3). The job offer communicates the material terms and conditions of employment to H–2A workers and workers in corresponding employment, and therefore any productivity standard which may serve as a basis for termination should be disclosed to the worker in the job offer. This disclosure in the job offer ensures that the employer informs the workers of the productivity standard, and that the productivity standard is consistent for all workers, both of which are essential elements of any just disciplinary process. Consistent with current

[52] *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab2012_1.pdf.*

[53] *See, e.g.,* N.Y.C. Admin. Code sec. 20–1272, *https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-131240;* Phila. Code sec. 9–4703, *https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-280911#JD_Chapter9-4700;* H.B. 3530, 102nd Gen. Assemb. (Ill. 2021 & 2022), *https://www.ilga.gov/legislation/102/HB/PDF/10200HB3530lv.pdf.*

guidance, and discussed in the preamble corresponding with proposed § 655.122(l)(3), any productivity standard that serves as a basis for termination for cause must be static, quantified, and objective.[54] Vague standards (*i.e.,* those that are not quantified and depend on the employer's subjective judgement) do not constitute productivity standards, and failure to comply with such vague standards will not be accepted by the Department as a valid reason for termination for cause.

Third, proposed § 655.122(n)(2)(i)(C) would allow termination for cause only if compliance with the policy, rule, or productivity standard is within the employee's control. For example, termination for cause would not apply if a worker were unable to meet productivity standards if working in a field where compliance with the productivity standard is impossible for any worker (*e.g.,* in a field where most fruit to be picked remains unripe, or where the employer has hired significantly more employees than required to complete available work). Similarly, termination for cause would not apply where a worker is regularly tardy but arrives using employer-provided transportation that habitually arrives late through no fault of the worker. Reasonable disciplinary processes should not penalize workers for infractions outside of their control.

Fourth, proposed § 655.122(n)(2)(i)(D) would clarify that termination for cause would apply only where the policy, rule, or productivity standard is reasonable and applied consistently. A just and equitable discipline system requires equal treatment under the rules for all H–2A and corresponding workers. Termination for cause would not apply where one worker is terminated for noncompliance with a policy with which another worker performing a similar job is not required to comply. Similarly, termination for cause would not apply where a worker is terminated pretextually for noncompliance with a policy or rule that the employer infrequently or sporadically enforces.

Fifth, proposed § 655.122(n)(2)(i)(E) would outline that termination for cause would apply only where the employer undertakes a fair and objective investigation into the job performance or misconduct. Termination for cause would not apply where an employer merely assumes that the worker has failed to comply with a policy, rule, or productivity standard, or relies on a dubious third-party account as the basis for the termination.

Sixth, proposed § 655.122(n)(2)(i)(F) would require the employer to engage in progressive discipline to correct the worker's performance or behavior before terminating that worker for cause. Proposed § 655.122(n)(2)(ii) would define progressive discipline as a system of graduated and reasonable responses to an employee's failure to meet productivity standards or failure to comply with employer policies or rules. Examples of disciplinary measures may include counseling, verbal warnings, written warnings, and, when appropriate, termination for cause. Disciplinary measures are proportional to the failure but may increase in severity if the failure is repeated. For example, a worker who blatantly and willfully ignores known safety procedures when operating heavy machinery, putting their safety and/or the safety of others at risk, should encounter different disciplinary consequences than a worker who is 15 minutes tardy for the first time that season. Additionally, a worker who is tardy for the first time may experience different disciplinary consequences than a worker who is tardy for the fifth time in 2 weeks. Progressive discipline ensures that workers are not harshly punished for minor, first-time infractions and reinforces the conditions for termination for cause in proposed § 655.122(n)(2)(i), specifically that rules, policies, and productivity standards are communicated to the workers and are reasonable. This furthers the Department's objective of ensuring that disciplinary procedures resulting in termination for cause are reasonable and justified, thus avoiding adverse impact on similarly employed workers in the United States by protecting access to outbound transportation (§ 655.122(h)(2)), the three-fourths guarantee (including meals and housing until the worker departs for other H–2A employment or to the place outside the United States from which the worker came) (§ 655.122(i)), and, if a U.S. worker, to be contacted for work in the next year (§ 655.153).

The Department recognizes that in rare circumstances, termination for cause may be an appropriate disciplinary consequence for a first-time offense of egregious misconduct even in a progressive discipline system. Egregious misconduct means behavior that is plainly illegal or that a reasonable person would understand as being offensive, such as violence, drug or alcohol use on the job, or unlawful assault, as opposed to failure to meet performance expectations or productivity standards. The Department also emphasizes that all other conditions outlined in proposed § 655.122(n)(2)(i) must be met in cases of termination for cause involving egregious misconduct. Specifically, the worker must be informed, or reasonably should have known, about the policy or rule; compliance with the policy or rule must be within the worker's control; the policy or rule must be reasonable and applied consistently; and the employer must undertake a fair and objective investigation into the purported misconduct. Egregious misconduct need not be explicitly prohibited verbally or in writing—workers are generally expected to understand that the behavior is prohibited—but the Department encourages employers to clearly communicate to workers that activities like unlawful harassment, substance abuse, and illegal or violent conduct will not be tolerated.

Prior to each disciplinary measure, the employer must notify the worker of the infraction and allow the worker an opportunity to present evidence in their defense to dispute the accuracy of the employer's description of the infraction or failure to meet the productivity standards. Fair and just disciplinary policies should ensure that the employer undertakes reasonable steps to determine whether the worker committed an infraction that was within their control or failed to meet productivity standards. Such policies also should ensure that the employer considers any mitigating circumstances that may provide context to any infraction or failure to meet productivity standards.

The Department also proposes that, after imposing any disciplinary measure prior to termination, the employer must provide relevant and adequate instruction to the worker, and the worker must be afforded reasonable time to correct the behavior or meet the productivity standard following instruction. The type of instruction and the amount of time afforded to fix the issue may vary depending on the misconduct or performance issue. For example, if the worker is not meeting productivity standards, the worker should be provided training on harvesting techniques and a reasonable amount of time to develop those techniques to meet the productivity standard. In another example, if a worker arrives late to work one morning and is verbally counseled, the employer should make clear the time the worker is expected to arrive at work. In this second example, the employer can

[54] *See* OFLC, Frequently Asked Questions, H–2A Temporary Agricultural Foreign Labor Certification Program, 2010 Final Rule, Round 9 (October 30, 2015), *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_FAQ_Round9.pdf.*

reasonably expect the worker to correct the behavior by the next shift. Of course, there may be extenuating circumstances for the tardiness and the employer should take those into account as part of any counseling.

In the proposed regulation, the employer must also document, in writing, each disciplinary measure, evidence the worker presented in their defense, and resulting instruction, and the employer must clearly communicate to the worker, either verbally or in writing, in a language the worker understands, that a disciplinary action occurred, so as to create a record of the discipline and minimize the potential misunderstanding as to whether a disciplinary action occurred. The employer must also document any explanation that the employee provided in response to any purported infraction. These requirements—instruction, a reasonable period to fix issues, employee explanation, and documentation—are intended to ensure a worker is not prematurely terminated and deprived of their rights to the three-fourths guarantee (including meals and housing until the worker departs for other H–2A employment or to the place outside the United States from which the worker came) (§ 655.122(h)(2)), outbound transportation (§ 655.122(i)), and/or, if a U.S. worker, to be contacted for work in the next year (§ 655.153), for misconduct or performance issues that are unknown to the worker and/or are easily remedied.

Proposed § 655.122(n)(2)(iii) would outline specific reasons for which workers may not be terminated for cause. This proposed language makes clear that an employee continues to be entitled to outbound transportation (§ 655.122(h)(2)), the three-fourths guarantee (including meals and housing until the worker departs for other H–2A employment or to the place outside the United States from which the worker came) (§ 655.122(i)), and, if a U.S. worker, to be contacted for work in the next year (§ 655.15) if the employer has broken the law in terminating the worker, or if the worker is reasonably exercising their rights to a safe workplace. Specifically, termination for cause would not apply where the termination is contrary to a Federal, State, or local law; for an employee's refusal to work under conditions that the employee reasonably believes will expose them or other employees to an unreasonable health or safety risk; for discrimination on the basis of race, color, national origin, age, sex (including sexual orientation and gender identity),[55] religion, disability, or citizenship; or, where applicable, where the employer fails to comply with its obligation under § 655.135(m)(4) in a meeting that contributed to the employee's termination. The Department seeks comment on these reasons for termination excluded from termination for cause, and whether any other reasons should explicitly be included in this list.

The Department does not propose changes to the prohibition on preferential treatment of H–2A workers (§ 655.122(a) or layoffs of U.S. workers (§ 655.135(g)), but reminds employers that they are prohibited from offering preferential treatment to H–2A workers over U.S. workers. *See* § 655.122(a). Similarly, employers are prohibited from laying off similarly employed U.S. workers in the occupation that is the subject of the H–2A Application in the area of intended employment in the period beginning 60 days before the first date of need and continuing throughout the period certified on the H–2A Application, except on the basis of lawful, job-related reasons. While U.S. workers in corresponding employment may be laid off for lawful, job-related reasons such as lack of work or the end of the growing season, such a layoff is permissible only after all H–2A workers have been laid off. *See* § 655.135(g). As noted above, a worker in corresponding employment may only be terminated for cause using the same procedures, found in proposed § 655.122(n)(2), as those used to terminate an H–2A worker for cause. However, such processes must be applied fairly and consistently (and in compliance with the conditions set forth in § 655.122(n)(2)(ii)). In addition, to comply with the prohibitions on preferential treatment (§ 655.122(a)) and layoffs of U.S. workers (§ 655.135(g)), U.S. workers in corresponding employment may not be terminated without cause, or laid off, before all H–2A workers are terminated without cause. Of course, any worker terminated without cause, or laid off, is entitled to outbound transportation (§ 655.122(h)(2)), the three-fourths guarantee (including meals and housing until the worker departs for other H–2A employment or to the place outside the United States from which the worker came) (§ 655.122(i)), and, if a U.S. worker, to be contacted for work in the next year (§ 655.153). Where the employer terminates an H–2A or worker in corresponding employment without cause, Department will, as appropriate, cite violations, assess civil money penalties, compute back wages, and/or pursue debarment for (1) failure to pay outbound transportation, (2) failure to comply with the three-fourths guarantee, and/or (3) failure to contact a U.S. worker for employment in the following season. When computing back wages owed under the three-fourths guarantee, the Department will compute for the hours not offered pursuant to § 655.122(i)(1) as well as any housing and meals not provided when required pursuant to § 655.122(i)(5).

Proposed § 655.122(n)(2)(iv) would require the employer to bear the burden of demonstrating to the Department that any termination for cause meets the requirements of proposed § 655.122(n)(2). The employer would be required to prove that the termination was justified and proper progressive discipline procedures were followed. The Department believes that it is reasonable to require employers, as the entities seeking an exemption from outbound transportation, the three-fourths guarantee (including meals and housing until the worker departs for other H–2A employment or to the place outside the United States from which the worker came), and notification requirements found in §§ 655.122(h)(2) and (i) and 655.153, to demonstrate why termination for cause was warranted.[56]

Consistent with current policy, where an employer constructively discharges a worker, the Department will consider

[55] ''Sex'' includes sexual orientation and gender identity because differential treatment on those bases necessarily involves discrimination because of sex. *See Bostock* v. *Clayton Cnty.,* 140 S. Ct. 1731, 1741 (2020) (''it is impossible to discriminate against a person'' under Title VII because of their sexual orientation or gender identity ''without discriminating against that individual based on sex'').

[56] Termination for cause provides employers with an exception from certain provisions of the H–2A program. Where a party seeks an exemption from prescribed terms or from a generally applicable provision, it is generally appropriate to assign to that party the burden of demonstrating the conditions for such an exemption. *See, e.g., Meacham* v. *Knolls Atomic Power Lab'y,* 554 U.S. 84, 91–94 (2008) (employers bear burden of proving certain exemptions to Age Discrimination in Employment Act); *Karawia* v. *U.S. Dep't of Lab.,* 627 F. Supp. 2d 137, 146 (S.D.N.Y. 2009) (under 29 CFR 4.188, a contractor found by the Secretary to have violated the Service Contract Act bears the burden of establishing unusual circumstances to warrant relief from the debarment sanction that generally applies to violators); 29 CFR 525.21(c) (where an employer that has obtained a special certificate under FLSA section 14(c) allowing the employer to pay special minimum wage rates to certain workers with disabilities, and the employer seeks to obtain authority to lower the wage rate of a worker with a disability below the rate specified in the certificate, the employer has the burden of establishing the necessity of lowering the wage of that worker); 29 CFR 779.101 (stating that ''[a]n employer who claims an exemption under the [FLSA] has the burden of showing that it applies'') (citing *Walling* v. *Gen. Indus. Co.,* 330 U.S. 545 (1947) and *A.H. Phillips, Inc.* v. *Walling,* 324 U.S. 490 (1945)).

that worker to be terminated without cause. Constructive discharge occurs when a worker departs employment because working conditions have become so difficult that a reasonable person would have felt compelled to leave the job. Constructive discharge may occur in a wide variety of situations, such as where a worker departs employment because of unsafe or intolerable housing conditions (such as grossly inadequate heating during the winter, lack of running water, or exposure of bare electrical wires), because the employer requires the worker to work in an unsafe workplace (for example, where an employer requires a worker to work in a field that was recently sprayed with pesticides before the required re-entry interval has elapsed), or because the worker has not received work assignments for an extended period of time, despite being available and willing to take on new work. Along the same lines, where a worker involuntarily leaves employment prior to the end of the contract period, the employee's departure may be deemed constructive discharge rather than abandonment under § 655.122(n)(1). Consistent with current practice, in assessing whether alleged abandonment is voluntary, the Department will consider, for example, whether the employer sought to influence workers to leave a job prior to the end of the contract period or whether the employer took other steps to render working conditions so intolerable that a reasonable person in the worker's position would not stay. *See* U.S. Dep't of Lab., Wage & Hour Div., Field Assistance Bulletin No. 2012–1, H–2A ''Abandonment or Termination for Cause'' Enforcement of 20 CFR 655.122(n) (Feb. 28, 2012).[57]

The Department also proposes additional recordkeeping obligations in § 655.122(n)(4). The regulations at current § 655.122(n) require employers to maintain records of notification to the NPC, and to DHS in the case of an H–2A worker. Proposed § 655.122(n)(4)(i) would make a minor clarification that such records of notification must be maintained with respect to both abandonment and termination for cause, which is consistent with DOL's established interpretation of the current regulations. Further, proposed § 655.122(n)(4)(ii) would require the employer to maintain disciplinary records, including each step of progressive discipline, any evidence the worker presented in their defense, any investigation related to the termination, and any subsequent instruction afforded the worker. Finally, proposed § 655.122(n)(4)(iii) would require that the employer maintain records indicating the reason(s) for termination of any employee, including disciplinary records as described in §§ 655.122(n)(4)(ii) and 655.167. These records are necessary to show that an employer complied with the regulations throughout the process leading to the termination for cause. An employer that does not maintain these records may not meet the burden of demonstrating to the Department that any termination for cause meets the requirements of proposed § 655.122(n)(2), as required by proposed § 655.122(n)(2)(iv). The Department also proposes conforming edits to § 655.167, specifically by adding paragraphs (c)(10) and (11), requiring employers to retain records indicating the reason(s) for termination of any employee, including records of each step of progressive discipline, any subsequent instruction afforded the worker, and any investigation, including any evidence or information that the worker presented in their defense, relating to the termination as set forth in § 655.122(n). The maintenance of disciplinary records for all employees, not simply those who were terminated, will assist employers in meeting their burden to demonstrate that discipline leading to termination was not pretextual and was consistent with company policies and procedures. The Department seeks comments as to whether it should require any other records in support of these proposed requirements.

Finally, the Department proposes minor edits to § 655.122(n) to improve readability and clarity. Specifically, the Department proposes to number paragraphs within this section and to reorder the mentions of termination for cause and abandonment of employment. Additionally, the Department proposes to clarify that the employer must notify the NPC and, in the case of an H–2A worker, DHS, not later than 2 working days after any termination for cause or abandonment occurs. This edit would be consistent with DOL's established interpretation of the current regulations at § 655.122(n) and would clarify ambiguous language to specify that the notice procedures apply both to termination for cause and to abandonment.

[57] *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab2012_1.pdf.*

C. Application for Temporary Employment Certification Filing Procedures

1. Section 655.130, Application Filing Requirements

a. The Department Proposes To Require Enhanced Disclosure of Information About Employers: Owners, Operators, Managers, and Supervisors

The Department proposes to expand its collection of information about employers and the managers and supervisors of workers at places of employment by collecting additional information about the owner(s) of agricultural businesses that employ workers under the H–2A Application, the operators of the place(s) of employment identified in the job order, and the managers and supervisors of the workers when performing labor or services at those place(s) of employment. Specifically, the Department proposes to require that each prospective H–2A employer, as defined at 20 CFR 655.103(b), provide the following information in relation to the owner(s) of each employer, any person or entity (if different than the employer(s)) who is an operator of the place(s) of employment, including an H–2ALC's fixed-site agricultural business client(s), and any person who manages or supervises the H–2A workers and workers in corresponding employment under the H–2A Application: full name, date of birth, address, telephone number, and email address. The Department also proposes to revise the Form ETA–9142A to require the employer provide additional information about prior trade or DBA names the employer has used in the 3 years preceding its filing of the H–2A Application, if any, rather than collecting only the DBA name the employer currently uses. Accordingly, the Department proposes to revise and restructure § 655.130 by adding four new paragraphs, (a)(1) through (4), to specify the information employers must provide at the time of filing an H–2A Application.

In a new paragraph (a)(1), the Department proposes to retain the language currently in § 655.130(a) that addresses the H–2A Application and supporting documentation the employer must submit. The remainder of § 655.130(a), which contains language regarding collection of the employer's information—*i.e.,* FEIN, valid physical location in the United States, and means of contact for recruitment—would be moved to proposed paragraph (a)(2). Also, in paragraph (a)(2), the Department proposes to explicitly

require disclosure of the employer's name and the additional employer information collection the Department proposes to require (*i.e.,* the identity, location, and means of contact for each owner). Proposed paragraph (a)(3) would require the employer to provide the identity, location, and contact information of all persons or entities who are operators of the place(s) of employment listed in the job order, if different from the employer(s) identified under paragraph (a)(2), including an H–2ALC's fixed-site agricultural business client(s) who operate the place(s) of employment where the workers employed under the H–2A Application will perform labor or services. In addition, paragraph (a)(3) would require the employer to provide the identity, location, and contact information of all persons who will manage or supervise H–2A workers and workers in corresponding employment under the H–2A Application at each place of employment. Proposed paragraph (a)(4) would require the employer to continue to update the information required by the above paragraphs until the end of the work contract period, including extensions thereto, and retain this information post-certification and produce it upon request by the Department. To effectuate proposed § 655.130(a)(4), the Department proposes a new record retention paragraph at § 655.167(c)(9) that would require the employer to retain the information specified in paragraphs (a)(2) and (3) of § 655.130 for the 3-year period specified in § 655.167(b).

The additional information the Department proposes to collect is necessary to improve program administration and better protect vulnerable agricultural workers. The new collections would allow the Department to gain a more accurate and detailed understanding of the scope and structure of the employer's agricultural operation, which is essential to the Department's fulfillment of various obligations in the administration and enforcement of the H–2A program. During the application process, this information would assist the Department in determining whether the employer has demonstrated a bona fide temporary or seasonal need, or, conversely, whether an employer has, through multiple related entities, sought to obtain year-round H–2A labor. The additional information would enhance the Department's enforcement capabilities by helping the Department identify, investigate, and pursue remedies from program violators; ensure that sanctions, such as debarment or civil money penalties, are appropriately assessed and applied to responsible entities, including individuals and successors in interest when appropriate; and determine whether an H–2A employer subject to investigation has prior investigative history under a different name. For example, contact information for owners, operators, and supervisors may assist the Department in locating the employer and workers for the purposes of conducting an investigation, presenting findings (either verbally or in a written determination) and obtaining payment for back wages and civil money penalties following a final order of the Secretary. Similarly, this information provided at the application stage may assist the Department to identify whether an individual or successor in interest should be named on any determination and therefore subject to any sanctions or remedies assessed. As explained in the discussion of proposed § 655.104, in the experience of the Department, some H–2A employers have sought to avoid penalties and continue participating in the program despite having been debarred by reconstituting as a new legal entity while ultimately retaining the underlying business that was debarred from the H–2A program. In an audit or investigation of an employer, this information would allow the Department to better identify those persons with a financial stake in the certified H–2A employer who employ agricultural workers through non-petitioning entities. In addition, and as set forth in the discussion of proposed § 655.103(e), in the experience of the Department, some employers have established one entity that pays the firm's H–2A workers and another entity that pays the firm's other workers, while in fact the entire agricultural operation constitutes a single employer. This information will assist the Department in determining quickly whether the employees of the non-petitioning entity are in corresponding employment as employees of a single employer with an H–2A labor certification.

OFLC may use this information in post-adjudication audit examinations and/or program integrity proceedings (*e.g.,* revocation or debarment actions). The information will help OFLC verify that persons representing employers both in the labor certification process and in the process of recruiting, managing, or supervising workers are acting on behalf of the employers within the scope of the terms and conditions of the labor certification and any contracts or agreements with employers, and in compliance with the revised regulations and all employment-related laws, such as laws prohibiting discrimination, retaliation, or the imposition of unlawful recruitment or visa-related fees. Collection of prior DBA names and identifying information for people other than the employer will make it easier for OFLC and WHD to search across applications within a filing system database to identify instances in which employers have changed names or roles to avoid complying with program regulations or avoid monetary penalties or serious sanctions such as program debarment. The proposed information collections also will facilitate interagency information sharing and permit OFLC and WHD to share relevant identifying information with other agencies when necessary to aid an investigation or enforcement action.

The Department will collect this information primarily through the H–2A Application the employer must complete to obtain temporary labor certification, and the Department proposes revisions to these forms under the Paperwork Reduction Act (PRA) for this purpose. In particular, the Department proposes revisions to the Form ETA–790A, *Addendum B,* to collect more detailed information about employers and the places of employment at which workers will provide the agricultural labor or services described in the job order. In addition, the Department proposes a new Form ETA–9142A, *Appendix C,* to collect the additional identifying information for owners and operators of places where work is performed and the people who manage and supervise workers under the H–2A Application, discussed above. The Department will collect, store, and disseminate all information and records in accordance with the Department's information sharing agreements and System of Records Notices, principles set forth by the Office of Management and Budget (OMB), and all applicable laws, including the Privacy Act of 1974 (Pub. L. 93–579, sec. 7, Dec. 31, 1974, 88 Stat. 1909), Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 585 [codified as amended in chapters 21, 29, 31, and 33 of 44 U.S.C.]), the PRA (44 U.S.C. 3501 *et seq.*), and the E-Government Act of 2002 (Pub. L. 107–347 (2002)). More information about the Department's proposed changes to the H–2A information collection instruments and the Department's collection and use of this information is available in supporting documentation in the PRA package the Department has prepared for this rulemaking.

2. Section 655.135, Assurances and Obligations of H–2A Employers

a. Section 655.135 Introductory Language, WHD Authority

The Department proposes a minor, clarifying revision to the introductory language to § 655.135 to include explicit reference to 29 CFR part 501 as part of the obligations and assurances of an employer seeking to employ H–2A workers. The current introductory language specifies that an employer seeking to employ H–2A workers must agree as part of the job order and Application that it will comply with all requirements under 20 CFR part 655, subpart B. Those requirements currently include compliance with WHD's investigative and enforcement authority under 29 CFR part 501. *See, e.g.,* 20 CFR 655.103(b), 655.101(b). The proposed revisions here would simply make these obligations more explicit in § 655.135 and on the job order, to better ensure that both workers and employers are fully aware of WHD's authorities. The Department welcomes comments on this proposed revision.

b. Sections 655.135(h), (m), and (n), 655.103(b), Protections for Workers Who Advocate for Better Working Conditions

The Department proposes to revise the assurances and obligations of H–2A employers to include stronger protections for workers who advocate for better working conditions on behalf of themselves and their coworkers. The Department believes that these protections will significantly improve the Department's efforts to prevent adverse effect on the working conditions of similarly employed agricultural workers in the United States because the hiring of H–2A workers may suppress the ability of domestic workers to negotiate with employers and advocate on their own behalf. Even if workers in the United States were to demand better conditions or pay, under the current H–2A regulatory framework, employers may turn to the H–2A program for an alternative, vulnerable workforce that faces significant barriers to pushing for better conditions or organizing, thus undermining advocacy efforts by or on behalf of workers in the United States. The proposals in this rule seek to correct this imbalance in bargaining power by protecting the rights of H–2A and other workers to advocate for better working conditions. In other words, the protections that the Department proposes would provide an important ''baseline'' or minimum condition of employment under the H–2A program below which workers in the United States would be adversely affected, for the reasons set forth below.

Specifically, the Department proposes to broaden the provision at § 655.135(h), which prohibits unfair treatment, by adding a number of protected activities that the Department has determined will play a significant role in safeguarding collective action, and that workers must be able to engage in without fear of intimidation, threats, and other forms of retaliation. The Department also proposes a new employer obligation at § 655.135(m) that would ensure that H–2A employers do not interfere with efforts by their vulnerable workforce to advocate for better working conditions by including a number of requirements that would advance worker voice and empowerment and further protect the rights proposed under § 655.135(h). The Department also proposes a new employer obligation at § 655.135(n) that would explicitly allow H–2A workers and workers in corresponding employment the right to invite or accept guests to worker housing and also would provide a narrow right of access to worker housing to labor organizations. Some of these proposed protections would be limited to those workers who are engaged in agriculture as defined and applied in 29 U.S.C. 203(f)—that is, those who are exempt from the protections of the NLRA.

The Department believes that the proposed protections are necessary to prevent an adverse effect on the working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1). The Department has historically understood the INA's adverse effect requirement both as requiring parity between the terms and conditions of employment provided to domestic and H–2A workers and as establishing a baseline ''acceptable'' standard for working conditions below which workers in the United States would be adversely affected. Courts have long recognized that Congress delegated to the Department broad authority to implement the prohibition on adverse effect. *See, e.g., Overdevest Nurseries, L.P.* v. *Walsh,* 2 F.4th 977, 984 (D.C. Cir. 2021); *AFL–CIO* v. *Dole,* 923 F.2d 182, 187 (D.C. Cir. 1991) (citing *AFL–CIO* v. *Brock,* 835 F.2d 912, 915 n.5 (D.C. Cir. 1987)).

In the 1978 H–2 regulations for agricultural employment, the Department characterized many of the longstanding terms and conditions of the program now found at 20 CFR 655.122—including housing, workers' compensation insurance, the provision of tools and equipment, the maximum meal charge, inbound and outbound and daily transportation, the three-fourths guarantee, and recordkeeping and earning statements—as ''the minimum level'' of working conditions ''below which similarly employed'' workers in the United States ''would be adversely affected.'' 20 CFR 655.0(d), 655.202(b) (1978), 43 FR 10306, 10312, 10314 (Mar. 10, 1978). The 1978 rule further explained that ''[i]f it is concluded that adverse effect would result,'' the Department would not be able to separately determine whether U.S. workers are available because ''U.S. workers cannot be expected to accept employment under conditions below the established minimum levels.'' 43 FR 10306, 10312 (Mar. 10, 1978).

In IRCA, which bifurcated the H–2 program and created the separate H–2A program, Congress explicitly adopted the adverse effect requirement, stating that the Secretary may not issue a temporary labor certification unless the petitioning employer has established, among other things, that the employment of H–2A workers ''will not adversely affect the . . . working conditions of workers in the United States similarly employed.'' 8 U.S.C. 1188(a)(1). The Department retained the ''minimum'' terms and conditions of employment required under the program, explicitly described in the regulations as intended to prevent adverse effect, in its 1987 rulemaking. 52 FR 16770, 16779–80 (May 5, 1987); 52 FR 20496, 20508, 20513 (June 1, 1987); *see also Garcia-Celestino* v. *Ruiz Harvesting, Inc.,* 843 F.3d 1276, 1285 (11th Cir. 2016) (explaining that the regulations' provision of minimum benefits to H–2A workers, including sound working conditions, ''ensure[s] that foreign workers will not appear more attractive to the employer than domestic workers, thus avoiding any adverse effects for domestic workers'') (citations omitted).

Over the past decade, use of the H–2A program has grown dramatically while overall agricultural employment in the United States has remained stable, meaning that fewer domestic workers are employed as farmworkers.[58] The Department believes that this is because the dangers and physical hardships inherent in agricultural

[58] According to USDA's Economic Research Service, employment of farmworkers in the United States has remained stable since the 1990s, but the number of positions certified in the H–2A program has increased sixfold from 2005 to 2021. *See Farm Labor,* U.S. Dep't of Agriculture, *https://www.ers.usda.gov/topics/farm-economy/farm-labor; H–2A Seasonal Worker Program Has Expanded Over Time,* U.S. Dep't of Agriculture, *https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=104874.*

employment,[59] combined with the lack of protections for worker organizing and bargaining power, have together contributed to worsening working conditions in agricultural employment—a lowering baseline—leading to a decreasing number of domestic workers willing to accept such work.[60] Congress explicitly prohibited in the INA the granting of labor certifications in the event of a strike or lockout at the worksite, a prohibition that recognizes the potential for the hiring of H–2A workers to suppress domestic workers' bargaining power and organizing efforts and, thus, have a negative impact on workers in the United States. 8 U.S.C. 1188(b)(1).

Some of the characteristics of the H–2A program, including the temporary nature of the work, frequent geographic isolation of the workers, and dependency on a single employer, create a vulnerable population of workers for whom it is uniquely difficult to advocate or organize to seek better working conditions.[61] In its enforcement experience, the Department has received reports of employers that have prohibited or effectively prevented H–2A workers from receiving assistance from certain service providers. For example, some employers have prevented H–2A workers from consulting with legal aid organizations regarding workers' rights under the H–2A program. Others have refused to transport workers to a medical provider for care in the United States, and one employer required instead that workers return to Mexico to access medical care for an on-the-job injury. The Department has seen flyers prohibiting workers from talking to visitors at the housing site without supervisor permission and posters prohibiting visitors to agricultural establishments unless the visitors first check in with the employer. *See also Rivero* v. *Montgomery Cnty.,* 259 F. Supp. 3d 334, 337–40 (D. Md. 2017) (employer unlawfully blocked legal aid workers from visiting H–2A workers in employer-provided housing). Nongovernmental organizations (NGOs) that work with H–2A workers report similar employer interference with workers' rights to access services and information, including medical treatment and legal assistance.[62]

Workers in the H–2A program are also vulnerable to retaliation, which discourages workers from advocating for their own rights and the rights of their coworkers.[63] For example, the Department debarred and assessed penalties against an H–2A employer that instructed workers to lie about their pay to investigators and threatened to kill workers who talked to authorities.[64] The Department also recently obtained a temporary restraining order and preliminary injunction against an H–2A employer who, after workers requested more food and water, threatened workers with a gun, shooting twice near the workers.[65] In another example, the Department recently debarred and assessed penalties against an employer who underpaid workers by more than $5.00 per hour and confiscated workers' passports to keep them from leaving employment upon realizing they were being underpaid.[66] These examples are just a few among the many instances of retaliation that the Department has witnessed, and that workers experience, that demonstrate that workers can face significant hurdles when advocating on their own behalf to assert even their basic rights under the current H–2A program regulations.

As explained, the Department believes that the fear of retaliation, combined with the lack of clear protections for H–2A workers and corresponding workers to self-organize and advocate on their own behalf, has contributed to low union density in the agricultural workforce.[67] In addition, based on its enforcement experience, the Department has determined that the H–2A program currently does not provide sufficient protections for such workers to safely and consistently assert their rights under the program and engage in self-advocacy. This lack of sufficient protections adversely affects the ability of domestic workers to advocate for acceptable working conditions, leading to reduced worker bargaining power and, ultimately, deterioration of working conditions in agricultural employment. However, when these workers have engaged in organizing, it has led to better working conditions for all workers. According to the Farm Labor Organizing Committee, AFL–CIO, union advocacy has improved conditions for the workers it represents (over 10,000 H–2A workers employed at North Carolina agricultural sites), including by helping H–2A workers to obtain remedies for likely violations of the H–2A program's requirements relating to housing safety standards, travel reimbursements, wages, and other requirements.[68]

Therefore, the Department believes that changes proposed here, which would expand the H–2A anti-retaliation regulation and include employer obligations that would make advocacy and organizing more available to workers in the H–2A program, would help improve the working conditions of workers protected under the H–2A program, and thus prevent an adverse effect on similarly employed workers in the United States. The Department believes that the proposed protections also would increase U.S. worker response to H–2A employers' recruitment efforts, both by improving working conditions under the H–2A program and by increasing U.S. workers'

[59] *Workplace Safety and Health Topics: Agricultural Safety,* National Inst. for Occupational Safety & Health, Ctrs. for Disease Control & Prevention.

[60] Centro de los Derechos del Migrante, Ripe for Reform: Abuses of Agricultural Workers in the H–2A Visa Program 4, 6 (CDM Report), *https://cdmigrante.org/ripe-for-reform;* Farmworker Justice Report at 7, 11, 17, 31; Miriam Jordan, Black Farmworkers Say They Lost Jobs to Foreigners Who Were Paid More, N.Y. Times (Nov. 12, 2021), *https://www.nytimes.com/2021/11/12/us/black-farmworkers-mississippi-lawsuit.html;* Polaris, Labor Trafficking on Specific Temporary Work Visas, a Data Analysis 2018–2020 13, 18 (May 2022) (Polaris 2018–2020 Report), *https://polarisproject.org/wp-content/uploads/2022/07/Labor-Trafficking-on-Specific-Temporary-Work-Visas-by-Polaris.pdf.*

[61] CDM Report at 4–6, 9, 13, 18–19, 23, 27; Farmworker Justice Report at 17; Polaris 2018–2020 Report at 13, 18–19, 26.

[62] CDM Report at 5, 23, 27, 30; Farmworker Justice Report at 22, 33; Polaris 2018–2020 Report at 7, 8, 19, 26.

[63] Farmworker Justice Report at 30–31; Polaris 2018–2020 Report at 16–17, 26.

[64] Individuals associated with this employer also pleaded guilty to criminal charges for their role in forced labor racketeering conspiracy. *See* Press Release, U.S. Dep't of Just., *Owner of Farm Labor Contracting Company Pleads Guilty in Racketeering Conspiracy Involving the Forced Labor of Mexican Workers* (Sept. 27, 2022), *https://www.justice.gov/opa/pr/owner-farm-labor-contracting-company-pleads-guilty-racketeering-conspiracy-involving-forced;* Press Release, U.S. Dep't of Just., *Three Defendants Sentenced in Multi-State Racketeering Conspiracy Involving Forced Labor of Mexican Agricultural H–2A Workers* (Oct. 27, 2022), *https://www.justice.gov/opa/pr/three-defendants-sentenced-multi-state-racketeering-conspiracy-involving-forced-labor-mexican.*

[65] *See* Press Release, U.S. Dep't of Lab., *Federal Court Orders Louisiana Farm, Owners to Stop Retaliation After Operator Denied Workers' Request for Water, Screamed Obscenities, Fired Shots* (Oct. 28, 2021), *https://www.dol.gov/newsroom/releases/whd/whd20211028-0.*

[66] *See* Press Release, U.S. Dep't of Lab., *US Department of Labor Investigation Results in Judge Debarring North Carolina Farm Labor Contractor for Numerous Guest Worker Visa Program Violations.*

[67] According to BLS data, in 2021, union representation in agriculture was just 3.1 percent of total workers employed compared to the 11.6 percent of workers employed overall represented by unions; in 2022, agricultural union representation was 4.3 percent of workers employed, compared to 11.3 percent of workers employed overall. *BLS News Release, Union Members—2022* tbls 1, 3, Bureau of Lab. Stats., *https://www.bls.gov/news.release/pdf/union2.pdf. See* also Report for Congress, Farm Labor: The Adverse Effect Wage Rate (AEWR), Congressional Research Service (updated March 26, 2008) n.17; Farmworker Justice Report at 31.

[68] *See* Farmworker Justice Report at 30–31; 2017 Grievance Summary, Farm Lab. Org. Comm., *https://floc.com/2017-grievance-summary.*

interest in H–2A job opportunities that include protections for advocacy and organizing efforts that would not be undermined by the availability of an alternative, more vulnerable workforce. These proposals also would enhance worker bargaining power and meaningfully equip workers to prevent further deterioration of working conditions that adversely affect workers in the United States.

The Department welcomes comments on whether, in fact, foreign workers employed under the H–2A program are more vulnerable to labor exploitation than similarly employed domestic workers, due to the temporary nature of the work; frequent geographic isolation of the workers; dependency on a single employer for work, housing, transportation, and necessities, including access to food and water; language barriers; possible lack of knowledge about their legal rights; or other factors. It also welcomes evidence or experience regarding, or refuting, the unique vulnerability of these workers, and whether existing worker protections are adequate to prevent violations of H–2A program requirements, dangerous working conditions, retaliation, and labor trafficking, or to promote H–2A workers' ability to advocate or organize to seek better working conditions. The Department also seeks comments on whether domestic agricultural workers have greater voice and empowerment at work generally than foreign agricultural workers, despite the fact that they are not covered by the NLRA, due to their established presence in the United States, their domestic network of family and friends, their greater familiarity with services and supports available to workers in the United States, and their ability to find alternative employment. And more generally, the Department also seeks comment on how to increase, or increase awareness of existing, protections for workers advocating for better working conditions and to help prevent adverse effect on workers in the United States, without infringing on employers' rights to manage their workplaces. It welcomes the views of employers, workers, worker advocates, labor organizations, and other stakeholders on these issues. In particular, the Department welcomes any evidence, research, and/or empirical data regarding these issues. The Department also welcomes comments on whether further protections for workers' advocacy and organization, in addition to the protections contained within the following sections, are necessary to ensure that the employment of foreign workers under the H–2A program does not adversely affect the wages or working conditions of domestic workers.

i. The Department's Proposed Regulations Would Not Be Preempted by the NLRA

Some of the provisions included in the Department's proposed regulations would be limited to persons who are engaged in agriculture as defined and applied in 29 U.S.C. 203(f) (''FLSA agriculture''). For these workers, and these workers alone, the proposed regulations would protect some conduct and provide some rights necessary to safeguard collective action and protect against retaliation. The NLRA's coverage extends only to workers who qualify as ''employee[s]'' under section 2(3) of that Act, and the NLRA's definition of employee expressly excludes ''any individual employed as an agricultural worker.'' 29 U.S.C. 152(3). Congress has provided that the definition of ''agricultural'' in section 3(f) of the FLSA also applies to the NLRA. *See, e.g., Holly Farms* v. *NLRB,* 517 U.S. 392, 397–98 (1996). Following the plain text of the statute, both Federal courts and the NLRB have long held that the NLRA does not apply to agricultural workers, worker organizing by agricultural workers, or unions ''composed exclusively of agricultural laborers.'' *Di Giorgio Fruit Corp.* v. *NLRB,* 191 F.2d 642, 647 (D.C. Cir. 1951); *see also, e.g., Villegas* v. *Princeton Farms, Inc.,* 893 F.2d 919, 921 (7th Cir. 1990). Because portions of the Department's proposed regulations would apply only to workers who fall within the NLRA and FLSA definitions of agricultural labor, those proposed provisions would apply exclusively to workers who are exempt from the NLRA. Thus, to the extent that one might argue that the proposed changes in this section safeguarding collective action would be preempted by Federal labor law, the NLRA's exemption of agricultural labor shows that the proposal here is not preempted. As the Supreme Court explained in *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236 (1959), the NLRA preempts regulation of activities that either are or arguably are ''protected by [section] 7 of the National Labor Relations Act, or . . . an unfair labor practice under [section] 8.'' *Id.* at 244; *see also UAW-Labor Emp. & Training Corp.* v. *Chao,* 325 F.3d 360, 363 (D.C. Cir. 2003). Conduct may be ''arguably'' governed by section 7 or 8 of the NLRA when there is a plausible argument for preemption ''that is not plainly contrary to [the Act's] language and that has not been authoritatively rejected by the courts or the Board.'' *Int'l Longshoremen's Ass'n* v. *Davis,* 476 U.S. 380, 395 (1986). Because agricultural workers are expressly excluded from the NLRA by the plain text of the statute, agricultural worker organizing is neither protected by section 7 of the Act nor subject to section 8's limitations on unfair labor practices. *See* 29 U.S.C. 152(3); *see also Di Giorgio,* 191 F.2d at 647–49 (holding that section 8's prohibition on secondary boycotts did not apply to a Farm Union, because an organization composed exclusively of agricultural workers is not governed by the NLRA). Moreover, because any argument that the NLRA governs agricultural workers would be ''plainly contrary to [the NLRA's] language,'' the conduct that would be protected under the Department's proposed rule is not even arguably governed by the NLRA. *See Int'l Longshoremen's Ass'n,* 476 U.S. at 395; *see also Wilmar Poultry Co., Inc.* v. *Jones,* 430 F. Supp. 573, 578 (D. Minn. 1977) (holding that *Garmon* preemption does not apply to State regulation of agricultural workers' labor activity ''because the NLRA's protections and prohibitions do not apply to agricultural laborers.'').

The Supreme Court held in *International Ass'n of Machinists & Aerospace Workers* v. *Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976), that the NLRA also preempts regulation of employer or worker conduct that Congress intended to leave unregulated ''to be controlled by the free play of economic forces.'' *Id.* at 140 (quotations omitted). *Machinists* preemption applies to State or Federal regulation of ''economic weapons'' that would ''frustrate effective implementation of the Act's processes.'' *Id.* at 147–48 (quotations omitted). The Department's proposed rule could not frustrate effective implementation of the NLRA's processes, because the relevant portions of the proposal would apply exclusively to a set of H–2A agricultural workers to whom the NLRA's processes do not apply. Thus, the text and structure of the NLRA indicate that *Machinists* field preemption does not extend to agricultural worker organizing. *See United Farm Workers* v. *Arizona Ag. Emp. Rels. Bd.,* 669 F.2d 1249, 1257 (9th Cir. 1982) (explaining that when ''Congress has chosen not to create a national labor policy in a particular field, the states remain free to legislate as they see fit'' and *Machinists* preemption does not apply); *Wilmar Poultry,* 430 F. Supp. at 578 (holding that *Machinists* preemption does not apply to State regulation of agricultural laborers). Similarly, courts have held

that *Machinists* preemption does not prevent State labor relations regulations that apply to other workers excluded from the NLRA. *See, e.g., Davenport* v. *Wash. Educ. Ass'n,* 551 U.S. 177, 181 (2007) (public employees); *Chamber of Commerce* v. *City of Seattle,* 890 F.3d 769, 792 (9th Cir. 2018) (independent contractors); *Greene* v. *Dayton,* 806 F.3d 1146, 1149 (8th Cir. 2015) (domestic service workers).

Furthermore, in these proposed regulations the Department would be exercising its authority under the INA to regulate the labor market to prevent adverse effect on the working conditions of agricultural workers in the United States. 8 U.S.C. 1188(a)(1). Congress could not have intended for the NLRA to ''occupy the 'field' with respect to the regulation of all labor concerns,'' as it delegated authority under the INA to the Department. *See Nat'l Ass'n of Mfrs.* v. *Perez,* 103 F. Supp. 3d 7, 25 (D.D.C. 2015) (citing *UAW-Lab. Emp. & Training Corp.,* 325 F.3d at 364) (holding that a DOL regulation was not preempted under *Machinists* because it was an exercise of the President's procurement power, rather than an exercise of authority conferred by the NLRA, and because Congress did not intend for the NLRA to ''foreclose all other'' labor regulation). For these reasons, no part of the Department's proposed regulation would be preempted by the NLRA.

Because certain provisions of this proposed rule would be limited to workers engaged in FLSA agriculture, the Department notes that workers who are not engaged in FLSA agricultural labor (*e.g.,* those workers engaged in logging occupations) would not be covered by those proposed provisions. The vast majority of workers excluded from those proposed provisions, however, are covered by the NLRA, and are thus already afforded the right to self-organization. Nothing in this proposed rule would alter or circumscribe the rights of workers already protected by the NLRA to engage in conduct and exercise rights afforded under that law.

ii. Section 655.103(b), Definitions

In support of the new employer obligations the Department is proposing, the Department proposes to add two new definitions to § 655.103(b).

The Department proposes to define ''key service provider'' to mean a health-care provider; a community health worker; an education provider; an attorney; a legal advocate or other legal service provider; a government official, including a consular representative; a member of the clergy; and any other service provider to which an agricultural worker may need access. The Department has adapted this proposed definition from one used in the Colorado Agricultural Labor Rights and Responsibilities Act, Colo. Rev. Stat. 8–13.5–201, because it believes that a definition and examples of the types of service providers that workers should have access to would be useful for both workers and employers. The list of service providers included in the proposed definition is intended to be illustrative and not exhaustive. For example, the Department would consider a non-union worker center to be a key service provider under the proposed definition, as well as the representatives, directors, or other individual employees of a worker center. Worker centers are generally non-union, community-led organizations that provide or engage in services, advocacy, and organizing to support workers in low-wage industries and occupations, particularly in those industries and occupations excluded from Federal labor law, such as agriculture.[69] The Department is soliciting comment on the scope of this proposed definition, in particular as to whether it is sufficient, whether other types of service providers should be included in the list of examples in the regulation, or whether this definition is too broad.

The Department proposes to define ''labor organization'' to mean an organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers over grievances, labor disputes, or terms or conditions of employment. This definition is similar to the one used under the NLRA with key differences to reflect the nature of the H–2A program. While this definition would thus incorporate many NLRA principles regarding the meaning of the term ''labor organization,'' the Department intends the range of organizations that would be considered labor organizations under these proposed regulations to be broader than under the NLRA because the Department's proposed definition would include organizations in which agricultural workers participate, whereas such organizations are excluded under the NLRA. The Department believes this broader definition is appropriate given the unique characteristics of the H–2A program. The Department seeks comment on the scope of this proposed definition. The Department also seeks comment on whether the definition should include additional criteria or protections in order to ensure that any such organization is not dominated, interfered with, or supported by employers, as would be prohibited by section 8(a)(2) of the NLRA, 29 U.S.C. 158(a)(2).

The Department also welcomes comments on whether other terms introduced by the proposed regulations should be defined in § 655.103(b), and on other definitions that the Department should consider.

iii. Section 655.135(h) No Unfair Treatment

The Department proposes to expand the scope of what constitutes prohibited unfair treatment under § 655.135(h) to better protect workers from intimidation or discrimination in response to worker advocacy. As detailed above, the Department believes that these protections are necessary to prevent an adverse effect on the working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1). Workers' rights cannot be secured unless they are protected from all forms of discrimination resulting from any worker's attempt to advocate on behalf of themselves or their coworkers. The Department has long recognized that such protections are essential to the effective functioning of a complaints-based enforcement regime. *Mitchell* v. *Robert DeMario Jewelry, Inc.,* 361 U.S. 288, 292 (1960) (agreeing with the Department's interpretation of the FLSA's anti-retaliation provision and explaining that Congress ''chose to rely on information and complaints received from employees seeking to vindicate rights'' and ''effective enforcement could thus only be expected if employees felt free to approach officials with their grievances''); *see also* U.S. Dep't of Lab., Wage & Hour Div., Field Assistance Bulletin No. 2022–02, Protecting Workers From Retaliation

[69] For example, the Coalition of Immokalee Workers is a worker-based human rights organization that focuses on fighting human trafficking and gender-based harassment and violence affecting farmworkers, and improving labor standards through a voluntary code of conduct called the Fair Food Program (''FFP''), a market-centered approach to the protection of human rights in corporate supply chains. ''Key service providers'' under the voluntary FFP might include worker educators who provide regular training at participating farms; investigators who conduct audits and accept, investigate, and resolve complaints; and representatives who work with participating buyers to enforce the voluntary FFP at participating farms. *See* Coalition of Immokalee Workers, Fair Food Program (2021), *https://ciw-online.org/blog/2021/09/released-2021-fair-food-program-report.* Similar worker centers serve farm workers in other States. *See also* Economic Policy Institute, Briefing Paper No. 159: Worker Centers: Organizing Communities at the Edge of the Dream (Dec. 31, 2005), *https://www.epi.org/publication/bp159.*

(Mar. 10, 2022).[70] Stated differently, an employer who is free to intimidate workers to discourage them from raising or reporting legal violations, or to retaliate against those who do so, interferes with the Department's ability to enforce the legal requirements of the H–2A statute and regulations. This is particularly true for workers in the H–2A program. Due to the temporary nature of their work; their geographic isolation and lack of independent transportation; their dependency on a single employer for work, housing, and other necessities, including access to food and water; language barriers; and, often, a lack of knowledge about their legal rights, H–2A workers are especially vulnerable to retaliation. This vulnerability makes H–2A workers less likely to assert their legal rights or to raise or report H–2A violations, including illegal or intolerable working conditions. *See* section IV.C.2.b of this preamble. And as set forth above, the availability of H–2A workers who are less likely to complain about such working conditions makes it less likely that H–2A workers will come together to seek better working conditions, and it is similarly less likely that workers in the United States will be able to organize with their fellow H–2A workers or otherwise seek improvements to their working conditions alongside H–2A workers. Thus, the Department has determined that strengthening and expanding the regulations' existing protections against intimidation or discrimination in the H–2A program is necessary to prevent further adverse effect on the working conditions of workers in the United States.

Currently, the prohibition on unfair treatment provides that an employer ''has not or will not intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person'' who has engaged in certain enumerated protected activities pertaining to the H–2A program requirements, namely, filing a complaint, instituting a proceeding, testifying in a proceeding, or consulting with an attorney or legal assistance program regarding any H–2A violation, or exercising or asserting any right or protection under the H–2A program. 20 CFR 655.135(h)(1) through (5). The Department proposes to redesignate and expand current paragraphs (h)(1) through (h)(5) into proposed (h)(1)(i) through (h)(1)(vii). The Department also proposes a new category of protected activity, limited to those workers engaged in FLSA agriculture, at proposed § 655.135(h)(2). Finally, to help inform workers of their rights under the H–2A program, the Department is proposing to include the protections that would be afforded under proposed § 655.135(h) in the disclosures required on the job order.

iv. Section 655.135(h)(1)(v) Consulting With Key Service Providers

Recognizing the barriers that H–2A workers frequently face in accessing certain services (*see* section IV.C.2.b of this preamble), the Department proposes to broaden the range of service providers and advocates with whom consultation regarding the terms and conditions of employment under the H–2A program is explicitly protected. Specifically, the Department proposes to add a new paragraph (v) to the list of protected activities at § 655.135(h)(1), consulting with a ''key service provider,'' as defined in proposed § 655.103(b), regarding matters under the H–2A program. This proposal would not be limited to persons engaged in FLSA agriculture. The Department notes that workers are already entitled to access and meet with many different service providers to discuss or assert rights under the H–2A program, without fear of retaliation for doing so, under the Department's current regulatory framework. *See, e.g.,* 20 CFR 655.135(e) and (h)(5). For example, under the current regulations, an employer may not retaliate against a worker because the worker goes to see a doctor to care for an injury the worker incurred while on the job, or because the worker consults a worker advocacy organization regarding the employer's failure to pay the wages promised in the job order. *Id.* The proposal here is intended to simply make these rights explicit. And because this explicit assurance would be included on the job order (Form ETA–790A), this clarification would help ensure that workers will be aware of this protection through the terms of the job order. The Department believes that clarifying protections for workers' consultation with such providers would increase the likelihood that workers will receive necessary services and help prevent the frequent isolation that renders workers more vulnerable to H–2A violations and other forms of labor exploitation, including worsening working conditions. The Department seeks comment on this proposal.

v. Section 655.135(h)(1)(vi) Exercising or Asserting Any Rights Under the H–2A Program

The Department proposes to redesignate current paragraph (h)(5), which protects any person from discrimination for exercising or asserting any rights protected or afforded under the H–2A program, to (h)(1)(vi). The Department does not propose any substantive changes to this paragraph. However, the Department notes that this category of protected activity would protect any person from any form of discrimination for asserting any rights or protections afforded under the H–2A program, including those rights and protections afforded under the Department's proposed paragraphs (m), (n), and (o) of this section.

vi. Section 655.135(h)(1)(vii) Exercising Rights Under Federal, State, or Local Laws

The Department also proposes to clarify existing regulations by adding § 655.135(h)(1)(vii) to explicitly protect complaints, proceedings, and testimony under any applicable labor- or employment-related Federal, State, or local law or regulation, including those related to health and safety. This would explicitly prohibit employers from retaliating against any person who files a complaint, institutes or causes to be instituted any proceeding, or testifies or is about to testify in any proceeding under or related to any applicable Federal, State, or local labor- or employment-related law, rule, or regulation. The Department notes that these activities are already protected under the Department's current regulatory framework because employers already must comply with all applicable Federal, State, and local laws as a requirement of the H–2A program. *See* 20 CFR 655.135(e) and (h)(1), (5). The proposal here is intended to make these rights explicit, in order to better inform workers and employers of the protected rights under the H–2A program. Moreover, because there are Federal, State, and local labor- or employment-related laws and regulations that may apply to workers protected under the H–2A program (*e.g.,* the Occupational Safety and Health Act, 29 U.S.C. ch. 15, or the FLSA, 29 U.S.C. 201 *et seq.*), explicitly prohibiting retaliation against persons who share information with or assist those seeking to enforce these other laws would better protect workers advocating for better working conditions and would help prevent adverse effect on workers in the United States.

The Department emphasizes that nothing in this proposed rule is intended to preempt more protective local, State, or Federal laws, including labor and employment laws and regulations at the State level that expressly protect agricultural workers, as well as those that protect workers

[70] *https://www.dol.gov/sites/dolgov/files/WHD/fab/fab-2022-2.pdf.*

generally against discrimination, unsafe working conditions, or other adverse impacts, such as those referenced above. Moreover, the remedies provided for under this proposed regulation are not intended to be exclusive; if an agricultural worker has other remedies available under State or local law, the remedies contemplated under this proposal are not intended to displace them. The Department welcomes comments on how best to ensure that its proposals do not conflict with existing laws and regulations and how best to preserve available remedies under those laws, in particular State laws that provide for a system of collective bargaining for farmworkers and explicitly prohibit retaliation against farmworkers.

The Department seeks comments on this proposal.

vii. Prohibitions on Seeking To Alter or Waive the Terms and Conditions of Employment, Including the Right To Communicate With the Department

The Department's current regulations, including current § 655.135(h), have long protected a worker's ability to communicate with the Department. In addition, the Department's H–2A regulations have long required employers to fully disclose in the job order the material terms and conditions of employment under the job opportunity, and have long prohibited employers from seeking to later alter those terms and conditions. *See* 20 CFR 655.103(b), 655.122(b) and (q); 29 CFR 501.5. However, in recent years, the Department has observed a troubling trend of H–2A employers imposing ''side agreements'' that purport to add or waive certain terms and conditions of employment as compared to those disclosed in the job order. For example, after terminating a group of workers without cause, one H–2A employer presented the workers with forms falsely asserting that the workers had left voluntarily, purporting to waive the workers' rights to the three-fourths guarantee. *WHD* v. *Sun Valley Orchards, LLC,* ARB No. 2020–18, 2021 WL 2407468, at *10–11 (ARB May 27, 2021), *aff'd,* No. 1:21–cv–16625, 2023 WL 4784204 (D.N.J July 27, 2023), *appeal filed.* Other H–2A employers have required workers to sign arbitration agreements after the workers have arrived at the place of employment, without having disclosed such a requirement in the job order. *See, e.g., Martinez-Gonzalez* v. *Elkhorn Packing Co., LLC,* 25 F.4th 613 (9th Cir. 2022); *Magana-Muñoz* v. *West Coast Berry Farms, LLC,* No. 5:20–cv–02087, 2020 WL 3869188, at *5 (N.D. Cal. July 9, 2020). These practices violate the Department's H–2A regulations and may mislead workers regarding their rights under the H–2A program, including their ability to communicate with the Department. Therefore, the Department takes this opportunity to reiterate its longstanding requirements relevant to these ''side agreements.''

First, the Department's H–2A regulations include robust disclosure requirements. Specifically, employers must disclose in the job order all material terms and conditions of employment. *See* 20 CFR 655.103(b) (defining ''job order'' as ''[t]he document containing the material terms and conditions of employment''); 655.121(a)(4) (requiring H–2A job orders to meet the requirements specified for agricultural clearance orders under 20 CFR part 653, subpart F); 653.501(c)(1)(iv) and (3)(viii) (requiring agricultural clearance orders to include material terms and conditions of employment). Each job qualification and requirement listed in the job order must be bona fide, as well as normal and accepted among non-H–2A employers in the same or similar occupations. 20 CFR 655.122(b) (job qualifications and requirements). Finally, the employer must provide H–2A workers with a copy of the written work contract (at minimum, the terms of the job order) before the worker travels to the place of employment. 20 CFR 655.122(q) (disclosure of work contract). Such written disclosure must be made to workers in corresponding employment no later than the first day work commences. *Id.*

These requirements ensure that employers seeking to employ H–2A workers are adequately testing the local labor market to determine the availability of U.S. workers for the actual job opportunity and are not imposing inappropriate requirements that discourage otherwise qualified U.S. workers from applying. *See* 75 FR at 6901. These requirements also ensure that workers are apprised of the accurate terms and conditions of employment before accepting employment with the employer and, in the case of many workers, traveling great distances and at significant personal expense to do so. *Adm'r* v. *Frank's Nursery LLC,* ARB Nos. 2020–0015 and 2020–0016, 2021 WL 4155563, at *3–4 (ARB Aug. 25, 2021) (describing the importance of disclosure to workers of all material terms and conditions of employment before the worker accepts the job offer), *aff'd,* No. 21–cv–3485, 2022 WL 2757373 (S.D. Tex. July 14, 2022).

Thus, pursuant to these requirements, an employer may *not* seek to add new material terms and conditions of employment after the worker arrives at the place of employment, even if such terms and conditions would otherwise be permissible if they had been disclosed in the job order. For example, even if a mandatory arbitration agreement would be a permissible term and condition of employment for a particular H–2A job opportunity if disclosed in the job order, it is a violation of the H–2A regulations for the employer to impose such a material term and condition of employment on the workers if it was not disclosed in the job order. *See Frank's Nursery,* 2022 WL 2757373, at *3–4 (affirming WHD Administrator's determination of violation and assessment of a civil money penalty for employer's failure to disclose in the job order a drug testing policy); *see also Magana-Muñoz* v. *West Coast Berry Farms, LLC,* No. 5:20–cv–02087, 2020 WL 3869188, at *5 (N.D. Cal. July 9, 2020) (discussing the Department's regulatory requirements for H–2A job orders and concluding that an arbitration agreement is a material term or condition of employment that must be disclosed in the job order); *cf. ETA* v. *DeEugenio & Sons #2,* OALJ No. 2011–TLC–00410, slip op. at 3–4 (OALJ June 13, 2011) (affirming CO's denial of labor certification because employer failed to demonstrate that arbitration and grievance clauses listed in job order were normal and accepted requirements among non-H–2A employers in the occupation); *ETA* v. *Bourne, et al.,* OALJ No. 2011–TLC–00399, slip op. at 9–11 (OALJ June 6, 2011) (same); *ETA* v. *Head Bros.,* OALJ No. 2011–TLC–00394 (OALJ May 18, 2011) (same); *but see ETA* v. *Frey Produce et al.,* OALJ No. 2011–TLC–403, slip op. at 6 (OALJ June 3, 2011) (concluding arbitration is a not a job ''qualification or requirement'').

Second, and in addition to the disclosure requirements, the Department's H–2A regulations prohibit *any* person from seeking to have a worker waive any right afforded under the H–2A program. 29 CFR 501.5. Thus, an employer may not—at any time—request that a worker waive or reduce any of the terms and conditions of employment disclosed in the job order or other rights under the H–2A program, such as the provision of meals as disclosed in the job order, the right to the three-fourths guarantee, the prohibition on the payment of fees, or the payment of the H–2A wage rate for hours spent engaged in corresponding employment. For example, through its enforcement experience, the Department has learned of H–2A employers presenting their entire workforces with

side ''opt-out'' agreements under which the workers purport to waive their right to employer-provided meals on certain days, despite the employer's disclosure in the job order that meals will be provided every day. The regulations prohibit such practices. In addition, an employer may never seek to prevent a worker from engaging in activity protected under the H–2A regulations, such as filing a complaint with, speaking with, or cooperating with the Department. *See* 20 CFR 655.135(h); 29 CFR 501.4(a).

The Department is concerned that ''side agreements'' carry significant potential to mislead workers regarding their rights under the H–2A program, including the right to file complaints with and communicate with the Department. For example, an H–2A worker who is terminated without cause but is required to sign a form purportedly ''resigning'' the job may believe—incorrectly—that they may no longer file a complaint with the Department to enforce their right to the three-fourths guarantee or their right to the cost of return transportation and subsistence. Another worker may misunderstand a ''side'' arbitration agreement as preventing the worker from filing a complaint with the Department before first submitting the issue to the employer's arbitration procedures, even though an employee who agrees to arbitrate a statutory claim is not waiving any substantive rights under the statute. *Gilmer* v. *Interstate/Johnson Lane Corp.,* 500 U.S. 20, 25 (1991). Moreover, an H–2A worker's agreement with their employer to arbitrate employment disputes does not limit the Department's ability to enforce the H–2A program's requirements. *EEOC* v. *Waffle House, Inc.,* 122 S. Ct. 754 (2002); *Walsh* v. *Arizona Logistics, Inc.,* 998 F.3d 393, 396–97 (9th Cir. 2021) (same). Accordingly, where an H–2A employer's job order *does* include an arbitration clause that is otherwise permissible, the SWA and OFLC review the disclosure for actual or implied restrictions on workers' access to complaint systems and may require employers to include language in the job order affirmatively stating that the worker may not be prevented from filing complaints with the Department. For efficiency and clarity, and consistent with the other proposals in this NPRM that would serve to protect worker voice and better inform workers of their rights under the H–2A program, the Department is proposing to add standard language to the job order affirmatively stating that a worker may not be prevented from communicating with the Department of Labor or any other Federal, State or local governmental agencies regarding the worker's rights. The Department welcomes comments suggesting other means it can use to better inform workers of their rights and to better inform employers and workers alike of the longstanding limitations on ''side agreements.''

viii. Section 655.135(h)(2) Activities Related to Self-Organization and Concerted Activity

The Department proposes a new protected activity for any person engaged in FLSA agriculture at proposed § 655.135(h)(2), relating to self-organization and concerted activity, for those workers who are exempt from similar protections under the NLRA. As discussed above, the Department believes that these proposed protections are necessary to prevent an adverse effect on the working conditions of workers in the United States similarly employed. 8 U.S.C. 1188(a)(1). Specifically, the Department proposes at § 655.135(h)(2) to protect engaging in activities related to self-organization, including any effort to form, join, or assist a labor organization, as defined in proposed § 655.103(b); a secondary activity such as a secondary boycott or picket; or other concerted activities for the purpose of mutual aid or protection relating to wages or working conditions. The Department also proposes to protect a person's refusal to engage in any such activities.

By proposing to add protections for such activities, the Department intends to prohibit an employer from intimidating, threatening, restraining, coercing, blacklisting, or in any manner discriminating against, any person engaged in FLSA agriculture for engaging, or refusing to engage, in activities related to self-organization, including, among other things, concerted activity for mutual aid or protection. The Department's proposed use of the terms ''concerted activity'' and ''mutual aid or protection'' draws upon the general body of case law from the Federal courts and the NLRB broadly construing similar language in the NLRA. However, the Department notes that these terms must ultimately be interpreted consistently with the statutory purpose of the INA and the H–2A program, including the need to prevent adverse effect on workers in the United States, and in light of the H–2A program's unique characteristics.

The Department proposes that concerted activity include employee activity ''engaged in with or on the authority of other employees, and not solely by and behalf of the employee himself.'' *Meyers Indus.* (*Meyers I*), 268 NLRB 493, 497 (1984), *remanded sub nom., Prill* v. *NLRB,* 755 F.2d 941 (D.C. Cir. 1985); *see also NLRB* v. *City Disposal Sys. Inc.,* 465 U.S. 822, 830 (1984). For example, concerted activity includes two or more employees presenting joint requests or grievances to their employers;[71] a series of ''spontaneous individual pleas'' from employees about shared concerns;[72] two or more workers circulating or signing a petition;[73] two or more workers striking or walking off the job;[74] participating in a concerted refusal to work in unsafe or intolerably bad conditions;[75] two or more workers talking directly to their employer, to a government agency, or to the media about problems in their workplace;[76] or cooperating as a group with law enforcement investigations (including investigations by DOL).[77] The term concerted activity also includes worker organizing ''outside the immediate employee-employer relationship'' and ''common cause'' activity, including concerted activity ''in support of employees of employers other than their own.'' *See Eastex, Inc.* v. *NLRB,* 437 U.S. 556, 564–65 (1978). These examples are intended to be illustrative and not exhaustive. The proposed regulation's protections for concerted activity would apply to both workers that have joined a labor organization and those that have not. *See Indiana Gear Works* v. *NLRB,* 371 F.2d 273, 274 (7th Cir. 1967).

The Department proposes that the term concerted activity also encompass workers' individual actions when they seek to initiate, induce, or prepare for group action, or when workers bring shared complaints to the attention of management. *See Meyers Indus.* (*Meyers II*), 281 NLRB 882, 887 (1987) (citing *Mushroom Transp. Co.* v. *NLRB,* 330 F.2d 683 (3d Cir. 1964)). For example, if an individual attempts to ''enlist [ ] the support of his fellow employees'' in shared activity, the worker's attempt is protected regardless of whether other

[71] *See, e.g., NLRB* v. *Sequoyah Mills, Inc.,* 409 F.2d 606, 608 (10th Cir. 1969).

[72] *See, e.g., NLRB* v. *Washington Aluminum Co.,* 370 U.S. 9, 15 (1962).

[73] *See, e.g., Richardson Paint Co.* v. *NLRB,* 574 F.2d 1195, 1206 (5th Cir. 1978).

[74] *See, e.g., Case Farms of North Carolina, Inc.,* 353 NLRB 26 (2008), *enforced,* 2010 WL 1255941 (D.C. Cir. Mar. 3, 2010).

[75] *See, e.g., Washington Aluminum,* 370 U.S. at 17; *Brown & Root, Inc.* v. *NLRB,* 634 F.2d 816, 817–18 (5th Cir. 1981).

[76] *See, e.g., Case Farms,* 353 NLRB 26.

[77] *See, e.g., A.N. Elec. Corp.,* 276 NLRB 887, 889 (1985); *Squier Dist. Co.* v. *Int'l Bhd. of Teamsters, Local 7,* 801 F.2d 238, 242 (6th Cir. 1986).

employees ultimately participate in ongoing efforts. *Whittaker Corp.,* 289 NLRB 933, 933 (1988); *Salt River Valley Water Users Ass'n,* 99 NLRB 849, 853 (1952) (''[G]roup action is not deemed a prerequisite to concerted activity for the reason that a single person's action may be the preliminary step to acting in concert.''). An individual's goal of initiating, inducing, or preparing for group activity can be inferred from the totality of the circumstances. *See Whittaker Corp.,* 289 NLRB at 934. For example, the fact that a person refers to the possibility of taking group action in a conversation with their co-workers, or the fact that a conversation among co-workers is about wages and working conditions, can support a finding that the conversation was aimed at inducing group action. *See id.; Jeanette Corp* v. *NLRB,* 532 F.2d 916, 918 − 20 (3d Cir. 1976) (holding that an employer rule prohibiting workers from discussing wages among themselves suppressed concerted activity). An individual's actions to enforce the terms of a CBA qualifies as concerted activity even if pursued singly, because those actions are a continuation of the concerted activity of negotiating. *See City Disposal Systems,* 465 U.S. at 830–31. Likewise, an employee is engaged in collective activity when an individual worker's actions are a ''logical outgrowth'' of an earlier protest by workers. *See, e.g., NLRB* v. *Mike Yurosek & Son, Inc.,* 53 F.3d 261, 265 (9th Cir. 1995) (workers' refusal to work additional hour was a logical outgrowth of earlier, collective protestations regarding the employer's reduction in scheduled hours); *Every Woman's Place,* 282 NLRB 413, 415 (1986) (single employee's call to WHD regarding overtime pay was a logical outgrowth of prior, collective complaints to supervisor regarding overtime without receiving any response).

The Department intends to define activity for ''mutual aid or protection'' to encompass activities for which ''there is a link between the activity and matters concerning the workplace or employees' interests as employees.'' *Fresh & Easy Neighborhood Market,* 361 NLRB 151, 153 (2014). For example, agricultural employees' activity would be deemed to be for mutual aid or protection for the purposes of proposed § 655.135(h)(2) when it concerns wages, hours, benefits, working conditions, worker safety, workplace equity, housing conditions, worker voice, or other issues pertaining to their workplace or their interests as employees. Employee activity aimed at ''channels outside the immediate employee-employer relationship,'' or ''in support of employees of employers other than their own'' may also be for ''mutual aid or protection.'' *Eastex,* 437 U.S. at 565. For example, political and social advocacy may be for mutual aid or protection when it has a nexus to employees' ''interests as employees.'' *Id.* at 566; *see also Kaiser Eng'rs,* 213 NLRB 108 (1974).

Although the terms ''concerted activity'' for ''mutual aid or protection'' would encompass secondary activity, such as secondary boycotts and pickets, the Department proposes to expressly list this among the protected activities related to self-organization in light of the differences between workers covered by the NLRA and those that would be covered by this proposed provision. The Department notes that, while the NLRA, as amended by the Taft-Hartley Act, prohibits many labor organizations from engaging in secondary boycotts or pickets, *see* 29 U.S.C. 158(b)(4), this prohibition would not apply to the agricultural employees to whom the Department's proposed rule would apply, *see* 29 U.S.C. 152(3). Therefore, this proposed rule is consistent with the longstanding consensus under the NLRA that it is not unlawful for agricultural workers, or labor organizations composed exclusively of agricultural employees, to participate in secondary activity. *See Di Giorgio Fruit,* 191 F.2d at 647. However, the Department believes that it would benefit employees, employers, and the Department to reiterate this longstanding legal principle by making this principle clear in this proposed rule at § 655.135(h) and, therefore, on the job order. This clarity would help ensure that workers could refer to the job order to understand what activity is protected under the regulation. Likewise, this additional clarity would help employers comply with their obligations under the proposed rule. The Department believes that clearly explaining these obligations for both H–2A employers and workers would prevent unnecessary confusion and resulting disputes.

Additionally, the Department recognizes that this proposal to include activities related to self-organization as a protected activity may prompt questions about when and where an employer must permit the conduct of such activities. Under the proposed regulations, an employer could not prohibit activities related to self-organization or other concerted activities for the purpose of mutual aid or protection that occur during nonproductive time. Nonproductive time means any time the worker is not actively performing work, even if the worker remains on the clock or the time is otherwise compensable. For example, nonproductive time generally includes lunch breaks, rest breaks, and time spent riding as a passenger in a vehicle when being transported between worksites. Nonproductive time also includes any noncompensable time, such as time after the end of the worker's workday. Similarly, under the proposed regulations, an employer would be required to permit self-organization or other concerted activities for the purpose of mutual aid or protection in nonwork or mixed-use areas, even if such areas are on the employer's premises. For example, the employer would not be allowed to prohibit employees from meeting with one another after the end of the workers' workday to discuss wages or working conditions in the parking lot of the employer's establishment, insofar as employees would otherwise have access to the parking lot after the end of the workers' workday. Similarly, consistent with the proposed access provision at § 655.135(n), the employer would not be allowed to prohibit employees from meeting with one another, or with one or more representatives from a labor organization or with employee guests for such discussions in or around employer-furnished housing that occur outside of the workers' workday.

Furthermore, although an employer could establish reasonable work rules that limit discussions, meetings, and gatherings not related to the job while the worker is actively performing the work, the employer could not apply or enforce work rules selectively to discourage worker self-organization. For example, the employer may place reasonable restrictions on employees' use of personal devices while in the field. However, if the employer selectively applied such restrictions to certain individuals who the employer suspected were engaged in organizing, or only to those text messages or phone conversations that the employer perceived to be related to worker self-organization or other concerted activities while permitting them in other instances, such a practice would violate the proposed requirement at 20 CFR 655.135(h)(2). Similarly, while an employer could reasonably establish a work rule limiting personal conversations during productive working hours where such conversations would affect productivity, if the employer selectively enforced this work rule against employees for conversing about self-organization or other concerted activities, such a practice would be impermissible.

Nothing in this proposal would require or prohibit the adoption of any specific term of a collective bargaining agreement ultimately negotiated between the employer and the workers; rather, any such agreement would be subject to any applicable Federal, State, or local law. In addition, as noted above, the Department does not intend to preempt any applicable State laws or regulations that may regulate labor-management relations, organizing, or collective bargaining by agricultural workers. Moreover, the remedies provided for under this proposed regulation are not intended to be exclusive; if an agricultural worker has other remedies available under State or local law, the remedies contemplated under this proposal are not intended to displace them.

The Department seeks comments on the proposal to protect certain concerted activity related to self-organization in § 655.135(h)(2) with respect to workers who are engaged in FLSA agriculture. Specifically, the Department seeks comments on whether to expressly list secondary boycotts and pickets among the protected activities related to self-organization, the scope of the proposed protections and the proposed definitions of ''concerted activity'' and ''mutual aid or protection,'' the impact that expressly protecting such activity would have on the working conditions of H–2A workers, workers in corresponding employment, and agricultural workers in the United States more generally, and how this proposal would interact with State labor laws. The Department also welcomes comments on how best to ensure that its proposals do not conflict with existing State laws and regulations that provide for a system of collective bargaining for farmworkers and explicitly prohibit retaliation against farmworkers.

ix. Section 655.135(m) Worker Voice and Empowerment

The Department proposes a new employer obligation at § 655.135(m) that would include a number of protections that the Department has determined are necessary to prevent an adverse effect on the working conditions of workers in the United States similarly employed, 8 U.S.C. 1188(a)(1), as discussed above, by protecting the rights of workers under the H–2A program to self-organization and concerted activity as proposed in § 655.135(h)(2). The employer's obligations under this proposed provision would apply only to workers engaged in FLSA agriculture. Specifically, the Department proposes to add requirements that an employer provide to a requesting labor organization the contact information of H–2A workers and workers in corresponding employment employed at the place(s) of employment; permit workers to designate a representative of their choosing to attend any meeting that may lead to discipline; refrain from captive audience meetings unless the employer provides certain information to ensure that such meeting is not coercive; and attest either that they will bargain in good faith over the terms of a proposed labor neutrality agreement with a requesting labor organization, or that they will not do so and provide an explanation for why they have declined. The Department believes that these requirements would provide H–2A workers and workers in corresponding employment with important tools to allow them to more successfully organize and advocate for better working conditions from their employers and thereby prevent adverse effect on the working conditions of similarly employed workers in the United States. Finally, to help inform workers of their rights under proposed § 655.135(m), the Department is proposing to include these proposed protections in the disclosures required on the job order.

A. Section 655.135(m)(1) Employee Contact Information

The Department proposes in § 655.135(m)(1) to require employers to provide worker contact information to a requesting labor organization. As explained further below, this proposal is similar to but more expansive than the ''voter list'' requirements under the NLRA, differing in various respects due to the unique characteristics of the H–2A workforce. Under this provision, employers would be required to provide to the labor organization a list of all H–2A workers and workers in corresponding employment engaged in agriculture as defined under the FLSA and employed at the place(s) of employment included within the employer's H–2A Application. The proposed list would be in alphabetical order, and include each worker's full name, date of hire, job title, work location address and ZIP code, and (if available to the employer) personal email, personal cellular number and/or profile name for a messaging application, home country address with postal code, and home country telephone number. The Department proposes to require the employer to update the list once per certification period, if requested by the labor organization. In addition, the proposed list would be provided to the requesting labor organization in a format agreed upon by the requesting labor organization and the employer and would be transmitted electronically.

The Department believes that this proposed requirement would significantly bolster the ability of workers to effectively self-organize and to engage in concerted activity protected under proposed § 655.135(h)(2), by ensuring that workers have access to information regarding the arguments both for and against organization, and that workers have access to information and resources necessary to engage in concerted activity regarding working conditions. Under the NLRA, the NLRB has long recognized the importance to organizing rights of workers' access to information regarding the arguments for and against organization, and has held that the rights to self-organization and to engage in concerted activity ''necessarily encompass employees' rights to communicate with one another and with third parties'' about organization and working conditions. *Quicken Loans, Inc.* v. *NLRB,* 830 F.3d 542, 545 (D.C. Cir. 2016) (quotations omitted) (citing *Beth Israel Hospital* v. *NLRB,* 437 U.S. 483, 491 (1978) and *Eastex,* 437 U.S. at 565); *see also Oakwood Hosp.* v. *NLRB,* 983 F.2d 698, 701 (6th Cir. 1993); *Hutzler Bros. Co.* v. *NLRB,* 630 F.2d 1012, 1015 (4th Cir. 1980). To ensure the effective exercise of these rights, the NLRB has long required employers to provide worker contact information to unions in certain circumstances because this requirement improves the likelihood that workers will understand the arguments both for and against organization. *See* 29 CFR 102.62(d), 102.67(l); *RadNet Mgmt., Inc.* v. *NLRB,* 992 F.3d 1114, 1122–23 (D.C. Cir. 2021) (provision of contact information to labor organizations is fundamental to effective exercise of organizing rights).

The Department's proposal here contains similar information requirements as those listed in the NLRB's requirements at 29 CFR 102.62(d), but is more expansive given the unique characteristics of the H–2A program, including the temporary and migrant nature of the workforce in which the majority of workers are exempt from the NLRA's protections and thus may be even less likely than NLRA-covered workers to be aware of the benefits of self-organization and engaging in concerted activity. Workers under the H–2A program also are often employed and housed in remote locations. In light of these characteristics, to better protect against adverse effect, the Department has tailored this proposal to the needs of the H–2A workforce. For example, the

Department proposes to require the employer to provide available contact information for the worker in the worker's home country and for any messaging application the worker uses to communicate (*e.g.,* ''WhatsApp''). The Department also proposes to require that the contact list be updated once per season, if such an update is requested by the labor organization. The Department believes that, given the potential for organizing activities to occur at any time throughout the job order period (as opposed to a more time-limited event such as an election, as is the case in the context of the NLRB voter list requirements), allowing the union to request an updated list at the time of its choosing would best ensure that workers are able to receive information regarding the arguments both for and against organization, in the event of workforce turnover over the course of the work contract. However, the Department proposes to limit this ability to request an updated list to one time per season, to avoid unduly burdening the employer with complying with this request. The Department believes that this proposed requirement would significantly bolster the ability of workers to effectively self-organize and to engage in concerted activity by ensuring that workers have equal access to information regarding the arguments both for and against organization, and that workers have access to information and resources necessary to engage in concerted activity regarding working conditions.

The Department also recognizes that the ability to self-organize and to engage in concerted activity must be balanced against the workers' rights to the privacy of their personal information. In the context of the NLRA, the NLRB has reasoned that any privacy concerns raised by an employer providing employee contact information to unions are outweighed by the benefits and necessity of protecting the rights to self-organization and to engage in concerted activity. *RadNet Mgmt.,* 992 F.3d at 1122–23. Under the H–2A program, the importance of these benefits is arguably even greater and arises earlier in the organizing process for the reasons discussed above. Therefore, the Department believes it is imperative that labor organizations have access to the information they need to communicate with these workers effectively, and that this goal would outweigh any privacy concerns. However, the Department welcomes comment on whether it should include a worker ''opt-out'' provision, under which a worker could decline to have their contact information included in the list the employer would provide to the union, or if other protections for worker privacy may be warranted. The Department also welcomes comment on whether organizations other than labor organizations (defined as proposed in § 655.103(b)) also should be able to request this information, particularly in light of the unique circumstances of the H–2A program, such as ''key service providers'' as defined in proposed § 655.103(b). The Department also requests comments regarding the best methods to ensure workers are adequately notified of these employer obligations.

Finally, the Department notes that nothing in this proposed provision would limit a worker's ability to gather coworkers' contact information to share both amongst themselves and with unions, which is central to effective rights to self-organize and engage in concerted activity. *Cf. Quicken Loans,* 830 F.3d at 548. Moreover, a worker's ability to gather and share coworker information with unions would be protected under proposed § 655.135(h)(2). For example, a worker who gathers coworkers' contact information and shares that information with a union so that the union can contact the workers regarding the benefits of unionization is engaging in protected, concerted activity and self-organization. Under proposed § 655.135(h)(2), an employer may not retaliate against the worker for gathering or sharing this information.

B. Section 655.135(m)(2) Right To Designate a Representative

The Department proposes in § 655.135(m)(2) to require employers to permit workers to designate a representative of their choosing to attend any meeting between the employer and a worker where the worker reasonably believes that the meeting may lead to discipline. Under the proposed provision, the employer also would have an obligation to permit the worker to receive advice and active assistance from the designated representative during any such meeting.

The Department believes that proposed § 655.135(m)(2) would significantly bolster the ability of H–2A and corresponding workers to engage in concerted activity as protected in proposed § 655.135(h)(2). In the context of the NLRA, it is well established that in a workplace covered by a CBA, an employer interferes with an employee's right to engage in concerted activities for mutual aid or protection under section 7 of the NLRA when the employer denies an employee's request that a union representative accompany the employee at an investigatory interview that the employee reasonably believes might result in disciplinary action. *See NLRB* v. *J. Weingarten, Inc.,* 420 U.S. 251, 254, 267 (1975). As courts and the NLRB have explained, such a request by an employee constitutes concerted activity because the presence of a representative safeguards the interests of employees generally, not solely the particular employee's interest. *See id.* at 260–61.

In any workplace, union or nonunion, the presence of a representative at a meeting that may lead to discipline, and the ability of such representative to provide assistance and advice, gives the employee a witness, an advisor, and an advocate in a potentially adversarial situation, thus preventing the imposition of unjust discipline by the employer. Proposed § 655.135(m)(2) thus also helps ensure that workers have access to representation to assist in safeguarding workers against unjust termination under the Department's proposed definition of for cause termination. More generally, the ability to request a representative's presence at such a meeting enhances employees' ability to act in concert with their coworkers to protect their mutual interest in ensuring that their employer does not impose punishment unjustly. Courts have cited similar considerations in deeming reasonable the view that section 7 of the NLRA permits nonunion workers to designate a coworker to provide assistance during investigatory interviews that may lead to disciplinary action. *See Epilepsy Found. of Ne. Ohio* v. *NLRB,* 268 F.3d 1095, 1100 (D.C. Cir. 2001). The Department acknowledges that the NLRB has frequently shifted its position on whether section 7 applies in nonunion workplaces, but the Department's proposed regulations for the H–2A program apply independently of the NLRA, and would cover workers that are outside the NLRB's purview. Thus, any shifts in the NLRB's position would not alter proposed § 655.135(m)(2).[78] Moreover, the need for a representative is particularly acute for workers in the H–2A program, given their unique vulnerabilities and

[78] *Compare, e.g., Epilepsy Found. of Ne. Ohio,* 331 NLRB No. 92 (2000) (interpreting section 7 to extend the *Weingarten* rule to nonunion workplaces); *Materials Research Corp.,* 262 NLRB 1010 (1982) (same), *with, e.g., I.B.M. Corp.,* 341 NLRB 1288 (2004) (limiting *Weingarten* rights to employees covered by CBAs); *Sears, Roebuck & Co.,* 274 NLRB 230 (1985) (same). The Department recognizes that the workforce in the H–2A program is largely not unionized, and so the proposed regulation is not limited to workers that are members of a labor organization.

dependence on the employer for meals, housing, and transportation.

Proposed § 655.135(m)(2) would not limit whom a worker may designate as a representative. For example, a worker may designate a coworker, an outside advocate, a representative from a labor organization (regardless of whether the worker is a member), or any other individual. The Department believes it is appropriate to permit workers to designate a broader scope of representatives than the representatives contemplated under section 7 of the NLRA. The benefits of a representative apply even where the representative is not employed by the employer, such as a legal aid advocate or member of the clergy, because a single worker's efforts to seek such assistance and advice broadly advances other workers' shared interest in preventing the imposition of unjust punishment. Moreover, in H–2A workplaces, it is impractical to limit such representatives to union representatives or coworkers. Due to low union density in agricultural workplaces, workers in H–2A workplaces will seldom have the ability to designate union representatives, and workers may face difficulties identifying trusted coworkers to serve as representatives because the temporary nature of the work may limit opportunities to develop relationships with coworkers and because the high incidence of retaliation in H–2A workplaces may discourage coworkers from involvement.

The Department proposes that the employer's obligation under § 655.135(m)(2) would apply in the context of ''meetings between the employer and a worker where the worker reasonably believes that the meeting may lead to discipline.'' Under this proposal, the scope of situations in which this obligation would apply is broader than the ''investigatory interviews'' in which a worker's right to a representative arises under section 7 of the NLRA. *See Weingarten,* 420 U.S. at 253, 257–58 (recognizing right to representative in ''investigatory interview which the employee reasonably believed might result in disciplinary action''). The Department believes that, given the realities of employer-worker interactions in H–2A workplaces, it is appropriate to apply the employer's obligation under proposed § 655.135(m)(2) beyond such ''investigatory interviews.'' Disciplinary action in H–2A workplaces may often occur in informal contexts or in worksite settings such as fields, and limiting employers' obligation to ''investigatory interviews may constrain workers' ability to designate representatives in such contexts or settings. However, the Department welcomes comments regarding the scope of situations in which employers' obligation under proposed § 655.135(m)(2) should apply, including, for example, comments addressing whether this obligation should apply in all situations, not just meetings, that a worker may reasonably believe could involve or lead to discipline, including in situations where, for example, employers correct work techniques, give instructions, or provide training, or whether the obligation should apply in situations more analogous to the ''investigatory interviews'' addressed in *Weingarten.* The Department also seeks comment as to whether it should draw on sources other than *Weingarten*—including State, local, or other Federal law—in determining when this obligation should be applicable, and whether it should take into account any other considerations particular to workers in nonunion settings, or to agricultural workers and their interactions with their employers.

The Department also welcomes comments on how to ensure that workers are adequately informed of the employer's obligation to permit workers to request a representative and of the circumstances under which this obligation would arise. In a workplace covered by a CBA and the NLRA, workers may rely on their unions for information regarding when *Weingarten* rights apply, but the Department acknowledges that most agricultural workers are not unionized. The Department welcomes comments regarding the best methods to ensure adequate notification, including comments that address whether employers should be required to inform workers of their obligation to permit workers to request a representative and whether employers should be required to notify workers explicitly that a meeting may lead to discipline. For example, possible methods of notifying workers may include requiring that all job orders and job assurances shared with workers include information about the employer's obligation to permit workers to request a representative; requiring that employers provide other means of written notification in a language that workers understand; and/or requiring that employers provide oral notification in a language that workers understand and that employers maintain records of such oral notifications.

In addition to comments on the specific questions the Department has posed to commenters, the Department welcomes comments on the general question of how proposed § 655.135(m)(2) can best be implemented in the context of agricultural employment and the way agricultural workers and employers interact, including in the contexts of herding and range livestock production occupations subject to §§ 655.200 through 655.235 and itinerant animal shearing, commercial beekeeping, and custom combining occupations subject to §§ 655.300 through 655.304.

C. Section 655.135(m)(3) Prohibition on Coercive Speech

The Department proposes a new provision at § 655.135(m)(3) to prohibit employers from engaging in coercive speech to try to prevent workers from advocating for better working conditions on behalf of themselves and their coworkers. Specifically, the Department proposes to add new protections at § 655.135(m)(3) prohibiting coercive speech, sometimes referred to as ''captive audience meetings'' or ''cornering.'' As under section 7 of the NLRA, a worker's right to engage, or not engage, in self-organization and concerted activity under proposed § 655.135(h)(2) would include the worker's right to listen and the worker's right to refrain from listening to employer speech concerning the worker's exercise of those rights. The proposed regulation at § 655.135(m)(3) would thus prohibit H–2A employers from coercing and/or requiring workers to listen to or attend an employer's speech or meeting concerning the exercise of their rights to engage in activities related to self-organization, including any effort to form, join, or assist a labor organization or engage in other concerted activities for the purpose of mutual aid or protection relating to wages or working conditions. Such ''captive audience meetings,'' which would typically occur in the workplace during working hours, while the workers are on the clock (though they might also occur during travel to the worksite or in situations where workers are not on the clock), inherently involve an unlawful threat that employees will be disciplined or suffer other reprisals if they exercise their protected right not to listen to such speech. The Department believes that such meetings are inherently coercive and should not be permitted.

In the NLRB context, the Supreme Court has instructed that employer actions should be evaluated from the perspective of employees who are in a position of ''economic dependence'' and would necessarily pick up threatening implications ''that might be more

readily dismissed by a more disinterested ear.'' *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 617 (1969); *see also Hill* v. *Colorado,* 530 U.S. 703, 717 (2000) (noting that within the employment relationship, persistent communication after refusal can become intimidation, and that persons have ''a right to be free'' from unwanted communication) (quoting *Rowan* v. *U.S. Post Office Dep't,* 397 U.S. 728, 736 (1970)). Here, H–2A workers and their employers do not have equal bargaining power, due in large part to H–2A workers' significant economic dependence on their employers. The Department is concerned that H–2A workers should not be forced to listen to such employer speech under threat or potential threat of discipline—directly leveraging the workers' dependence on their jobs.

The fact that such threats may arise in the context of employer speech would not immunize their unlawful coercive effect. Under the NLRA, the Supreme Court has made clear that threats fall outside the scope of employers' NLRA-related speech rights and constitutional free-speech protections. *Gissel Packing,* 395 U.S. at 617–20. Nevertheless, employers frequently use explicit or implicit threats to force employees into meetings concerning unionization or other NLRA-statutorily protected activity. *See 2 Sisters Food Grp.,* 357 NLRB 1816, 1825 n.1 (2011) (Member Becker, dissenting in part) (citing study finding ''that in 89 percent of [representation election] campaigns surveyed, employers required employees to attend captive audience meetings during work time and that the majority of employees attended at least five such meeting[s] during the course of the campaign''). These same employers often carry out those threats by seeking to discharge or discipline employees who assert their right to refrain from listening by refusing to attend such mandatory meetings. The Department believes that employers should not be permitted to coerce H–2A workers in this way under this proposed rule, but instead should be required to honor H–2A workers' free choice and their rights to listen or to refrain from listening to such coercive speech.

The Department recognizes that employers generally have a right under the First Amendment to communicate their views to their employees. *See Gissel Packing,* 395 U.S. at 617. However, protecting workers' right to refrain from listening, as proposed § 655.135(h)(2) does, would not impair employers' constitutional freedom of expression. As the Supreme Court has recognized, ''employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty.'' *Thomas* v. *Collins,* 323 U.S. 516, 537 (1945). But ''[w]hen to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed.'' *Id.* at 537–38.

The Department therefore proposes to prohibit employers from engaging in coercive speech intended to oppose workers' protected activity unless the employer: (a) explains the purpose of the meeting or communication; (b) informs employees that attendance or participation is voluntary, and that they are free to leave at any time; (c) assures employees that nonattendance or nonparticipation will not result in reprisals (including any loss of pay if the meeting or discussion occurs during their regularly scheduled working hours); and (d) assures employees that attendance or participation will not result in rewards or benefits (including additional pay for attending meetings or discussions concerning their rights to engage in protected activity outside their regularly scheduled working hours).

These safeguards were developed many years ago by the NLRB to avoid ''the inherent danger of coercion'' when an employer seeks to interfere with protected labor rights. *See Johnnie's Poultry Co.,* 146 NLRB 770, 774 (1964), *enforcement denied,* 344 F.2d 617 (8th Cir. 1965). There, the NLRB recognized that inherent in the employment relationship is the understanding that employees cannot, without consequences, either refuse to comply with their employer's stated requirement (*e.g.,* that they attend a meeting) or abandon their assigned work duties (*e.g.,* by walking away from employer speech directed at them as they work). Therefore, the NLRB has crafted safeguards to ensure that workers' participation is voluntary at all times. *See, e.g., Johnnie's Poultry Co.,* 146 NLRB 770, 774 (1964) (providing safeguards required when employer questions employees about protected activity in order to prepare defense against unfair-labor-practice charges); *Struksnes Constr. Co.,* 165 NLRB 1062, 1062–63 (1967) (same for when employer conducts poll to ascertain whether union enjoys majority employee support); *Allegheny Ludlum Corp.,* 333 NLRB 734, 734 (2001) (same for when employer may lawfully include visual images of workers in anti-union campaign presentations), *enforced,* 301 F.3d 167 (3d Cir. 2002); *Sunbelt Rentals, Inc.,* 374 NLRB No. 24 (2022) (reaffirming *Johnnie's Poultry* rule).

The Department believes that such safeguards would appropriately protect employers' constitutional free speech right to express views, argument, or opinion concerning protected organizing activity without unduly infringing on the rights of workers to refrain from listening to such expressions as proposed in this rule. Therefore, to ensure that workers are not held captive to coercive employer speech about their protected activity, the Department proposes to adopt these sensible disclosures that an employer must convey to workers in order to make clear that their attendance at any meeting or discussion in work areas during working hours concerning their rights to engage in protected activity is truly voluntary. Note that no disclosures would need to be given when employers require workers to attend meetings on subjects other than their exercise of protected rights (*e.g.,* work assignments for the day, tools, job training or safety instructions). But these safeguards would be required if, for example, the employer uses a regular daily meeting or a portion of that meeting to seek to dissuade employees from acting together to improve working conditions or safety or engaging in other protected concerted activity. The Department's approach is intended to protect both the workers' rights to engage in (or to refrain from engaging in) concerted activity under this proposed rule, and employers' speech concerning any such activity, without unduly infringing on either party's expression. It also seeks to make clear that an employer cannot retaliate against a worker (or provide rewards or benefits) for attending or refusing to attend a ''captive audience'' meeting or discussion concerning their rights to engage in protected activity, even if the meeting occurs during their regularly scheduled working hours.

The Department welcomes comments on this proposal, including, specifically, whether there are other ways to protect workers' rights to refrain from listening to employers' coercive speech, whether other safeguards or employer disclosures are appropriate, or how to most appropriately tailor the prohibition to avoid infringing on employer's free speech rights while protecting workers' right to engage in protected activity.

D. Section 655.135(m)(4) Commitment To Bargain in Good Faith Over Proposed Labor Neutrality Agreement

The Department proposes in § 655.135(m)(4) to require employers to attest either that they will bargain in good faith over the terms of a proposed

labor neutrality agreement with a requesting labor organization, or that they will not do so and provide an explanation for why they have declined. This attestation will provide workers, worker advocates, and the public with valuable information about prospective employers in the H–2A program.

As noted in the proposed regulatory text, a labor neutrality agreement is an agreement between a labor organization and an employer in which the employer agrees not to take a position for or against a labor organizing effort. Such agreements are effective mechanisms to improve workers' organizing success, as they address the major impediments to successful organizing efforts: ''intimidation and delay.'' [79]

As described above, coercive employer speech about collective bargaining or labor organizations can prevent workers from advocating for better working conditions on behalf of themselves and their coworkers. A labor neutrality agreement would protect workers from both coercive and non-coercive anti-organizing speech and provide workers with a free and fair choice about whether to organize. The Department believes that labor neutrality agreements negotiated between H–2A employers and labor organizations could help to correct the imbalance in bargaining power in the H–2A program that the Department has identified as having an adverse effect on agricultural workers in the United States.

However, as also explained above, employers generally have the right under the First Amendment to communicate their views on unionization to their employees. *See Gissel Packing,* 395 U.S. at 617 (distinguishing lawful communications from threats or coercion). Thus, an employer's choice whether to bargain over any labor neutrality agreement at the request of a labor organization, and whether to ultimately enter into such an agreement, is entirely voluntary. The Department does not intend to oversee or monitor any bargaining that ultimately takes place, although an employer that chooses to agree to bargain in good faith yet fails to do so would violate this proposed regulation.

In general, if the employer chooses to bargain in good faith, doing so means that, upon request by a labor organization, the employer will meet at reasonable times and confer, in good faith, with respect to negotiating the terms of a proposed labor neutrality agreement. Good-faith bargaining must be at arm's length and must involve engaging in genuine efforts to reach an accord. *See, e.g., NLRB* v. *Ins. Agents' Int'l Union,* 361 U.S. 477, 485 (1960); *NLRB* v. *Overnite Transp. Co.,* 938 F.2d 815, 821 (7th Cir. 1991). It means that the employer must approach bargaining with a good faith intention to reach an agreement, not just engage in ''surface bargaining'' or ''going through the motions.'' *Overnite Transp. Co.,* 938 F.2d at 821–22. If requested by either party, the execution of a written contract incorporating any agreement reached is part of good faith bargaining. However, neither party is compelled to agree to a proposal or make concessions, and the Department will not, either directly or indirectly, ''compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements.'' *Id.* at 821 (quoting *NLRB* v. *Am. Nat'l Ins. Co.,* 343 U.S. 395, 404 (1952)) (construing 29 U.S.C. 158(d)).

The Department believes that disclosure and information about employers can be a powerful tool for workers, and throughout this proposed rule has sought to enhance transparency and increase workers' access to important information about the job opportunity and workers' rights. Therefore, knowing whether an employer has chosen to commit to bargain in good faith over a labor neutrality agreement, or not, can provide workers with important information about such employers. Under proposed § 655.135(m)(4)(ii), employers that choose not to bargain over labor neutrality agreements must state that they are not willing to do so and disclose their reasons for making that choice. Because this information would be disclosed on the job orders, workers would be able to use it to decide whether they want to work for certain employers. In addition, worker advocacy groups and labor organizations may be able to use this information to decide whether to engage with certain employers or whether workers for such employers might need additional assistance from key service providers.

The Department welcomes comments addressing any aspect of this proposed regulatory provision. In particular, the Department seeks comment on whether the organization with which an employer would bargain should be limited other than by the general requirement to bargain in good faith, such as by including only those labor organizations that are subject to the Labor Management Reporting and Disclosure Act, 29 U.S.C. 401 *et seq.* The Department also welcomes comments regarding whether this proposed requirement will, as intended, advance the goal of ensuring that H–2A workers have a free and fair choice over whether to exercise their freedom of association rights to join together and negotiate with their employer as one body.

x. Section 655.135(n) Access to Worker Housing

The Department proposes the addition of a new provision, § 655.135(n), governing access to worker housing, which is intended to protect the right of association and access to information for H–2A workers and workers in corresponding employment and address the isolation that contributes to the vulnerability of some H–2A workers.

As set forth above in section IV.C.2.b of this preamble, the temporary nature of their work and dependency on a single employer for work, housing, transportation, and necessities, among other factors, make H–2A workers particularly vulnerable to labor exploitation, including violations of H–2A program requirements, dangerous working conditions, retaliation, and labor trafficking. Geographic isolation and employer-imposed limitations on workers' movements and communication exacerbate this vulnerability.

Studies by nongovernmental organizations highlight the vulnerability faced by H–2A workers and some employers' use of isolation and monitoring to control workers so that they do not feel they have any option but to accept substandard and illegal working conditions. Polaris, the organization that operates the National Human Trafficking Hotline, identified over 2,800 H–2A workers that were victims of labor trafficking between 2018 and 2020 (because human trafficking is notoriously underreported, it is extremely likely that more H–2A workers faced similar experiences). Polaris 2018–2020 Report at 7, 10. Similarly, Centro de los Derechos del Migrante conducted interviews with 100 H–2A workers between September 2019 and January 2020 and found that many experienced indicators of labor trafficking. For instance, 34 percent reported restrictions on their movement, such as not being permitted to leave employer-furnished housing or worksites and 32 percent described themselves as not feeling free to quit. CDM Report at 5. Both organizations described H–2A workers being subject to extreme isolation, such as being left

[79] *See* Non-Legislative Labor Law Reform and Pre-Recognition Labor Neutrality Agreements: The Newest Civil Rights Movement, Hartley, 22 Berkeley J. Emp. & Lab. L. 369, 378–85 (2001).

in remote areas without transportation or means of communicating with others, requiring permission to leave employer-furnished housing, being deliberately limited in accessing their support systems, having their personal cellular phones and passports confiscated, and being denied access to other forms of communication. Polaris 2018–2020 Report at 19; CDM Report at 23–24; Farmworker Justice Report at 22, 33; *see also* Indictment, *U.S.* v. *Patricio,* No. 5:21–cr–00009 (S.D. Ga.) (describing H–2A workers being detained in a work camp surrounded by an electric fence and having their identification documents and personal cellular telephones confiscated).[80] Thus, the Department seeks to protect workers' rights to association and access to information both to make them less susceptible to labor exploitation, including trafficking, and to interrupt factors that permit the deterioration of working conditions for agricultural workers in the United States and thus have an adverse effect on workers in the United States similarly employed. 8 U.S.C. 1188(a)(1).

In light of these serious concerns, proposed § 655.135(n)(1) would provide that workers residing in employer-furnished housing must be permitted to invite, or accept at their discretion, guests to their living quarters and/or the common areas or outdoor spaces near such housing during time that is outside of workers' workday and subject only to reasonable restrictions designed to protect worker safety or prevent interference with other workers' enjoyment of these areas. This protection would recognize that workers do not relinquish their rights to association or access to information simply by virtue of residing in employer-furnished housing. Nor could employers use the statutorily required provision of housing as a means to isolate or control their workforce by blocking their access to information and assistance from the outside. The proposed regulation would explicitly permit workers to invite guests or to accept (or reject) visitors wishing to speak with them. Because the right to invite or accept visitors is limited to housing areas and to time that is outside of workers' workday, the Department does not anticipate that this will disrupt employers' business operations.

Under the Department's proposed regulation, this protection is intended to apply to all housing furnished by the employer pursuant to the employer's statutory and regulatory obligations. While the Department anticipates that this protection would be the most beneficial for workers who reside in housing that is geographically isolated, it recognizes that even workers whose housing is more centrally located may be isolated by virtue of employer policies that limit their ability to leave housing or to interact with the public even during time that is outside of workers' workday. The Department is aware of instances in which employers used abusive restrictions to keep workers isolated and to restrict their access to services, for example, by forbidding workers to leave housing areas that may otherwise have been accessible except when being transported to work or for other limited purposes such as to buy groceries, or by retaining keys to worker housing or employing armed guards such that workers did not feel that they could leave or have guests. Regardless of whether housing is located in a remote or densely populated area, workers would benefit from a protected right to invite and accept visitors. The Department seeks comments on whether the protection in § 655.135(n)(1) should be limited to workers residing in certain types of employer-furnished housing or in certain locations.

Because workers typically reside in shared quarters, the Department recognizes the need to balance different workers' competing needs. It therefore proposes to permit reasonable restrictions designed to protect worker safety or to prevent interference with other workers' enjoyment of the housing. For example, it could be reasonable for an employer to limit visitors' access to shared sleeping quarters during sleeping hours, but to permit visitors in the common areas and outdoor spaces surrounding worker housing provided that they are quiet. Similarly, it could be reasonable for an employer to limit all visitor access during sleeping hours, provided that the employer does not use such a restriction to effectively bar most visitors. The Department seeks comments on what would constitute reasonable or unreasonable restrictions and other means of balancing different workers' interests in shared housing, as well as comments on visitor policies that may unduly hinder workers' rights to invite or accept guests.

The Department recognizes that the effectiveness of proposed § 655.135(n)(1) may be limited where H–2A workers are unaware of, or afraid to exercise, their right to invite or accept visitors in employer-furnished housing. To bolster the effectiveness of this proposed requirement, § 655.135(n)(2) would provide a narrow right of access to labor organizations, which have an incentive to report concerns of labor exploitation to the Department or other law enforcement agencies, as well as to provide information to workers on their rights under the H–2A program and to engage in self-organization. Specifically, where employer-furnished housing for H–2A workers and workers in corresponding employment who are engaged in FLSA agriculture is not readily accessible to the public, a labor organization would be permitted to access the common areas or outdoor spaces near worker housing for the purposes of meeting with workers during time that is outside of workers' workday for up to 10 hours per month.

The protections of paragraphs (n)(1) and (2) would be distinct, but would complement and bolster one another. Whereas the former would permit all resident H–2A workers and those in corresponding employment to invite or accept guests to their living quarters, as well as the common areas and outdoor spaces surrounding worker housing, the latter would permit labor organizations to, without explicit invitation, seek out workers only in the common areas and outdoor spaces surrounding worker housing in which H–2A workers and those in corresponding employment who perform FLSA agriculture reside. The former would permit workers to invite or accept guests during all time that is outside of workers' workday subject only to reasonable restrictions designed to balance their rights with the rights of other workers. The latter would limit labor organizations' access to 10 hours per month, an amount of time reasonable to make contact with new workers that may have started between labor organization visits. Finally, the latter would only apply in instances where the worker housing is on property or in a facility that is not readily accessible to the public such that labor organizations have limited alternatives for in-person meetings with workers. While the Department also

[80] In late 2021, the United States Attorney's Office for the Southern District of Georgia indicted 24 defendants on felony charges including human smuggling and forced labor. Defendants fraudulently used the H–2A program to smuggle agricultural workers into the United States from Mexico, Guatemala, Honduras, and other countries. Once in the United States, workers were forced to dig onions with their bare hands, earning $0.20 for each bucket harvested, and were threatened with guns and violence. The workers were detained in crowded, unsanitary buildings with little or no food. *See* Press Release, U.S. Attorney's Off. for the S. Dist. of Ga., *Operation Blooming Onion Human Trafficking Investigation* (Nov. 22, 2021), *https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment. See also* Jessica Looman, *U.S. Dep't of Lab. Blog: Exposing the Brutality of Human Trafficking* (Jan. 13, 2022), *https://blog.dol.gov/2022/01/13/exposing-the-brutality-of-human-trafficking.*

proposes the means for labor organizations to request worker contact information, including, when available, workers' personal cellular telephone numbers, it does not consider this a substitute for in-person meetings since it is aware of multiple instances in which workers' personal cellular telephones have been seized by employers. *See also* Patricio Indictment at 23; Polaris 2018–2020 Report at 19. To help inform workers of their rights under this proposal, the Department is proposing to include the protections that would be afforded under proposed § 655.135(n) in the disclosures required on the job order.

The Department seeks comments on all aspects of this proposal. The Department is particularly interested in comments on proposed § 655.135(n)(2), such as those regarding the limitations placed on labor organizations' right of access, including the cap of 10 hours per month and how to understand when worker housing is not readily accessible to the public, how this would apply when workers engaged in FLSA agriculture share housing with workers not engaged in FLSA agriculture (§ 655.135(n)(2) applies only with respect to the former), whether the right of access in this provision should be expanded to provide similar access to some or all key service providers as defined in proposed § 655.103(b), and, if so, whether the Department should limit the scope of the catchall term ''any other service providers to which an agricultural worker may need access.'' In addition, the Department is interested in comments on whether and how proposed § 655.135(n)(1) and (2) should apply with respect to workers housed pursuant to §§ 655.230 (housing for work performed on the range in herding and range production of livestock occupations) and 655.304 (mobile housing for workers engaged in animal shearing or custom combining).

Finally, the Department proposes corresponding edits to § 655.132(e)(1) to address instances in which the employer-furnished housing is provided by the fixed-site agricultural business (''grower'') as part of its agreement with an H–2ALC. Under the current provision, where housing is owned, operated, or secured by the grower, the H–2ALC is required to include with its H–2A Application proof that the housing complies with the applicable standards set forth in § 655.122(d) and certified by the SWA. The Department proposes to add to this provision the requirement that the H–2ALC also provide with its H–2A Application proof that the grower has agreed to comply with the requirements of proposed § 655.135(n). In doing so, the Department seeks to ensure that the protections for access to worker housing would be met even where the H–2ALC fulfills its obligation to furnish housing through its agreement with its client grower. The Department welcomes comments on what would constitute the requisite proof that an H–2ALC would be required to submit with its application, as well as alternative means of ensuring compliance with the access protections where housing is provided directly by a grower.

xi. Section 655.135(o) Passport Withholding

The Department proposes to add a new paragraph (o) to § 655.135 to better protect workers from potential labor trafficking by directly prohibiting an employer from confiscating a worker's passport, visa, or other immigration or government identification documents. Under this proposal, the only exceptions to this prohibition would be where the worker has stated in writing: that the worker voluntarily requested that the employer keep these documents safe, that the employer did not direct the worker to submit such a request, and that the worker understands that the passport, visa, or other immigration or government identification document will be returned to the worker immediately upon the worker's request. Even where the worker has voluntarily requested that the employer safeguard such documents, the worker must be able to have ready access to the document, at least during regular business hours and at a location that does not meaningfully restrict the worker's ability to access the document. As detailed in section IV.C.2.b of this preamble, H–2A workers are extremely vulnerable to labor exploitation, and an employer taking or holding a worker's passport is an egregious act that can be a strong indication of such exploitation.[81] Labor trafficking, including the restriction of a worker's movements, harms not only the worker but also the agricultural workforce in the area by subjecting workers to depressed working conditions.[82] The current regulation at § 655.135(e) requires an employer to comply with all applicable Federal, State, and local laws. That section explicitly references the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110–457, which amended the TVPA, Pub. L. 106–386 (2000), 18 U.S.C. 1592(a). The TVPA, as amended, prohibits the unlawful destruction, concealment, removal, confiscation or possession of another person's passport or other immigration documents, under the conditions set forth in that statute (*e.g.,* with the intent to obtain forced labor in violation of 18 U.S.C. 1589). 18 U.S.C. 1592(a). The Department's current regulation at 20 CFR 655.135(e) thus provides that an employer may not hold or confiscate a worker's passport, visa, or other immigration documents, in compliance with the TVPA and other applicable laws. The Department added this explicit reference to the TVPA and passport withholding in the 2010 H–2A Final Rule, in response to a comment received on the issue, because the Department ''recognize[d] the worker's right not to relinquish possession of his or her passport to the employer.'' *See* 75 FR 6923.

Despite the requirements of the current regulation at § 655.135(e), however, WHD has uncovered multiple instances of employers taking or withholding a worker's documents against the worker's wishes.[83] Under the current regulation, which is dependent upon compliance with the TVPA, it is often difficult for WHD to ascertain the intent of the employer each time a passport or document is withheld. Further, under the current regulation, it can be difficult for WHD to cite a violation for passport withholding absent a conviction of a trafficking offense by a law enforcement agency. As noted above, the Department believes it is important to prevent passport and document withholding to protect the workers subject to this practice from potential labor trafficking, as well as to protect other agricultural workers in the area from resulting adverse effects on working conditions, pursuant to 8 U.S.C. 1188(a)(1). Accordingly, to better address these issues, and pursuant to its authority under 8 U.S.C. 1188(a)(1), the Department proposes to flatly prohibit the taking or withholding of a worker's passport, visa, or other immigration or identification documents against the worker's wishes, independent of any other requirements under other Federal, State, or local laws, in a new paragraph at § 655.135(o). In addition, to promote

[81] *See also* Polaris 2018–2020 Report at 26; CDM Report at 23–24; Farmworker Justice Report at 33; Indictment, *U.S.* v. *Patricio,* No. 5:21–cr–00009 (S.D. Ga.) (confiscation of identity documents used in scheme to traffic H–2A workers).

[82] *See, e.g.,* Jessica Looman, *U.S. Dep't of Lab. Blog: Exposing the Brutality of Human Trafficking* (Jan. 13, 2022), *https://blog.dol.gov/2022/01/13/exposing-the-brutality-of-human-trafficking.*

[83] *See, e.g.,* Press Release, U.S. Dep't of Lab., *Federal court sentences South Carolina labor contractor, operators after investigation finds fraud, labor trafficking, abuses of farmworkers* (Aug. 3, 2023), *https://www.dol.gov/newsroom/releases/whd/whd20230803.*

compliance with and deter violations of this requirement, the Department proposes to include failure to comply with this assurance and obligation within the definition of violations subject to debarment under § 655.182(d)(1)(viii) and 29 CFR 501.20(d)(1)(viii). We note, however, that even under the current regulations, debarment may be appropriate due to passport withholding in certain circumstances. *See* 20 CFR 655.182(d)(1)(x) and 29 CFR 501.20(d)(1)(x). Finally, to help inform workers of their rights under this proposal, the Department is proposing to include the protections that would be afforded under proposed § 655.135(o) in the disclosures required on the job order.

The Department recognizes that an employer and/or its agent(s) often facilitate a prospective H–2A worker's submission of the worker's passport, visa, or other identification documents to the United States Government for purposes of visa application, processing, or entry to the United States. Nothing in the current regulation at § 655.135(e), or in proposed § 655.135(o), is intended to prohibit such facilitation, provided that the worker voluntarily requests the employer's assistance in these processes and that the documents are returned to the worker immediately upon return by the United States Government.

The Department welcomes comments on this proposal, particularly regarding whether the Department should include any other requirements for application of the proposed exception to this prohibition, and whether the Department should include any additional exceptions to this prohibition.

3. Section 655.137, Disclosure of Foreign Worker Recruitment

The Department proposes new disclosure requirements to enhance foreign worker recruitment chain transparency and bolster the Department's capacity to protect vulnerable agricultural workers from exploitation and abuse, as explained more fully below. As the Government Accountability Office (GAO) has explained, ''[w]ithout accurate, accessible information about employers, recruiters, and jobs during the recruitment process, potential foreign workers are unable to effectively evaluate the existence and nature of specific jobs or the legitimate parties contracted to recruit for employers, potentially making them more vulnerable to abuse.'' [84] More recently, the Department's OIG released a report that emphasized the need for increased transparency in the recruiting chain to enhance the Department's enforcement capabilities.[85] Concerns expressed by workers' rights advocacy organizations and human trafficking prevention groups, in addition to the Department's own experience in finding continuing abuses by foreign labor recruiters, also indicate the need for enhanced transparency to aid enforcement and protect vulnerable agricultural workers from predatory and abusive practices during the recruitment process. A recent report published by Polaris, an organization working to combat labor trafficking, notes that abuses by foreign labor recruiters continue, with workers reporting unlawful fees charged by ''foreign labor recruiters, their employers, or their direct supervisors at their jobs,'' and that additional transparency in the recruitment chain is needed to ensure the Department can identify, investigate, and hold accountable those employers and other entities who engage in abusive and unlawful behavior at various stages of the international recruitment process.[86] The Department's proposed changes are also consistent with the assessment of organizations looking at migrant worker abuse globally. For example, the United Nations Office on Drugs and Crime, in a 2015 report entitled ''The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons,'' noted that recruitment systems are often ''opaque,'' and that a ''[l]ack of evidence,'' contributes to low levels of trafficking convictions for recruiters and recruitment agencies.[87]

Pursuant to its authority under the INA, the Department can regulate the conduct of U.S. employers using foreign labor certification programs and doing business with foreign labor recruiters. The INA expressly authorizes the Department to promulgate regulations governing recruitment. The Department may only issue a labor certification to an employer that has ''complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary).'' 8 U.S.C. 1188(c)(3)(A)(i). The INA states that ''[t]he Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.'' 8 U.S.C. 1188(g)(2). As the Department has noted in prior rulemaking, though there are limits to the liability the Department can impose on employers for the actions of recruiters abroad, the Department can regulate the conduct of recruiters in the H–2A program through enforcement of employer obligations to foreign workers, such as enforcement of the prohibition on imposition of recruitment fees. 73 FR 77110, 77160 (Dec. 18, 2008, suspended). Currently, employers must contractually forbid any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment from seeking payments or other compensation from prospective employees, in both the H–2A and H–2B programs, at 20 CFR 655.135(k) and 655.20(p), respectively. The H–2B regulations at §§ 655.9 and 655.20(aa) additionally require employers to provide copies of their agreements with foreign labor recruiters and disclose information about the foreign labor recruiters that have or will be engaged in connection with their H–2B applications. The Department proposes similar additional foreign labor recruiter disclosure requirements in the H–2A program, specifically to require, as a condition for approving an *H–2A Temporary Labor Certification,* that the employer identify any foreign labor

[84] U.S. Gov't Accountability Office, GAO–15–154, H–2A and H–2B Visa Programs: Increased Protections Needed for Foreign Workers 33–34 (2015; Rev. 2017), *https://www.gao.gov/assets/gao-15-154.pdf.*

[85] Office of Inspector Gen., U.S. Dep't of Lab., Rep. No. 06–21–001–03–321, Overview of Vulnerabilities and Challenges in Foreign Lab. Certification Programs (2020).

[86] Polaris, Human Trafficking on Temporary Work Visas: A Data Analysis 2015–2017 12–13 (2018), *https://polarisproject.org/wp-content/uploads/2019/01/Human-Trafficking-on-Temporary-Work-Visas.pdf* (noting that workers continue to be charged unlawful fees, and stating there is ''a general sense of confusion among victims as to the relationship between the person or agency who facilitated their recruitment and the person or company who would ultimately employ them'' and ''many victims were not sure to whom they had paid recruitment fees or why they had been required'').

[87] U.N. Office on Drugs and Crime, The Role of Recruitment Fees and Abusive and Fraudulent Recruitment Practices of Recruitment Agencies in Trafficking in Persons 23, 47 (2015), *https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf. See also International Labour Organization, Fair Recruitment Initiative, http://www.ilo.org/global/topics/fair-recruitment/fri/lang--en/index.htm;* International Labour Organization, General principles and operational guidelines for fair recruitment and Definition of recruitment fees and related costs (2019), *http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf.*

recruiters, provide copies of the agreements between the employer and recruiter, and ensure the agreement clearly prohibits the foreign labor contractor or recruiter from seeking or receiving payments or other compensation from prospective employees. This proposed requirement to disclose information about the recruitment chain would assist the Department to carry out its enforcement obligations, protect vulnerable agricultural workers and program integrity, and ensure equitable administration of the H–2A program for law abiding employers.

In particular, the Department proposes a new § 655.137, *Disclosure of foreign worker recruitment,* and a new § 655.135(p), *Foreign worker recruitment,* which are similar to §§ 655.9 and 655.20(aa) in the regulations governing disclosure of foreign worker recruitment in the H–2B program. Consistent with §§ 655.9(a) and 655.20(aa), proposed §§ 655.137(a) and 655.135(p) would require an employer and its attorney or agent, as applicable, to provide a copy of all agreements with any agent or recruiter that the employer engages or plans to engage in the recruitment of prospective H–2A workers, regardless of whether the agent or recruiter is located in the United States or abroad. Consistent with the H–2B program, the proposed rule would require employers to provide a copy of the agreement at the time the employer files the H–2A Application. The Department does not propose revisions to § 655.135(k), which will continue to apply to employers that have engaged with agents and foreign labor recruiters, directly or indirectly, in international recruitment of H–2A workers and will continue to require the employer to contractually prohibit the recruiter(s) from seeking or receiving payment from any worker at any time. As such, the written contract(s) the employer submits under this proposed rule must contain this contractual prohibition on charging fees and the prohibition language must include the quoted language specified in § 655.135(k). At the time of collection, the Department will review the agreements to obtain the names of the foreign labor recruiters and government registration and license numbers, if any (for purposes of maintaining a public list, as described below), and to verify that these agreements include the required contractual prohibition against charging fees.[88] The Department may further review the agreements during the course of an audit examination or investigation. Certification of an employer's application that includes such an agreement does not indicate general approval of the agreement or the terms therein. Where the required contractual prohibition is not readily discernible, the Department may request further information to ensure that the contractual prohibition is included in the agreement. Agreements between the employer and the foreign labor recruiter will not be made public unless required by law. Consistent with the Department's current practice in the H–2B program, this proposal allows the Department to obtain the agreements, but the Department will only share with the public the identity of the recruiters, not the agreements in their entirety, as discussed further below.

Proposed §§ 655.137(b) and 655.135(p), consistent with the H–2B provisions at §§ 655.9(b) and 655.20(aa), would require an employer and its attorney or agent, as applicable, to disclose to the Department the identity (*i.e.,* name and, if applicable, identification number) and geographic location of persons and entities hired by or working for the foreign labor recruiter and any of the agents or employees of those persons and entities who will recruit or solicit prospective H–2A workers for the job opportunities offered by the employer. If the recruiter has a valid registration number or license number, which is issued by a government agency and authorizes the recruiter to engage in the solicitation or recruitment of workers, the employer must provide this unique identification information. Consistent with the H–2B program, the Department proposes to interpret the term ''working for'' to encompass any persons or entities engaged in recruiting prospective foreign workers for the H–2A job opportunities offered by the employer, whether they are hired directly by the primary recruiter or are working indirectly for that recruiter downstream in the recruitment chain. As explained more fully in the requisite PRA supporting statement accompanying this proposed rule, the Department proposes to gather the additional recruitment chain information when the employer files its application and will require the employer to submit a proposed Form ETA–9142A, *Appendix D,* that mirrors the Form ETA–9142B, *Appendix C,* and collects information about the identity and location of the recruiter(s) and recruitment organization(s) the employer used or will use to recruit foreign workers.

Proposed § 655.137(c), and corresponding language in § 655.135(p), would require the employer to update the foreign worker recruitment information disclosed in accordance with paragraphs (a) and (b) of § 655.137 with any changes to foreign labor recruiter contracts, loss or revocation of registration number, or change to the names and locations of people involved in recruitment after filing the H–2A Application, and to continue to make these updates until the end of the work contract period. The Department proposes to require the employer to maintain updates to the foreign labor recruiter information disclosed at the time of filing the H–2A Application and be prepared to submit the record to the Department, upon request. To clarify the employer's record retention obligation, proposed § 655.167(c)(8) would require the employer to maintain the foreign worker recruitment information required by § 655.137(a) and (b) for a period of 3 years, similar to the provisions at § 655.167(c) that require retention of information regarding recruitment of U.S. workers.

The proposed disclosure requirements encompass all agreements involving the whole recruitment chain that brings an H–2A worker to the employer's certified H–2A job opportunity in the United States. Employers, and their attorneys or agents, as applicable, are expected to provide these names and geographic locations to the best of their knowledge at the time the application is filed. The Department expects that, as a normal business practice, when completing the written agreement with the primary recruiting agent or recruiter, the employer will ask whom the recruiter plans to use to recruit workers in foreign

[88] The Department uses all available tools to ensure that prohibited fees are not collected by employers, agents, recruiters, or facilitators. The Department has previously stated that an employer must make it abundantly clear that the recruiter and its agents are not to receive remuneration from the worker recruited in exchange for access to the job opportunity. For example, evidence showing that the employer paid the recruiter no fee or an extraordinarily low fee, or continued to use a recruiter about whom the employer had received numerous credible complaints, could be an indication that the contractual prohibition was not bona fide. *See* 75 FR 6925–6926. The Department has similarly stated that, if it determines that the employer knew or reasonably should have known that the H–2A worker paid or agreed to pay a prohibited fee to a foreign labor contractor or recruiter, the employer may be in violation of 20 CFR 655.135(j). However, should the circumstances demonstrate that the employer made a good faith effort to ensure that prospective workers were not required to pay prohibited fees (such as inquiry of both workers and agents/recruiters/facilitators regarding the payment of such fees), the Department will take the circumstances into consideration in determining whether a violation occurred. *See* U.S. Dep't of Lab., Wage & Hour Div., Field Assistance Bulletin No. 2011–2, H–2A ''Prohibited Fees'' and Employer's Obligation to Prohibit Fees (May. 6, 2011), *https://www.dol.gov/agencies/whd/field-assistance-bulletins/2011-2.*

countries, and whether those persons or entities plan to hire other persons or entities to conduct such recruitment, throughout the recruitment chain.

Consistent with current practice in the H–2B program, proposed § 655.137(d) provides for the Department's public disclosure of the names of the agents and foreign labor recruiters used by employers, as well as the identities and locations of all the persons or entities hired by or working for the primary recruiter in the recruitment of prospective H–2A workers, and the agents or employees of these entities. Determining the identity and location of persons hired by or working for the recruiter or its agent to recruit or solicit prospective H–2A workers—effectively acting as sub-recruiters, sub-agents, or sub-contractors—bolsters program integrity by aiding enforcement of provisions like § 655.135(k), which prohibits the seeking or receiving of recruitment fees. In addition, the proposed information collection requires additional disclosures relating to foreign worker recruitment that will bring a greater level of transparency to the H–2A worker recruitment process. By maintaining and making public a list of agents and recruiters, the Department will be in a better position to map international recruitment relationships, identify where and when prohibited fees are collected, ensure that contractual prohibitions on collecting prohibited fees are bona fide, and, when contractual prohibitions are not bona fide or do not exist, implement sanctions against and collect remedies from the appropriate entity. Finally, workers would be better protected against fraudulent recruiting schemes because they will be able to verify whether a recruiter is in fact recruiting for legitimate H–2A job opportunities in the United States. A list of foreign labor recruiters also will enhance transparency and aid enforcement by facilitating information sharing between the Departments and the public, and assist OFLC, other agencies, workers, and community and worker advocates to better understand the roles of recruiters and their agents in the recruitment chain, while permitting a closer examination of applications or certifications involving recruiters who may be engaged in improper behavior. Information about the identity of the international and domestic recruiters of foreign labor will also assist the Department in more appropriately directing its audits and investigations. For example, in the course of its enforcement, WHD sometimes reviews allegations from H–2A workers that they have been charged recruitment fees. Those workers, however, are frequently unaware of the contractual arrangements between the individuals alleged to have charged those fees and the recruitment agencies for which they may serve as sub-agents or sub-recruiters, and may only know the names, partial names, or nicknames of such individuals. This information would improve WHD's ability to identify individuals charging fees, connect such individuals' relationships with recruitment agencies contracted by the employer, determine whether all entities had contractually prohibited cost-shifting as required under 20 CFR 655.135(k), and hold the appropriate parties responsible. Such information would also improve WHD's ability to plan enforcement actions if, for example, a sub-recruiter working for multiple agencies or serving multiple employers is found, as a matter of practice, to be charging prohibited fees or otherwise engaging in conduct in violation of the requirements of the H–2A program. Finally, enhancing tools to strengthen enforcement of the prohibition on the collection of prohibited fees and other recruitment abuses also ensures that employers who comply with the H–2A program requirements are not disadvantaged by the actions of unscrupulous employers, such as those who pass recruitment fees on to workers.

Additionally, the proposed regulatory text includes a provision stating that the ''Department may share the foreign worker recruitment information it receives from employers with any other Federal agency, as appropriate for investigative or enforcement purpose, as set forth in § 655.130(f).'' The Department is considering making further revision to this regulation to allow the Department to share the foreign worker recruitment information it receives with the foreign government that has territorial jurisdiction over the recruiter for investigative or enforcement purpose. Under such a proposal, for example, if the Department discovers that a specific foreign labor recruiter's contracts allow for the illegal collection of recruitment fees, the Department may refer that foreign labor recruiter to its own government so that its government may take any appropriate investigative or enforcement action. As discussed above with regard to disclosure of information by recruiters generally, the Department believes sharing this information where appropriate would not only increase transparency throughout the international recruitment chain, but also help hold accountable those foreign labor recruiters who engage in improper conduct.

The Department requests comment on whether to allow the sharing of recruitment information, including the contracts and agreements between agents and/or recruiters and employers, with foreign governments that have territorial jurisdiction over the agent or recruiter at issue for investigative or enforcement purpose. In particular, the Department is interested in public comment on the potential benefits of sharing this information, and the scope of the content that should be shared—for example, whether it should just be a referral of the names of certain recruiters for investigative or enforcement purposes, or entire contracts between recruiters and employers. In addition, because there is no mandated template for contracts between recruiters and employers—though there is some mandated language—the Department seeks comment on whether confidential business information is often included in these contracts, and whether there are concerns with disclosing the information or contracts to foreign governments. Comments explaining what typically may be found in these types of contracts would assist the Department in determining whether to make further revisions to allow the sharing of foreign worker recruitment information with foreign governments and what safeguards might need to be in place.

The Department believes the proposed disclosure requirements will increase transparency in the international recruitment chain, aid the Department in enforcement, and better protect foreign workers. The Department is soliciting public comments on its proposals and encourages commenters to provide suggestions for ways the Department can use this rulemaking to most effectively prevent worker exploitation and abuse during the international recruitment process, and ways the Department can use this rulemaking to better protect vulnerable agricultural workers from predatory recruiters.

D. Labor Certification Determinations

1. Section 655.167, Document Retention Requirements of H–2A Employers

The Department proposes a technical change to § 655.167(c)(6) to update this paragraph's outdated cross-reference to the regulatory citation for the definition of ''work contract.'' The Department proposes another technical change to

§ 655.167(c)(7) to add ''to'' before ''DHS.'' As discussed above, the Department proposes a new record retention paragraph at § 655.167(c)(8) that would require the employer to maintain the foreign worker recruitment information required by § 655.137(a) and (b) for a period of 3 years, and a new § 655.167(c)(9) that would require the employer to retain the additional employment and job related information specified in § 655.130(a)(2) and (3) for the 3-year period specified in § 655.167(b). The Department also proposes new paragraphs at § 655.167(c)(10) and (11) to require records of progressive discipline and termination for cause, as discussed more fully in the preamble section corresponding with § 655.122(n). Finally, the Department also proposes a new paragraph (c)(12) that requires the employer to retain evidence demonstrating the employer complied with proposed § 655.175(b)(2)(i), which would require employers with an unforeseen minor start date delay to notify the SWA and each worker to be employed under the approved H–2A Application of the delay.

E. Post-Certification

1. Section 655.175, Post-Certification Changes to Applications for Temporary Employment Certification

The Department proposes a new provision at § 655.175 that will address an employer's obligations in the event of a post-certification delay in the start of work more clearly and consistently with the Department's proposals for start date delay procedures at § 653.501(c). The Department's regulations currently conflate pre-certification requests to make minor amendments to the period of employment before the CO issues a final determination and post-certification requests for the CO's approval of a delay in the start date caused by unforeseeable circumstances; both types of requests are currently addressed in the pre-determination section of subpart B at § 655.145(b). For clarity, the Department proposes to separate the two types of requests and relocate the component of § 655.145(b) that addresses post-certification delays in the start of work from current § 655.145(b) to the new proposed provision at § 655.175. Consistent with the type of situations covered by proposed § 655.175, the new provision is included in the section of the regulations that addresses post-certification activities.

The Department proposes only minor conforming changes to the procedure in current § 655.145(b) that an employer must follow to request a minor amendment to the period of employment during the processing of the H–2A Application. These changes are intended to clarify the existing procedure for such amendments, and to better distinguish that procedure from the procedure an employer must follow if, after certification, it seeks to delay the start of work for reasons that the employer could not have foreseen. Currently, § 655.145(b) addresses both procedures and creates confusion with respect to the timeframes in which employers can request minor amendments. The Department proposes to revise the pre-determination amendments provision at § 655.145(b) so that it addresses only pre-determination amendments to the period of employment. To further distinguish the topics, the Department retains the term ''amendment'' in § 655.145(b) and uses the terms ''delay'' in § 655.175 and clarifies that post-certification changes are not permitted unless specified in this subpart (*e.g.,* post-certification extensions continue to be permitted under § 655.170; a contract may be shortened by CO-approved mutual agreement under § 655.122(i)(1)(ii)).

As under the current rule, the new § 655.175 would permit delays in the start of work only when such a delay is minor and due to unforeseen circumstances and the employer's crops or commodities will be in jeopardy prior to expiration of an additional recruitment period. The Department proposes to define a ''minor'' delay in the start date as a delay of 14 calendar days or fewer, which eliminates ambiguity in the current text and aligns this provision with the conceptually similar provision at § 655.170(a), which limits ''short-term'' extensions to 2 weeks and does not require CO approval. As is the case for non-minor delays under the current rule, where the anticipated delay would be more than 2 weeks or indefinite and cannot be considered ''minor,'' the employer may withdraw the application and refile, using emergency processing under § 655.134, as applicable, to engage in recruitment for the job opportunity, which will begin on a newly identified start date. If the employer cannot employ workers under the terms and conditions promised beginning on the certified start date and can only offer a fraction of the work hours in the 2 weeks following the certified start date (*e.g.,* the employer can offer only a single day of work, followed by several days without work or a similar offer of only minimal hours upon the worker's arrival, followed by an extended rest period), the Department will consider the employer's start date delayed and the employer will be required to comply with proposed § 655.175(b), including all housing, subsistence, and compensation obligations and the proposed obligation to provide notice of the delay to workers and the SWA, as explained below.

Consistent with proposed § 653.501(c) and current § 655.170(a), proposed § 655.175 would not require the employer to submit a delay request to OFLC for CO approval. Instead, in the event of a minor delay (no more than 14 calendar days), proposed § 655.175(b)(2)(i) would require the employer to notify the SWA and each worker to be employed under the approved H–2A Application of the delay at least 10 business days before the certified start date consistent with § 653.501(c), and proposed § 655.167(c)(12) would require the employer to retain evidence it provided this notice to each worker and to the SWA. As noted in the preamble explaining changes to § 653.501(c), employers are in the best position to contact and notify workers of changes to the date of need because the employer has already contracted to employ the workers and should have up-to-date contact information for each worker. The proposed notice obligation, together with the proposed definition of ''minor delay'' and the current and proposed obligations discussed below, will strike an appropriate balance between the employer's need to respond to unforeseen exigent circumstances and the needs of agricultural workers to be apprised of changes to the terms and conditions of the job opportunity and compensated in accordance with the terms of employment the workers accepted.

Proposed paragraph (b)(1) modifies the requirements in current § 655.145(b) with respect to the employer's subsistence obligations to workers in the event of a minor delay in the start of work. Specifically, paragraph (b)(1) requires employers with a minor start date delay to provide to all workers who are already traveling to the place of employment, upon their arrival and without cost to the workers until work commences, except for days for which the worker receives compensation under proposed paragraph (b)(2)(ii), daily subsistence in the same amount required during travel under 20 CFR 655.122(h)(1).[89] The employer must

[89] The employer also would remain responsible for compliance with the distinct and existing

Continued

fulfill this subsistence obligation to the worker no later than the first date the worker would have been paid had they begun employment on time. Proposed § 655.175(b)(1) also would remind employers that, even in the event of a minor delay in the start of work, the employer must continue to comply with all other requirements under the certified H–2A Application, including but not limited to the provision of housing as described in the job order.

Proposed paragraph (b)(2)(ii) includes new compensation obligations in circumstances where the employer delays the start of work and fails to provide adequate notice of the delay to workers, similar to the existing provisions at § 653.501(c) and consistent with changes proposed to that section, explained above. Currently, an employer who seeks to delay the start date after certification is subject to the Wagner-Peyser Act provisions at § 653.501(c), which describe the process for providing notice to workers placed on the clearance order in the event of a delayed start date and an employer's obligations under the work contract in those circumstances. The Department's proposals related to § 653.501(c), including situations in which the start date is delayed, are discussed in greater detail above, in the preamble section dedicated to discussion of proposed changes to those provisions. Proposed § 655.175 retains the employer obligations currently provided under § 655.145(b) and these obligations continue to apply both to employers who notify the SWA and workers as required in § 653.501(c) and those who do not comply with that notice requirement.

For the same reasons described in detail in the preamble discussing proposed changes to delayed start date obligations at § 653.501(c), the Department proposes to require employers to provide to each worker to be employed under the approved H–2A Application the applicable wage rate for each hour of the offered work schedule in the job order, for each day that work is delayed, for a period up to 14 calendar days, starting with the certified start date, if the employer fails to provide adequate notice of the delay. Under proposed § 655.175(b)(2)(ii), the employer's wage obligation would apply in any case where the employer fails to provide notice of the delayed start of work at least 10 business days prior to the certified start date. This obligation would apply in conjunction with the three-fourths guarantee at § 655.122(i), which would continue to require employers to guarantee to offer workers employment for a total number of work hours equal to at least three-fourths of the workdays of the total period, beginning with the first workday after the arrival of the worker at the place of employment or the advertised contractual first date of need, whichever is later. However, under proposed § 655.175(b)(2)(iii), compensation paid to a worker under proposed paragraph (b)(2)(ii) of this section for any workday included within the time period described in § 655.122(i) would be considered hours offered to the worker when determining an employer's compliance with the § 655.122(i) three-fourths guarantee obligation. As proposed, an employer would be permitted to reduce the compensation owed to any worker(s) under proposed § 655.175(b)(2)(ii) by the amount of wages paid to the worker(s) for work performed within the time period described in proposed § 655.175(b)(2)(ii), insofar as such wages are paid timely and such work is otherwise authorized by law. Wages for unauthorized work, including work performed by H–2A workers outside the location or duties certified in the job order, may not be credited. The Department believes this proposal will effectively address the hardship concern (discussed above in the preamble section regarding § 653.501(c)) by providing workers a source of income should the employer fail to provide such workers sufficient notice of a delay in the start of work, while continuing to allow the employer flexibility to delay the start of work for up to 14 calendar days if necessitated by circumstances that could not have been foreseen and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period.

Proposed § 655.175 and the proposed compensation obligations in situations where workers are not notified of a start date delay will better protect agricultural workers from financial hardship they are likely to experience should they travel or otherwise rely on the information included in the job order, only to discover upon arriving that work is not available to them. As workers' rights advocacy organization and SWA commenters noted during prior rulemaking, delayed start dates are harmful to workers, who value predictability and certainty in employment start dates, particularly where they turn down other work or must travel far to make themselves available to work at the time and place advertised in the job order. In addition, these commenters noted that farmworkers have expenses beyond housing and meals and cannot afford to lose expected pay for up to 2 weeks, should the actual start date be later than the first date of need offered. The Department has determined the housing and subsistence obligations in current § 655.145(b) (proposed § 655.175(b)(2)(i)) and the existing three-fourths guarantee at § 655.122(i) are not sufficient to fully protect workers from the financial hardships associated with a delayed start date of work when such delays are not adequately communicated to the worker, particularly if a worker is required to travel a great distance to accept the job. The beginning of the certification period is a particularly vulnerable time for workers, who may have little or no savings as they await a first paycheck; delays in the start of work and resulting first paycheck exacerbate this vulnerability and can lead to financial hardships. Providing up to 2 weeks of wages, due at the time workers anticipate receiving their first paycheck had the work begun on time, provides a safety net for workers to support themselves when work is not available. Imposing these pay obligations in the event workers are not notified of a delayed start of work also may help to ensure growers accurately disclose the first date of need in the job order. The proposed changes also will increase the likelihood that workers will receive timely notification of any delay in the start of work and that employers maintain accurate records of notices they provide. Sanctions and remedies for an employer's failure to comply with the notice or compensation obligations required under proposed § 655.175 may include, as appropriate, the recovery of such compensation, the assessment of civil money penalties, revocation of the approved certification under § 655.181, and, if warranted, debarment of the employer under § 655.182.

The Department invites comment on all aspects of these proposed changes, including the proposed relocation of the provision addressing post-certification delays to a new provision at § 655.175 in the post-certification section of the rule and the proposed compensation provision applicable to all H–2A workers, recruited U.S. workers, and workers in corresponding employment who expected employment under the job order to begin on the certified start date, similar to current and proposed § 653.501(c)(5). Commenters are encouraged to provide input on the proposal to require notice to each worker and the SWA, rather than the

inbound travel and subsistence obligations at 20 CFR 655.121(h)(1).

CO, consistent with proposed changes to § 653.501(c); the proposed definition of ''minor delay'' at 14 calendar days and whether the final rule should require the employer to fulfill the obligations at § 655.175(b) in any case where it cannot offer full time work as specified in the job order for the 14-calendar-day period beginning on the certified start date (as opposed to solely when the employer fails to provide 10 days of notice, as proposed here); and the proposal to permit the employer to credit compensation paid under proposed § 655.175(b)(2)(ii) toward the employer's three-fourths guarantee obligation.

F. Integrity Measures

1. Section 655.182, Debarment

a. The Department Proposes Revisions to 20 CFR 655.182 To Shorten Appeal Times for Debarment Matters, and Shorten the Time To Submit Rebuttal Evidence to OFLC

To help protect and uphold program integrity, and to further protect workers in the United States, the Department proposes to increase the speed with which debarments become effective by decreasing the time for parties to submit rebuttal evidence to OFLC, the time for parties to appeal Notices of Debarment to the OALJ, and the time for parties to appeal debarment decisions to the ARB from the OALJ. Reducing these timeframes will lead to faster final agency adjudications which will more efficiently prevent H–2A program violators from accessing this program. As a result of a more expedited debarment process, workers will be protected from further harm.

b. OFLC Debarment Actions

The Department proposes to amend § 655.182(f)(1) and (2) by reducing the period to file rebuttal evidence or request a hearing of a Notice of Debarment from 30 calendar days to 14 calendar days. If the party receiving a Notice of Debarment does not file rebuttal evidence or request a hearing, the Notice of Debarment will take effect at the end of the 14-calendar-day period unless the party has requested, and the Administrator has granted, an extension of time to submit rebuttal evidence. Extensions of time may be granted only in limited circumstances as discussed further below.

This proposed change aligns with the timeframe provided in the Department's 2008 H–2A Final Rule. 73 FR 77110 (Dec. 18, 2008). The 2008 H–2A Final Rule provided 14 calendar days for parties to submit rebuttal evidence in response to a Notice of Intent to Debar, and if the party's rebuttal did not persuade the Administrator to terminate debarment proceedings, provided an additional 30-calendar-day period to appeal the Administrator's post-rebuttal Notice of Debarment. *Id.* at 77228. In the preamble to that rule, the Department stated, ''[g]iven the severity of debarment and revocation, the short timeframes set forth in . . . [the 'Administrative review and de novo hearing before an administrative law judge' section] are neither necessary nor appropriate for these types of determinations.'' *Id.* at 77184. At the time, 14 calendar days—twice as long as the 7-calendar-day timeframe permitted to appeal a denied application—was deemed a sufficient timeframe to submit evidence in rebuttal both in debarment and revocation procedures. *Id.* at 77187.

Subsequently, in a 2009 NPRM, the Department proposed to eliminate the ''Notice of Intent to Debar'' and the opportunity to submit rebuttal evidence. 74 FR 45906, 45923 (Sept. 4, 2009). The Department ultimately decided not to eliminate the option to submit rebuttal evidence after considering comments that expressed concerns about due process. 75 FR 6884, 6938 (Feb. 12, 2010). In the final rule, the Department restored the option to submit rebuttal evidence, with a simultaneous option to appeal, but adopted a 30-calendar-day timeframe instead of the prior rule's 14-calendar-day period for submission of rebuttal evidence. The Department did not explicitly state that 30 calendar days was more appropriate than 14 calendar days or otherwise explain why it now considered 30 calendar days an appropriate timeframe for submitting rebuttal evidence in a debarment proceeding. *Id.* at 6938. The 2010 H–2A Final Rule noted that it had intended in the corresponding NPRM to propose changes to the OFLC debarment procedures to ensure ''that the procedures [were] consistent with the WHD debarment procedures,'' which, at the time, allowed for 30 days to appeal. 74 FR 45923, 45963; 75 FR 6938. It also noted that the opportunity for parties to provide rebuttal evidence is ''better suited to the method of OFLC investigations'' and parallels OFLC revocation procedure, without addressing the now-different timeframes for submitting rebuttal evidence in a revocation proceeding (*i.e.,* 14 days) and in a debarment proceeding (*i.e.,* 30 days). 75 FR 6938. While the Department continues to believe the ability to submit rebuttal evidence is necessary, it does not consider the 30-calendar-day timeframe appropriate for either OFLC or WHD debarment actions.

The benefits to expediting the debarment procedures and more quickly removing violating parties from the program far outweigh the limited benefits of providing 30 calendar days for rebuttal or appeal. Not only does more quickly removing violating parties from the program better protect workers, but it also reduces the time the debarred parties spend awaiting a final order regarding their status. In addition, reducing the period of time better aligns with the timeframe available to submit rebuttal evidence under OFLC's revocation procedure (*i.e.,* 14 days). As both revocation and debarment serve similar purposes—to protect workers—the Department has determined that it is appropriate to align the two rebuttal periods. The increased use of electronic recordkeeping, as well as the ability to submit documentation via email, means that the shortened 14-calendar-day timeframe to submit rebuttal documentation should not be overly burdensome.

Nevertheless, to continue to ensure due process for parties and to allow adequate time to establish a record, the Department proposes permitting parties to request an extension of time to submit rebuttal evidence in a new regulatory provision at § 655.182(f)(2). The option to request an extension of time to submit rebuttal evidence would be available to a party who shows good and substantial cause necessitating additional time. The proposal would require the request to be made in writing, with detailed information and supporting documentation, and to be received by the OFLC Administrator within 14 calendar days of the date the Notice of Debarment was issued. If the OFLC Administrator determines that the party has established good and substantial cause, the Administrator could grant one extension of time to submit rebuttal evidence. As specified in proposed paragraph (f)(2)(iii), good and substantial cause may include, but is not limited to, health-related emergencies, catastrophic fire- or weather-related incidents, or other similar conditions that are wholly outside the party's control and hinder a party's ability to respond in a timely manner. Should the OFLC Administrator deny the one-time extension request, such denial is not appealable.

In addition, for the reasons stated above, the Department also proposes to shorten the timeframes to appeal the OFLC Administrator's Notice of Debarment, in lieu of submitting rebuttal evidence; to appeal the OFLC Administrator's final determination, after review of rebuttal evidence; and for

all parties to request review by the ARB from 30 days to 14 calendar days in § 655.182(f)(1), (2), and (3) and (f)(5)(i). The Department's proposal would not permit a party to request an extension of time to appeal the OFLC Administrator's Notice of Debarment. A party need only submit a written request for review to appeal a debarment decision to an ALJ; they are not required to gather or provide additional records (as they would to submit a rebuttal), or to draft a full legal brief, and therefore the request itself should not be burdensome. Shortening the time to request review by the ARB to 14 calendar days should also not be burdensome for the same reasons.

As described fully in the discussion of section 29 CFR 501.20, the Department proposes conforming revisions to WHD's regulations governing the timeframe to appeal WHD determinations involving debarment as well.

The Department welcomes comments on this proposal, including specific examples of how the proposed changes may affect the regulated community.

V. Discussion of Proposed Revisions to 29 CFR Part 501

The Department proposes revisions to the regulations at 29 CFR part 501, which set forth the responsibilities of WHD to enforce the legal, contractual, and regulatory obligations of employers under the H–2A program. The Department proposes these amendments concurrent with and to complement the changes ETA proposes to its regulations in 20 CFR part 655, subpart B, governing the certification of temporary employment of nonimmigrant workers employed in temporary or seasonal agricultural employment. As with the proposed revisions to ETA's regulations, the proposed revisions to 29 CFR part 501 focus on strengthening protections for agricultural workers and enhancing the Department's capabilities to monitor program compliance and take necessary enforcement actions against program violators. The Department invites comments on all of these proposed revisions.

A. Section 501.3 Definitions

The Department proposes to add definitions of the terms *key service provider* and *labor organization* in § 501.3(a), to conform to the proposed addition of these terms to the definitions in 20 CFR 655.103(b) and for the reasons set forth in the discussion of proposed 20 CFR 655.135(h). The Department also proposes to remove the definition of the term *successor in interest* from § 501.3(a), to conform to and for the reasons described in the discussion of proposed 20 CFR 655.104. Finally, the Department proposes to add a new § 501.3(d), defining the term *single employer,* to conform to and for the reasons described in the discussion of proposed 20 CFR 655.103(e).

B. Section 501.4 Discrimination Prohibited

The Department proposes revisions to § 501.4(a) to conform to proposed changes to 20 CFR 655.135(h) that would expand and strengthen the Department's existing anti-retaliation provisions. The reasons for this proposal are described fully in the discussion of proposed 20 CFR 655.135(h). The Department does not propose any revisions to § 501.4(b) regarding WHD investigations and enforcement of § 501.4.

C. Section 501.10 Severability

As set forth in the discussion of proposed 20 CFR 655.190, the Department proposes a new § 501.10, that would explain that if any provision of 29 CFR part 501 is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of total invalidity or unenforceability, in which event the provision or sub-provision shall be severable from 29 CFR part 501 and shall not affect the remainder thereof.

The Department seeks comments both on the substance and scope of this proposed severability clause and requests the public's views on any other issues related to severability, such as whether the rule in general includes provisions amenable to severability; whether specific parts of the rule could operate independently; whether the benefits of the rule would continue to justify the costs should particular provisions be severed; or whether individual provisions are essential to the entire rule's workability.

D. Sections 501.20, 501.33, 501.42 Debarment and Revocation

The Department proposes revisions to WHD's regulations at §§ 501.20, 501.33, and 501.42, with respect to debarment, to maintain consistency with and implement various proposed changes to ETA's debarment regulation at 20 CFR 655.182. These proposed changes are described briefly here, and described fully in the section-by-section analysis of 20 CFR part 655, subpart B.

1. Successors in Interest

The Department proposes revisions to existing § 501.20(a) and (b) to conform to proposed 20 CFR 655.104 and 655.182 regarding the effect of debarment on successors in interest. As explained fully in the discussion of proposed 20 CFR 655.104, any WHD debarment of an employer, agent, or attorney applies to any successor in interest to that debarred entity, and under this proposed rule, WHD need not issue a new notice of debarment to a successor in interest to a debarred employer, agent, or attorney. However, as reflected in proposed new paragraph § 501.20(j), WHD would be permitted, but not required, to identify any known successor(s) in interest in a notice of debarment issued to an employer, agent, or attorney.

2. Passport Withholding

The Department proposes a conforming revision to § 501.20(d)(1)(viii) to include within the definition of a violation, for purposes of debarment, a violation of the proposed prohibition on passport withholding at 20 CFR 655.135(o), as described fully in the discussion of proposed 20 CFR 655.135(o).

3. Timeline To Appeal WHD Debarment Determinations

For consistency with and conformance to the Department's proposal under 20 CFR 655.182 to expedite debarment processing, the Department proposes to shorten the timeframe to appeal any WHD determination seeking debarment from 30 calendar days to 14 calendar days as well. Any determination seeking a debarment, including for example, determinations which also include civil money penalties, would be subject to the shortened timeframe. Determinations by the WHD Administrator that *do not* include debarment, but only include, for example, an assessment of civil money penalties or the payment of back wages, would retain a 30-calendar-day timeframe for appeal.

In shortening the appeal timeframes for matters involving debarments, the Department seeks to bolster program integrity and help protect workers from further harm. Debarment is a remedy for a substantial violation of the program and if a determination has been made that this is appropriate, then it is also appropriate to expedite the process by which a party is ultimately prohibited from using the program. If the WHD Administrator has determined in a particular case that debarment is *not*

necessary, then the original timeframe of 30 calendar days to appeal will apply.

Specifically, under proposed § 501.20(e), the debarment would take effect 14 calendar days from the Notice of Debarment, unless a request for review is properly filed within 14 calendar days of the Notice of Debarment.

Under proposed § 501.33, the regulatory text in current paragraph (a) would be redesignated to paragraph (a)(1) and amended to note that the 30-calendar-day timeframe would apply when seeking review of a WHD determination, except for those determinations involving debarment. A newly added paragraph (a)(2) would state clearly that any person desiring review of a WHD determination involving debarment shall make their written request no later than 14 calendar days after the date of the notice referred to in § 501.32.

Finally, under proposed § 501.42, the regulatory text in paragraph (a) would be revised to clarify that a decision of an ALJ *not* involving debarment would still require appeal to the ARB within 30 calendar days, while newly added text would state that any decision involving debarment would be required to be appealed to the ARB within 14 calendar days. The Department proposes further conforming edits to these sections.

The Department is also considering whether the timeframe to appeal all determinations in this subpart, not only those involving debarments, should be shortened from 30 to 14 calendar days. In particular, the Department is concerned that different timeframes to appeal different types of determinations (*i.e.,* 30 days to appeal a determination assessing civil money penalties, but not debarment, versus 14 days to appeal a determination assessing civil money penalties *and* debarment) may result in confusion and employers missing appeal deadlines. The Department also believes that a shortened appeal timeframe of 14 calendar days may better ensure that back wages are paid timely to workers, and that 14 calendar days may be sufficient to appeal any determination, not only those determinations involving debarment. The Department seeks comment as to whether the shortened timeframe of 14 calendar days should apply to all determinations of the WHD Administrator, not simply those determinations involving debarment.

E. Section 501.33 Request for Hearing

The Department proposes revisions to § 501.33(b), governing the contents of a request for review of a WHD determination before the OALJ, to make explicit that issues not raised for review in such requests would be deemed waived. The Department's current regulations make explicit that administrative exhaustion is required before a party may seek judicial review, and that the party requesting a hearing before the OALJ must ''[s]pecify the issue or issues stated in the notice of determination giving rise to such request'' and ''[s]tate the specific reason or reasons why the person requesting the hearing believes such determination is in error.'' 29 CFR 501.33(b)(2) and (3). Despite these provisions, parties frequently attempt to raise new issues on appeal, whether before the OALJ, the ARB, or a Federal court, that were not raised in the party's request for a hearing. However, under relevant case law, issue exhaustion requirements are applicable and appropriate under the H–2A administrative review procedures. *See, Sun Valley Orchards,* 2021 WL 2407468, at *7; *Sandra Lee Bart,* ARB No. 2018–0004, slip op. at 6–7 (ARB Sept. 22, 2020); *see also Carr* v. *Saul,* 141 S. Ct. 1352, 1358 (2021) (''Typically, issue-exhaustion rules are creatures of statute or regulation'' but where the ''regulations are silent, . . . courts decide whether to require issue exhaustion based on an analogy to the rule that appellate courts will not consider arguments not raised before trial courts.'') (quotation omitted).

Without explicit regulatory text codifying that issue exhaustion applies, courts and the Department may be required to expend significant resources considering or defending against issues that are ultimately deemed to have been waived. Similarly, parties have asserted that they lacked notice that issues not raised in a request for hearing before the OALJ may be deemed waived. The Department thus proposes an explicit issue exhaustion provision that will better inform parties of the potential consequences of failing to raise an issue in requests for review of a WHD determination (*i.e.,* that issues not included cannot be raised later in the ALJ proceedings or on review of any ALJ decision before the ARB or in Federal court), as well as better preserve agency and judicial resources.

Accordingly, the Department proposes to revise § 501.33(b)(2) to make clear that any issue not raised in a party's request for a hearing before the OALJ ordinarily will be deemed waived in any further proceedings. The proposed language is modeled on similar provisions in OSHA's whistleblower regulations governing the procedures for administrative review of OSHA's findings in those contexts. *See, e.g.,* 29 CFR 1982.110(a). As OSHA has explained, including such a requirement in the Department's regulations is intended to provide clear and timely notice to all parties that issue exhaustion may apply, thus alerting the parties to the need to raise any and all issues and objections before the agency to preserve them for further review. *See, e.g.,* 80 FR 69115, 69128 (Nov. 9, 2015). The Department welcomes comments on this proposal.

VI. Administrative Information

A. Executive Order 12866: Regulatory Planning and Review; Executive Order 14094: Modernizing Regulatory Review; and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive order and review by OMB. 58 FR 51735 (Oct. 4, 1993). Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) has an annual effect on the economy of $200 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. 88 FR 21879 (Apr. 11, 2023). This proposed rule is a significant regulatory action under section 3(f)(4) of Executive Order 12866, as amended by Executive Order 14094.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. 76 FR 3821 (Jan. 21, 2011). Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss

qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. *Id.*

Outline of the Analysis

Section VI.A.1 describes the need for the proposed rule, and section VI.A.2 describes the process used to estimate the costs of the rule and the general inputs used, such as wages and number of affected entities. Section VI.A.3 explains how the provisions of the proposed rule would result in quantified costs and transfer payments, and presents the calculations the Department used to estimate them. In addition, section VI.A.3 describes the unquantified transfer payments and unquantified cost savings of the proposed rule, and a description of qualitative benefits. Section VI.A.4 summarizes the estimated first-year and 10-year total and annualized costs and transfer payments of the proposed rule. Finally, section VI.A.5 describes the regulatory alternatives that were considered during the development of the proposed rule.

Summary of the Analysis

The Department estimates that the proposed rule would result in costs and transfer payments. As shown in Exhibit 1, the proposed rule is expected to have an annualized cost of $2.03 million and a total 10-year quantifiable cost of $14.24 million, each at a discount rate of 7 percent.[90] The proposed rule is estimated to result in annual transfer payments from H–2A employers to H–2A employees of $12.81 million and total 10-year transfer payments of $89.95 million at a discount rate of 7 percent.[91]

EXHIBIT 1—ESTIMATED MONETIZED COSTS AND TRANSFER PAYMENTS OF THE PROPOSED RULE

[2021 $millions]

	Costs	Transfer payments
Undiscounted 10-Year Total	$19.51	$123.83
10-Year Total with a Discount Rate of 3%	16.92	107.19
10-Year Total with a Discount Rate of 7%	14.24	89.95
10-Year Average	1.95	12.38
Annualized at a Discount Rate of 3%	1.98	12.57
Annualized with at a Discount Rate of 7%	2.03	12.81

The total cost of the proposed rule is associated with rule familiarization, worker contact information, and application additions. Transfer payments are the results of the elimination of the 2-week delay in effectiveness of the AEWR after publication. See the costs and transfer payments subsections of section VI.A.3 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department was unable to quantify some costs, transfer payments, cost savings, and benefits of the proposed rule. Unquantified transfer payments include compensation to workers under proposed § 655.175(b)(2)(ii) in cases where the start date is delayed without sufficient notice and clarifying that piece rate should be included in the prevailing wage determination. Unquantified cost-savings include the Department's ability to deny labor certification applications filed by or on behalf of successors in interest to debarred employers, agents, or attorneys. Unquantified benefits include better protection from inappropriate termination, protection for worker advocacy, reduction in risk of injury during employer-sponsored transportation, reduction in improper holding of passports or other immigration documents and enhanced integrity and enforcement. The Department describes them qualitatively in section VI.A.3 (Subject-by-Subject Analysis). The Department seeks public comments and inputs on all aspects of the economic analysis presented here. In addition, the Department requests public inputs about this rule's impact on labor costs and production of agricultural products.

1. Need for Regulation

The Department proposes provisions in this NPRM that will strengthen protections for agricultural workers and enhance the Department's enforcement capabilities against fraud and program violations. The Department has determined the proposed revisions will help prevent exploitation and abuse of agricultural workers and ensure that unscrupulous employers do not gain from their violations or contribute to economic and workforce instability by circumventing the law. It is the policy of the Department to maintain robust protections for workers and vigorously enforce all laws within its jurisdiction governing the administration and enforcement of nonimmigrant visa programs. The Department has determined through program experience, recent litigation, challenges in enforcement, comments on prior rulemaking, and reports from various workers' rights advocacy organizations that the proposals in this NPRM are necessary to strengthen protections for agricultural workers, ensure that employers, agents, attorneys, and labor recruiters comply with the law, and enhance the Department's ability to monitor compliance and investigate and pursue remedies from program violators.

The proposed rule aims to address some of the comments that were beyond the scope of the 2022 H–2A Final Rule and concerns expressed by workers' rights advocacy groups, labor unions, and organizations that combat human trafficking. It also seeks to respond to recent court decisions and program experience indicating a need to enhance the Department's ability to enforce regulations related to foreign labor recruitment, and to improve accountability for successors-in-interest and employers who use various methods to attempt to evade the law and regulatory requirements, and to enhance worker protections for a vulnerable workforce, as explained further in the section-by-section analysis above.

The Department can use this rulemaking to better protect the rights and liberties, health and safety, and wages and working conditions of agricultural workers and best safeguard the integrity of the H–2A program, while continuing to ensure that

[90] The proposed rule would have an annualized cost of $1.98 million and a total 10-year cost of $16.92 million at a discount rate of 3 percent in 2021 dollars.

[91] The proposed rule would have annualized transfer payments from H–2A employers to H–2A employees of $12.57 million and a total 10-year transfer payments of $107.19 million at a discount rate of 3 percent in 2021 dollars.

responsible employers have access to willing and available agricultural workers and are not unfairly disadvantaged by employers that exploit workers and attempt to evade the law.

2. Analysis Considerations

The Department estimated the costs and transfer payments of the proposed rule relative to the existing baseline (*i.e.,* the current practices for complying, at a minimum, with the H–2A program as currently codified at 20 CFR part 655, subpart B, and 29 CFR part 501).

In accordance with the regulatory analysis guidance articulated in OMB's Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the proposed rule (*i.e.,* costs, benefits, and transfer payments that accrue to entities affected). The analysis covers 10 years (from 2024 through 2033) to ensure it captures major costs, benefits, and transfer payments that accrue over time. The Department expresses all quantifiable impacts in 2021 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A–4.

Exhibit 2 presents the number of affected entities that are expected to be impacted by the proposed rule.[92] The average number of affected entities is calculated using OFLC certification data from 2016 through 2021. The Department provides this estimate and uses it to estimate the costs of the proposed rule.

EXHIBIT 2—NUMBER OF UNIQUE EMPLOYERS BY TYPE

Fiscal year (FY)	Number
2016	6,713
2017	7,187
2018	7,902
2019	8,391
2020	7,785
2021	9,442
Average	7,903

a. Growth Rate

The Department estimated growth rates for certified H–2A workers based on FY 2012–2021 H–2A program data, presented in Exhibit 3.

EXHIBIT 3—HISTORICAL H–2A PROGRAM DATA

FY	Workers certified
2012	85,248
2013	98,814
2014	116,689
2015	139,725
2016	165,741
2017	199,924
2018	242,853
2019	258,446
2020	275,430
2021	317,619

The geometric growth rate for certified H–2A workers using the program data in Exhibit 3 is calculated as 17.9 percent. This growth rate, applied to the analysis timeframe of 2024 to 2033, would result in more H–2A certified workers than projected employment of workers in the relevant H–2A SOC codes by BLS.[93] Therefore, to estimate realistic growth rates for the analysis, the Department applied an autoregressive integrated moving average (ARIMA) model to the FY 2012–2021 H–2A program data to forecast workers and unique employers, and estimated geometric growth rates based on the forecasted data. The Department conducted multiple ARIMA models on each set of data and used common goodness of fit measures to determine how well each ARIMA model fit the data.[94] Multiple models yielded indistinctive measures of goodness of fit. Therefore, each model was used to project workers and unique employers through 2033. Then, a geometric growth rate was calculated using the forecasted data from each model and an average was taken across each model. This resulted in an estimated growth rate of 6.3 percent for H–2A certified workers.

To estimate the growth rate for unique employers, the Department uses FY 2016–FY 2021 data on unique employers. The use of FY 2016 as the first year is chosen due to data availability on calculated unique employers. The Department calculates a compound annual growth rate based on FY 2016 unique employers (6,713) and the FY 2021 unique employers (9,442). The result is an estimate of 7.1 percent annual growth rate.[95]

The estimated annual growth rates for unique employers (7.1 percent) and workers (6.3 percent) were applied to the estimated costs and transfers of the proposed rule to forecast participation in the H–2A program.[96]

b. Compensation Rates

In section VI.A.3 (Subject-by-Subject Analysis), the Department presents the costs, including labor, associated with the implementation of the provisions of the proposed rule. Exhibit 4 presents the hourly compensation rates for the occupational categories expected to experience a change in the number of hours necessary to comply with the proposed rule. The Department used the mean hourly wage rate for private sector human resources (HR) specialists (SOC code 13–1071).[97] Wage rates are adjusted to reflect total compensation, which includes nonwage factors such as overhead and fringe benefits (*e.g.,* health and retirement benefits). We use an overhead rate of 17 percent [98] and a fringe benefits rate based on the ratio of average total compensation to average wages and salaries in 2021. For the private sector employees, we use a fringe benefits rate of 42 percent.[99] For State and local employees, we use a fringe benefits rate of 62 percent.[100] We then multiply the loaded wage factor by the wage rate to calculate an hourly compensation rate. The Department used the hourly compensation rates presented in Exhibit 4 throughout this analysis to estimate the labor costs for each provision.

[92] *Performance Data,* U.S. Dep't of Lab., *https://www.dol.gov/agencies/eta/foreign-labor/performance.*

[93] Comparing BLS 2030 projections for combined agricultural workers (SOC 45–2000) with a 17.9 percent growth rate of H–2A workers yields estimated H–2A workers that are about 127 percent greater than BLS 2030 projections. The projected workers for the agricultural sector were obtained from BLS's Occupational Projections and Worker Characteristics, which may be accessed at *https://www.bls.gov/emp/tables/occupational-projections-and-characteristics.htm.*

[94] The Department estimated models with different lags for autoregressive and moving averages, and orders of integration: ARIMA(0,2,0); (0,2,1); (0,2,2); (1,2,1); (1,2,2); (2,2,2). For each model we used the Akaike Information Criteria goodness of fit measure.

[95] Calculation: $7.1\% = (9{,}442 \div 6{,}713)^{(1 \div 5)} - 1$.

[96] Final forecasted estimates of H–2A employer participation: 8,464 in 2023, 9,065 in 2024, 9,708 in 2025, 10,398 in 2026, 11,136 in 2027, 11,927 in 2028, 12,774 in 2029, 13,681 in 2030, 14,652 in 2031, and 15,692 in 2032.

[97] *May 2021 National Occupational Employment and Wage Estimates: 13–1071—Human Resources Specialists,* Bureau of Lab. Stats., *https://www.bls.gov/oes/current/oes131071.htm.*

[98] Cody Rice, Wage Rates for Economic Analyses of the Toxics Release Inventory Program, U.S. Env't Prot. Agency (June 10, 2002), *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[99] *Employer Costs for Employee Compensation,* Bureau of Lab. Stats. (2021), *https://www.bls.gov/news.release/ecec.toc.htm.* Ratio of total compensation to wages and salaries for all private industry workers.

[100] *Employer Costs for Employee Compensation,* Bureau of Lab. Stats. (2022), *https://www.bls.gov/news.release/ecec.toc.htm.* Ratio of total compensation to wages and salaries for all State and local government workers.

EXHIBIT 4—COMPENSATION RATES

[2021 dollars]

Position	Grade level	Base hourly wage rate (a)	Loaded wage factor (b)	Overhead costs (c)	Hourly compensation rate d = a + b + c
Private Sector Employees					
HR Specialist	N/A	$34.00	$14.28 ($34.00 × 0.42)	$5.78 ($34.00 × 0.17)	$54.06
State Government Employees [101]					
Educational, guidance, and career counselors and advisors.	N/A	29.09	$18.01 ($29.09 × 0.619)	$4.95 ($29.09 × 0.17)	$52.05

3. Subject-by-Subject Analysis

The Department's analysis below covers the estimated costs, transfer payments, and qualitative benefits of the proposed rule. In accordance with Circular A–4, the Department considers transfer payments as payments from one group to another that do not affect total resources available to society. This proposed rule includes the cost of rule familiarization, application additions, and worker contact information, and transfer payments associated with the elimination of the 2-week delayed effective date of the AEWR.

a. Costs

The following section describes the quantified and unquantified costs of the proposed rule.

i. Quantified Costs

The following sections describes the quantified costs of rule familiarization, application addition, and worker contact information provisions of the proposed rule.

A. Rule Familiarization

When the proposed rule takes effect, H–2A employers will need to familiarize themselves with the new regulations. Consequently, this will impose a one-time cost in the first year. New employers in each subsequent year would need to familiarize themselves with current regulations regardless of this proposed rule.

To estimate the first-year cost of rule familiarization, the Department applied the growth rate of H–2A employers (7.1 percent) to the number of unique H–2A employers (7,903) to determine the number of unique H–2A applicants impacted in the first year. The number of unique H–2A employers (8,464) was multiplied by the estimated amount of time required to review the rule (1 hour). The Department requests public comments and inputs regarding this estimate. This number was then multiplied by the hourly compensation rate of HR specialists ($54.06 per hour). This calculation results in a one-time undiscounted cost of $457,570 in the first year after the proposed rule takes effect. The annualized cost over the 10-year period is $53,641 and $65,148 at discount rates of 3 and 7 percent, respectively.

B. Application Additions

Once the proposed rule takes effect, H–2A employers will need to fill out additional information on the H–2A Application (such as individual owners' names, home addresses, phone, date of birth, identifying information for all managers/labor supervisors; DBA information; identifying info for recruiters, including those the petitioner directly hires and all employees, contractors, agents, including the name and information for direct contacts to the workers; address for worker housing; and names/contact information of recruiters or hiring agents), which will impose a yearly cost as the additional time is required for every application for certification.

To estimate the yearly cost of the application additions, the Department applied the growth-rate of H–2A employers (7.1 percent) to the current number of unique certified H–2A employers (7,903) to determine the number of unique H–2A employers in the first year (8,464). The number of unique certified H–2A employers in the first year is then multiplied by the growth rate again to determine the number of unique certified H–2A employers in the second year. This process is repeated each year to determine the total number of unique certified H–2A employers every year during the study period. Since it is assumed that only a single HR specialist per employer will incur the additional time investment, the estimated total yearly cost can be estimated by multiplying the total number of unique certified H–2A employers (8,464) by the HR specialist hourly wage rate ($34.00 per hour), the loaded wage factor and the overhead rate for the private sector (1.59), and the estimated additional time taken to gather and enter the information on a yearly basis (2 hours on average). The Department requests public comments and inputs regarding this estimate. Lastly, this value is multiplied by the growth rate of unique employers (7.1 percent) to the nth power, with n being equal to the period year. The result is $915,140 in the first year, an undiscounted average cost over a 10-year period of $1,270,386, and discounted annualized costs of $1,286,884, and $1,308,447 at rates of 3 and 7 percent respectively.

C. Worker Contact Information

This provision of the proposed rule would require employers to provide worker contact information (a list of all H–2A workers and workers in corresponding employment employed at the place(s) of employment within the employer's application) to a requesting labor organization. Employers must make this disclosure upon the request of a labor organization, and must update the disclosure, again upon the request of the labor organization, up to one time per work contract period. The Department assumes that on average each employer will need to respond to requests from one labor organization and that responding to the initial request and one request for an updated list will take 1 hour each year. The Department requests public comments and inputs regarding this estimate.

To determine the total additional costs of this provision, the Department used the average number of unique

[101] As part of the discontinuation of services provision of the proposed rule, there will be changes to the number of field checks that will occur. The Department assumes that a single educational, guidance, and career counselor and advisor from the SWA will conduct the site visits.

certified H–2A employers (7,903) and applied the unique employer growth rate (7.1 percent) and assumed that the number of labor organizations that would request employee lists from each employer is one. The Department then multiplied the number of requests by the estimated time to respond to each request per year (1 hour). This number was then multiplied by the hourly compensation rate of an HR specialist ($34.00) and the loaded wage factor and the overhead rate for the private sector (1.59) to obtain the total cost of the worker contact information provision. This results in the estimated total cost for this provision in the first year of $457,570. This process is repeated each year resulting in an undiscounted average annual cost of $635,193 and discounted annualized costs of $643,442, and $654,223 at discount rates of 3 and 7 percent respectively. The Department seeks public comments and inputs on its assumptions on the number of labor organizations that would request employee lists from each H–2A employer and the estimated time to respond per year.

ii. Unquantified Costs

A. Transportation: Seat Belts for Drivers and Passengers

As part of the proposed rule, employers would have to ensure seat belts are provided for drivers and passengers in transportation vehicles, used to transport H–2A and corresponding workers, that were required by U.S. Department of Transportation regulations to be manufactured with seat belts. This could impose both a one time and annual cost to those employers who had previously, lawfully modified or removed seat belts in such vehicles and would be required to reinstall or retrofit seat belts to comply with the proposed rule through the cost of installing the necessary seat belts and the decreased fuel efficiency of transportation vehicles caused by the additional weight of the seat belts. The Department does not have data to estimate the number of seat belts to be retrofitted, or in the alternative vehicles that would need to be purchased, to provide seat belts for drivers and passengers in the above scenario. The Department seeks public comment on data and information that would support estimating this cost, including whether vehicle owners or users may lawfully modify or remove a seatbelt where the vehicle is required by DOT regulations to be manufactured with that seatbelt.

b. Unquantified Cost Savings

The following section describes the unquantified cost savings of the proposed rule.

i. Successors in Interest

Once the proposed rule takes effect, the Department would be able to deny labor certification applications filed by or on behalf of successors in interest to debarred employers, agents, or attorneys. Currently, the Department must first issue a separate notice of debarment to the successor in interest, and go through a lengthy administrative hearing and review process, before it may deny an application filed by or on behalf of a successor. The proposed rule would therefore result in cost savings from not having to go through the process to debar successors in interest but instead apply the predecessor's debarment to the successor. The Department lacks detailed data on the length of time necessary to enter a final order of debarment against successors under the current regulations, and the annual number of successor debarments and as a result is unable to accurately quantify this cost savings. The Department seeks public comment on data that would support estimating this cost savings.

c. Transfer Payments

The following section describes the transfer payments of the proposed rule.

i. Quantified Transfer Payments

This section discusses the quantifiable transfer payments related to revisions to the elimination of the 2-week effective date delay for AEWR publication. The Department considers transfers as payments from one group to another that do not affect total resources available to society. The transfers measured in this analysis are wage transfers from U.S. employers to H–2A workers. H–2A workers are migrant workers who will spend some of their earnings on consumption goods in the U.S. economy but likely send a large fraction of their earnings to their home countries.[102] Therefore, the Department considers the wage transfers in the analysis as transfer payments within the global economic system.

A. Elimination of the 2-Week Effective Date Delay for AEWR Publication

Currently, the Department publishes the AEWR as soon as data is available, typically in the middle of December. There is then a 2-week delay until the AEWR is effective, typically January 1st of the following year. Once the proposed rule takes effect, the 2-week delay until the AEWR is effective will be removed and the AEWR will be effective immediately. Therefore, employers that employ workers during the 2-week period from mid-December to early January will see a transfer to employees due to the elimination of the 2-week delay of wage increases from the AEWR publication.

To estimate the transfer, the Department first uses FY 2020 and FY 2021 H–2A certification data to calculate the weighted average increase in AEWR from one year to the next.[103] The Department weights the average by the number of workers in each State with employment between December 14th and the end of the year to account for regional differences in employment during December. The result is an average increase in the AEWR by $1.09. The Department then calculates the average number of days worked between December 14 and the end of the year (11.87) using the FY 2020 and FY 2021 H–2A certification data. Finally, the Department estimates the average annual number of workers with work during this period using the H–2A certification data (89,208).[104]

The Department determines the total amount of the transfers by multiplying the 2-year weighted AEWR difference for end-of-year employment (1.09), the 2-year average number of days worked between December 14 and the end of year (11.87), the number of work hours in a day (8), and the number of H–2A workers during this period (89,208). To determine the transfers for every year in the 10-year period, the total number of H–2A workers during the period is multiplied by the growth rate of H–2A workers (6.3 percent). The same process is repeated for every year in the period. The total undiscounted average annual transfers associated with this provision is $12,382,839 and the discounted annualized transfers are $12,566,020,

[102] Revisions to the elimination of the 2-week effective date delay for AEWR publication will also result in wage transfers from U.S. employers to workers in corresponding employment but the Department is not able to quantify this transfer due to the lack of data for workers in corresponding employment and their wages.

[103] H–2A disclosure data may be accessed at *https://www.dol.gov/agencies/eta/foreign-labor/performance.*

[104] The Department uses the 6.3 percent growth rate of H–2A workers (6.3) percent to produce final forecasted estimates of H–2A workers: 89,208 in 2023, 94,837 in 2024, 100,821 in 2025, 107,183 in 2026, 121,136 in 2027, 128,780 in 2028, 136,906 in 2029, 145,545 in 2030, 14,652 in 2031, and 154,729 in 2032.

and $12,806,284 at discount rates of 3 and 7 percent respectively.

ii. Unquantified Transfer Payments

This section discusses the unquantifiable transfer payments related to the reverse of the 14-day grace period to start dates, and piece rates.

A. Reverse of the 14-Day Grace Period for Start Dates

Currently, if an employer fails to contact the SWA of a start date change at least 10 days ahead, it must offer work hours and pay wages to each farmworker who followed the procedure to contact the SWA for updated start date information for the first week. If the employer requests a start date delay after workers have departed for the place of employment, the employer must provide housing and subsistence. After the proposed rule takes effect, employers that do not notify both the SWA and the worker at least 10 days before the anticipated start date, would be required to pay workers the hourly rate for the hours listed on the job order for each day work is delayed up to 2 weeks resulting in a transfer from employers to employees. The Department is unable to quantify this transfer because it lacks detailed data on the prevalence of job delays, the number of employees impacted by these delays, and the number of hours impacted by the delays on average, or the number of hours employers must spend contacting employees and as a result is unable to accurately quantify this transfer. The Department seeks public comment on data that would support estimating this transfer payment.

B. Piece Rates

This proposed rule clarifies language within 20 CFR 655.120(a) and 655.122(l) to make clear that the employer is required to advertise and pay the highest of the AEWR, prevailing hourly wage or piece rate, CBA rate, or Federal or State minimum wage, or any other wage rate the employer intends to pay. The Department is unable to quantify this transfer because it lacks data on the frequency of instances when employers will have to pay higher wages as a result of including and considering applicable piece rates in job offers. The Department seeks public comment on data that would support estimating this transfer payment.

d. Unquantified Benefits

i. Termination for Cause

This rule proposes that workers would only be terminated for cause for a failure to meet productivity standards or failure to comply with employer policies and procedures, and only if the termination was justified and reasonable. The designation of a termination as being for cause strips workers of essential rights to which they would otherwise be entitled—specifically the three-fourths guarantee, payment for outbound transportation, and, if a U.S. worker, the right to be contacted for re-hire in the following season—and therefore it is essential that workers not be deprived of these rights using inconsistent or unfair procedures. The proposed rule would require fairness in disciplinary and termination proceedings if the termination were to be designated as being for cause, which would prevent workers from being unjustly stripped of certain rights under the H–2A program. The Department lacks data on the numbers of terminations for cause each year and whether those terminations were justified and reasonable, and the number of hours required by employers to document termination proceedings as defined by this proposed rule.

ii. Protections for Worker Advocacy and Self-Organization

The Department's proposal would provide stronger protections for workers protected by the H–2A program to advocate for better working conditions on behalf of themselves and their coworkers and would prevent employers from suppressing this activity. These protections would help prevent adverse effect on the working conditions of similarly employed agricultural workers in the United States and would increase the likelihood of worker advocacy and organizing while protecting those workers from intimidation and retaliation by employers. There are additional benefits for workers and employers. Wages for nonunion workers are higher in industries where a larger share of workers are union members.[105] Unions also help close the gender pay gap and ensure worker advocacy protection and equitable pay for women because collectively bargained wages and pay scales are transparent and apply equally to workers in the same job.[106] In sum, protection for worker advocacy and self-organization provides unquantifiable benefits to workers under the H–2A program.

Unions also complement the Department's enforcement efforts in preventing wage-related violations and in ensuring workplace safety and health. Unions play a central role in curbing wage-related violations by negotiating contractual guarantees of workers' wages and a process for enforcing these guarantees. Unions also encourage State and local legislation to protect wages[107] and help low-wage, vulnerable workers understand their rights and report violations. Additionally, a recent study of NLRB and OSHA data shows that union certification has positive effects on the rate of OSHA safety and health inspections, the share of inspections carried out in the presence of a union representative, violations cited, and penalties assessed.[108]

Although the Department lacks data on how to quantify the benefits of such increased worker protections, the proposed regulations should increase workers' dignity and safety and should improve the working conditions for all agricultural workers employed by H–2A employers.

iii. Transportation: Seat Belts for Drivers and Passengers

Once the proposed rule takes effect, employer-provided transportation would be required to have seat belts available for all workers transported, if those vehicles were required by DOT regulations to be manufactured with seat belts. Seat belt use reduces the severity of crash-related injuries and deaths. The Department lacks data on the baseline number of crashes, whether those vehicles involved in crashes were equipped with seat belts and the occupants were using seat belts and subsequent injuries or fatalities involving vehicles transporting H–2A workers and therefore is not able to estimate the benefit from reduced fatalities or injuries. The benefit from reducing even a single fatality or serious injuries is significant. The value of a statistical life (VSL) that would measure the benefit of avoiding a fatality is estimated to be $11.8 million.[109] Recent

[105] *BLS News Release, Union Members—2022.* Bureau of Lab. Stats., *https://www.bls.gov/news.release/pdf/union2.pdf.*

[106] Wendy Chun-Hoon, *U.S. Dep't of Lab. Blog: Want Equal Pay? Get a Union, https://blog.dol.gov/2022/02/15/want-equal-pay-get-a-union?_ga=2.66102894.1387872399.1678980555-949551915.1678980555.*

[107] Marc Doussard & Ahmad Gamal, *The Rise of Wage Theft Laws: Can Community—Labor Coalitions Win Victories in State Houses?,* 52 Urb. Aff. Rev. 780–807 (2016), *https://doi.org/10.1177/1078087415608008.*

[108] Aaron Sojourner & Jooyoung Yang, *Effects of Unionization on Workplace-Safety Enforcement: Regression-Discontinuity Evidence,* Inst. of Lab. Econ., IZA Discussion Papers 9610 (2015), *https://ideas.repec.org/p/iza/izadps/dp9610.html.*

[109] The VSL is used by DOT to value fatalities associated with vehicle crashes. The VSL is based upon the base year's VSL adjusted for the annual change in the Consumer Price Index. Dep't of Transp., Departmental Guidance on Valuation of a Statistical Life in Economic Analysis, *https://www.transportation.gov/office-policy/*

NHTSA reports suggest avoiding injury crashes can be highly beneficial, with estimates that avoiding a critical injury crash is worth $3.8 million (32 percent of a fatality) and avoiding minor injuries is worth $63,000 (0.5 percent of a fatality), respectively.[110]

iv. Protection Against Passport and Other Immigration Document Withholding

To better protect this vulnerable workforce from potential labor trafficking, the Department proposes to flatly prohibit an employer, including through its agents or attorneys, from taking or withholding of a worker's passport, visa, or other immigration or identification documents against the worker's wishes, independent of any other requirements under other Federal, State, or local laws, in a new provision at 20 CFR 655.135(o). This proposal would help ensure that H–2A workers are less likely to be subject to labor exploitation and thus it safeguards the health, safety, and dignity of those workers and also prevents the depression of working conditions for the local agricultural workforce. The Department seeks comments on how it can quantify these benefits.

v. Enhanced Integrity and Enforcement Capabilities

The Department proposes reduced time frames to submit appeal requests for debarment matters and a reduced timeframe to submit rebuttal evidence to OFLC. This would lead to faster final agency adjudications and thereby better protect and uphold program integrity and agricultural workers by more efficiently and effectively preventing H–2A program violators from accessing the program. The Department seeks comments on how it can quantify these benefits.

4. Summary of the Analysis

Exhibit 5 summarizes the estimated total costs and transfer payments of the proposed rule over the 10-year analysis period. The Department estimates the annualized costs of the proposed rule at $2.21 million and the annualized transfer payments (from H–2A employers to employees) at $12.81 million, each at a discount rate of 7 percent. Unquantified transfer payments include reverse of the 14-day grace period for start dates and clarifying that piece rate should be included in the prevailing wage determination. Unquantified cost-savings include the Department's ability to deny labor certification applications filed by or on behalf of successors in interest to debarred employers, agents, or attorneys. Unquantified benefits include better protection from inappropriate termination, protection for worker advocacy, reduction in risk of injury during employer sponsored transportation, reduction in improper holding of passports or immigration documents, and enhanced integrity and enforcement. The Department requests public comments and inputs on this rule's potential distributional impacts and ripple effects in the economy.

EXHIBIT 5—ESTIMATED MONETIZED COSTS AND TRANSFER PAYMENTS OF THE PROPOSED RULE

[2021 $millions]

Year	Costs	Transfer payments
2024	$1.83	$9.26
2025	1.4787	9.84
2026	1.57	10.46
2027	1.69	11.12
2028	1.81	11.83
2029	1.93	12.57
2030	2.07	13.37
2031	2.22	14.21
2032	2.38	15.11
2033	2.54	16.06
Undiscounted 10-Year Total	19.51	123.83
10-Year Total with a Discount Rate of 3%	16.92	107.19
10-Year Total with a Discount Rate of 7%	14.24	89.95
10-Year Average	1.95	12.38
Annualized with a Discount Rate of 3%	1.98	12.57
Annualized with a Discount Rate of 7%	2.03	12.81

5. Regulatory Alternatives

The Department considered a regulatory alternative to this proposed rule's proposal to make updated AEWRs effective on the date of publication in the **Federal Register**. Under the alternative proposal, AEWRs would become effective 7 calendar days after publication in the **Federal Register**. This proposal would have been a compromise between the immediate effective date proposed in this rule and the current effective date, which can be as many as 14 calendar days after the Department publishes the updated AEWRs in the **Federal Register**. The benefit of the alternative proposal is that it would continue to provide employers a short window of time to adjust payroll or recordkeeping systems or make any other adjustments that may be necessary after the Department's announcement of update AEWRs, while providing a shorter adjustment window than under the current rule. However, the Department determined the disadvantages of a 7-calendar-day implementation period for updated AEWRs outweighed any potential benefits. Although this alternative would require employers to begin paying agricultural workers at least the newly required higher wage within a calendar week of the date the updated AEWRs are published in the **Federal Register**, it would not ensure that workers are paid at least the wage rate determined to prevent adverse effect for all hours worked. Further, unlike the possible 14-day period in the current rule, the 7-calendar-day period would not correspond with a typical 2-week

transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.

[110] Based on MAIS4 and MAIS1 injury per crash costs estimated by NHTSA in Table 1–9. Summary of Comprehensive Unit Costs, The Economic and Societal Impact of Motor Vehicle Crashes, 2019 (Revised), Nat'l Highway Traffic Safety Admin. (2023), *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813403.*

pay period; potentially creating more logistical challenges than it obviates. As the Department has explained in prior rulemaking, the duty to pay an updated AEWR during the employment period if it is higher than other required wage sources is not a new employer obligation. The Department recognizes that AEWR adjustments may alter employer budgets, but the Department believes the difference in the impact [111] on budget and payroll planning between the proposed immediate effective date and a 7-day period after publication is outweighed by the benefits to agricultural workers noted above. Moreover, as the Department noted in the 2010 H–2A Final Rule, employers are aware of the annual AEWR adjustment and the Department encourages employers to continue to include the annual adjustment in their contingency planning to allow flexibility to account for any possible wage adjustments.[112]

The Department also considered two regulatory alternatives to the employee contact information proposal, with respect to the proposed requirement that employers provide a labor organization with an updated employee contact list once per season, if requested. First, the Department considered a more stringent alternative, requiring the employer to provide the requesting labor organization with an updated list, if requested, up to once per month. This alternative would best ensure that the labor organization has accurate contact information for those workers actually employed by the employer throughout the entire job order period, and therefore would best ensure that workers who may have an interest in or against organizing have access to relevant information. However, this alternative would impose significantly more burden on the employer to comply. Second, the Department considered a less stringent alternative, that would not require the employer to provide any updates to the requesting labor organization; in other words, the requesting labor organization would be entitled to one list per season, without any updates. This alternative would be the least burdensome of the three, but would be less likely to ensure that all eligible workers have access to information regarding organization. The Department therefore chose to propose that the employer provide a one-time per season update, if requested, as the Department believes this alternative best balances the need for workers to receive information regarding arguments both for and against organization against unduly burdening the employer with providing multiple updates to the employee contact list.

B. Regulatory Flexibility Analysis and Small Business Regulatory Enforcement Fairness Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, requires agencies to determine whether regulations will have a significant economic impact on a substantial number of small entities. The Department certifies that the proposed rule does not have a significant economic impact on a substantial number of small entities. The Department presents the basis for this certification in the analysis below.

1. Description of the Number of Small Entities to Which This Proposed Rule Will Apply

a. Definition of Small Entity

The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used the entity size standards defined by the Small Business Administration (SBA), in effect as of December 19, 2022, to classify entities as small.[113] SBA establishes separate standards for individual 6-digit North American Industry Classification System (NAICS) industry codes, and standard cutoffs are typically based on either the average number of employees, or the average annual receipts. Small governmental jurisdictions are another noteworthy exception. They are defined as the governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000 people.[114]

b. Number of Small Entities

The Department collected employment and annual revenue data from the business information provider Data Axle [115] and merged those data into the H–2A certification data for FY 2020 and FY 2021. This process allowed the Department to identify the number and type of small entities in the H–2A certification data as well as their annual revenues. The Department determined the number of unique employers in the FY 2020 and FY 2021 certification data based on the employer name and city. The Department identified 9,927 unique employers (excluding labor contractors). Of those 9,927 employers, the Department was able to obtain data matches of revenue and employees for 2,615 H–2A employers in the FY2020 and FY2021 certification data. Of those 2,615 employers, the Department determined that 2,105 were small (80.5 percent).[116] These unique small entities had an average of 11 employees and average annual revenue of approximately $3.62 million. Of these small unique entities, 2,085 of them had revenue data available from Data Axle. The Department's analysis of the impact of this proposed rule on small entities is based on the number of small unique entities (2,085 with revenue data).

To provide clarity on the agricultural industries impacted by this regulation, Exhibit 6 shows the number of unique H–2A small entities employers with certifications in the FY 2020 and FY 2021 certification data within each NAICS code at the 6-digit level.

EXHIBIT 6—NUMBER OF H–2A SMALL EMPLOYERS BY NAICS CODE

6-digit NAICS	Description	Number of employers	Percent	Size standard
111998	All Other Miscellaneous Crop Farming	611	29	$1.0 million.
444220	Nursery, Garden Center, and Farm Supply Stores	162	8	$12.0 million.
561730	Landscaping Services	134	6	$8.0 million.
445230	Fruit and Vegetable Markets	127	6	$8.0 million.

[111] The wage transfer under this alternative would be approximately half of the impact of the proposed rule's proposal to make updated AEWRs effective on the date of publication in the **Federal Register** ($12.81 million at a discount rate of 7 percent).

[112] *See* 87 FR 61660, 61688 (Oct. 12, 2022) (quoting 75 FR 6884, 6901 (Feb. 12, 2010)).

[113] SBA *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (December 19, 2022), *https://www.sba.gov/document/support--table-size-standards.*

[114] See *https://advocacy.sba.gov/resources/the-regulatory-flexibility-act* for details.

[115] Data Axle (Aug. 2023), *https://www.data-axle.com.*

[116] SBA *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Aug. 2019), *https://www.sba.gov/document/support—table-size-standards.*

EXHIBIT 6—NUMBER OF H–2A SMALL EMPLOYERS BY NAICS CODE—Continued

6-digit NAICS	Description	Number of employers	Percent	Size standard
424480	Fresh Fruit and Vegetable Merchant Wholesalers	84	4	100 employees.
111339	Other Noncitrus Fruit Farming	78	4	$1.0 million.
112990	All Other Animal Production	57	3	$1.0 million.
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers.	51	2	100 employees.
424910	Farm Supplies Merchant Wholesalers	41	2	200 employees.
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance.	39	2	$30.0 million.
	All Other [117]	701	33	
Total		2,085	100	

2. Projected Impacts to Affected Small Entities

The Department has estimated the incremental costs for small entities from the baseline (*i.e.,* the current practices for complying, at a minimum, with the H–2A program as currently codified at 20 CFR part 655, subpart B) to this proposed rule. As discussed in previous sections, the Department estimates impacts using historical certification data and therefore simulates the impacts of the proposed rule to each actual employer in the H–2A program rather than using representative data for employers within a given sector. The Department estimated the costs of (a) time to read and review the proposed rule, (b) the time to send employee lists to labor organizations upon request, (c) the time required to complete H–2A applications due to application additions, and (d) wage transfers due to the removal of the 2-week effective date delay from the AEWR publication. The estimates included in this analysis are consistent with those presented in the E.O. 12866 section.

The Department estimates that 2,085 unique small entities, would incur a one-time cost of $54.00 to familiarize themselves with the rule, an annual cost of $54.00 to send employee contact lists to labor organizations, and a per application cost of $108.00 to complete H–2A applications.[118]

In addition to the cost of rule familiarization, employee contact lists, and application additions above, each small entity will have an increase in the wage costs due to the revisions to the wage structure. To estimate the wage impact for each small entity we followed the methodology presented in the E.O. 12866 section. For each certification of a small entity, the Department calculated total wage impacts of the proposed rule in CY 2020 and CY 2021 based on each certification for employment between December 14th and the end of the year, and the annual increase in AEWR. The Department estimates the wage impact to all small entities is $826 on average.[119] Many of the small entities have no wage impact from the proposed rule because they do not have workers employed at the end of December. Of small entities with wage impacts, their average wage impact is $2,567.[120]

The Department determined the proportion of each small entity's total revenue that would be impacted by the costs of the proposed rule to determine if the proposed rule would have a significant and substantial impact on small entities. The cost impacts included estimated first-year costs and the wage impact introduced by the proposed rule. The Department used a total cost estimate of 3 percent of revenue as the threshold for a significant individual impact and set a total of 15 percent of small entities incurring a significant impact as the threshold for a substantial impact on small entities.

A threshold of 3 percent of revenues has been used in prior rulemakings for the definition of significant economic impact.[121] This threshold is also consistent with that sometimes used by other agencies.[122]

Exhibit 7 provides a breakdown of small entities by the proportion of revenue affected by the costs of the proposed rule. Of the 2,085 unique small entities with revenue data in the FY 2020 and FY 2021 certification data, 0.7 percent of employers are estimated to have more than 3 percent of their total revenue impacted in the first year based on 2020 data and 2 percent of employers are estimated to have more than 3 percent of their total revenue impacted in the first year based on 2021 data. Based on the findings presented in Exhibit 7, the proposed rule does not have a significant economic impact on a substantial number of small H–2A employers.

EXHIBIT 7—COST IMPACTS AS A PROPORTION OF TOTAL REVENUE FOR SMALL ENTITIES

Proportion of revenue impacted	2020, by NAICS Code					
	111998	444220	561730	445230	All other	Total
<1%	594 (97.2%)	162 (100.0%)	133 (99.3%)	127 (100.0%)	1,028 (97.8%)	2,044 (98.0%)
1%–2%	12 (2.0%)	0 (0.0%)	1 (0.7%)	0 (0.0%)	10 (1.0%)	23 (1.1%)
2%–3%	2 (0.3%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (0.2%)	4 (0.2%)

[117] Size standards vary by NAICS code.

[118] Calculation: ($34.00 + $34.00(0.42) + 34.00(0.17)) * 1 = $54.00. $34.00 (1.59) * 1 = $54.00. $34.00 (1.59) * 2 = $108.00.

[119] In CY 2020 the average wage impact to all small entities is $620 and in CY 2021 $1,032.

[120] In CY 2020 the average wage impact small entities with wage impacts is $1,937 and in CY 2021 $3,191.

[121] *See, e.g.,* NPRM, *Increasing the Minimum Wage for Federal Contractors,* 79 FR 60634 (Oct. 7, 2014) (establishing a minimum wage for contractors); Final Rule, *Discrimination on the Basis of Sex,* 81 FR 39108 (June 15, 2016).

[122] *See, e.g.,* Final Rule, *Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction; Part II,* 79 FR 27106 (May 12, 2014) (Department of Health and Human Services rule stating that under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than three percent annually are not economically significant).

EXHIBIT 7—COST IMPACTS AS A PROPORTION OF TOTAL REVENUE FOR SMALL ENTITIES—Continued

Proportion of revenue impacted	2020, by NAICS Code					
	111998	444220	561730	445230	All other	Total
3%–4%	1 (0.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.1%)	2 (0.1%)
4%–5%	1 (0.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (0.4%)	5 (0.2%)
>5%	1 (0.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	6 (0.6%)	7 (0.3%)
Total >3%	3 (0.5%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	11 (1.0%)	14 (0.7%)
Proportion of revenue impacted	2021, by NAICS Code					
<1%	564 (92.3%)	161 (99.4%)	131 (97.8%)	127 (100.0%)	1,010 (96.1%)	1,993 (95.6%)
1%–2%	20 (3.3%)	1 (0.6%)	2 (1.5%)	0 (0.0%)	14 (1.3%)	37 (1.8%)
2%–3%	8 (1.3%)	0 (0.0%)	1 (0.7%)	0 (0.0%)	5 (0.5%)	14 (0.7%)
3%–4%	4 (0.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (0.4%)	8 (0.4%)
4%–5%	5 (0.8%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (0.4%)	9 (0.4%)
>5%	10 (1.6%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	14 (1.3%)	24 (1.2%)
Total >3%	19 (3.1%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	22 (2.1%)	41 (2.0%)

C. Paperwork Reduction Act

In order to meet its statutory responsibilities under the INA, the Department collects information necessary to render determinations on requests for temporary agricultural labor certification, which allow employers to bring foreign labor into the United States on a seasonal or other temporary basis under the H–2A program. The Department uses the collected information to determine if employers are meeting their statutory and regulatory obligations. This information is subject to the PRA, 44 U.S.C. 3501 *et seq.* A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid control number. *See* 5 CFR 1320.5(a) and 1320.6. The Department obtained OMB approval for this information collection under Control Number 1205–0466.

This information collection request (ICR), concerning OMB Control Number 1205–0466, includes the collection of information related to the Department's temporary agricultural labor certification determination process in the H–2A program. The PRA helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

On October 25, 2018, as part of its ongoing effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater oversight in the H–2A program, the Department published a 60-day notice announcing its proposed revisions to the collection of information under OMB Control Number 1205–0466 in the **Federal Register** in connection with the proposed rule *Temporary Agricultural Employment of H–2A Nonimmigrants in the United States,* 84 FR 36168 (July 26, 2019).[123] *See* 83 FR 53911. The Department published a final rule on October 12, 2022.[124] *See* 87 FR 61660.

The Department now proposes additional revisions to this information collection, covered under OMB Control Number 1205–0466, to further revise the information collection tools based on regulatory changes proposed in this NPRM. The additional proposed revisions to Form ETA–9142A and appendices and Form ETA–790/790A and addenda will align information collection requirements with the Department's proposed regulatory framework and continue the ongoing efforts to provide greater clarity to employers on regulatory requirements, standardize and streamline information collection to reduce employer time and burden preparing applications, and promote greater efficiency and transparency in the review and issuance of labor certification decisions under the H–2A visa program. For example, the Department proposes a new Form ETA–9142A, Appendix C, *H–2A Owner, Operator, Manager and Supervisor Information,* to implement proposed § 655.130(a), which would require employers to provide the identity, location, and contact information of all persons who are the owners, operators, managers, and supervisors of the agricultural business. Additionally, the Department proposes a new Form ETA–9142A, Appendix D, *Foreign Labor Recruiter Information,* to implement proposed § 655.137(b), which would require the employer, and its attorney or agent (as applicable), to provide the identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agent(s) or employee(s) of those persons and entities, to recruit prospective foreign workers for the H–2A job opportunities offered by the employer under an *H–2A Application for Temporary Employment Certification,* Form ETA–9142A.

Overview of Information Collections Proposed by This NPRM

Title of Collection: H–2A Temporary Agricultural Employment Certification Program.

[123] For administrative purposes only, the Department submitted the July 2019 NPRM's ICR under OMB Control Number 1205–0537. OMB authorized the NPRM's ICR as OMB Control Number 1205–0537 due to the Department's separate renewal of the ICR under OMB Control Number 1205–0466, which currently expires on October 31, 2025. In March 2023, the Department submitted a nonmaterial change request to transfer the burden from this OMB control number (1205–0537) to the existing OMB control number for the H–2A Foreign Labor Certification Program (1205–0466) and proceeded to discontinue the use of OMB Control Number 1205–0537.

[124] The current Form ETA–790/790A, *H–2A Agricultural Clearance Order,* and addenda, provide language to employers to disclose necessary information regarding the material terms and conditions of the job opportunity. A copy of Form ETA–790/790A is now integrated with the Form ETA–9142A for purposes of the Department's temporary agricultural labor certification determination; the CO reviews the Form ETA–790/790A in combination with Form ETA–9142A when the employer submits Form ETA–9142A to the NPC.

Type of Review: Revision of a Currently Approved Information Collection.

OMB Control Number: 1205–0466.

Description: This NPRM proposes to require (1) all agents who file H–2A applications on behalf of employers to demonstrate that a bona fide relationship exists between them and the employer; (2) agents who are Farm Labor Contractors to provide a copy of their Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Certificate of Registration; (3) employers to prohibit in a written contract any foreign labor contractor or recruiter (or any agent of such foreign labor contractor or recruiter) whom the employer engages, either directly or indirectly, in international recruitment of H–2A workers, from seeking or receiving payments or other compensation from prospective employees; (4) employers to determine the appropriate wage to offer, advertise, and pay workers to perform the agricultural services or labor in preparing the Form ETA–790A; (5) that the job order submitted to the SWA and Department must meet the content standards set forth in 20 CFR part 653, subpart F, and 20 CFR 655.122; (6) completion of the Form ETA–9142A when an employer seeks a temporary labor certification to employ nonimmigrant workers under the H–2A visa classification; and (7) employers operating as H–2A Labor Contractors (H–2ALCs) must provide additional documentation at the time of filing the Form ETA–9142A.

Affected Public: Individuals or Households, Private Sector—businesses or other for-profits, Government, State, Local, and Tribal Governments.

Form(s): ETA–9142A, H–2A Application for Temporary Employment Certification; ETA–9142A—Appendix A; ETA–9142A—Final Determination: H–2A Temporary Labor Certification Approval; ETA–790/790A, H–2A Agricultural Clearance Order; ETA–790/790A—Addendum A; ETA–790/790A—Addendum B; ETA–790/790A—Addendum B; ETA–9142A, Appendix C; ETA–9142A, Appendix D

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 467,843.

Estimated Total Annual Responses: 14,586.

Estimated Total Annual Burden Hours: 102,864.74.

Estimated Total Annual Other Burden Costs: $0.

Regulations Sections: Subpart F of part 655.

Agency: DOL–ETA.

Title of Collection: Agricultural Recruitment System Forms Affecting Migrant and Seasonal Farmworkers.

Type of Review: Revision of a Currently Approved Information Collection.

OMB Control Number: 1205–0134.

Description: This NPRM proposes to revise Agricultural Clearance Order Form, ETA Form 790B, which will be attached to the Agricultural Clearance Order Form, ETA Form 790 (see OMB Control Number 1205–0466). ETA Form 790B is only used for employers who submit clearance orders requesting U.S. workers for temporary agricultural jobs, which are not attached to requests for foreign workers through the H–2A visa program (non-criteria clearance orders). ETA is including the estimated burden to the public for the completion of ETA Form 790 as it relates to those employers seeking to place non-criteria job orders through the ARS in addition to the estimated burden for ETA Form 790B because employers would fill out both forms.

Affected Public: State Governments, Private Sector: Business or other for-profits, not-for-profit institutions, and farms.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 5,112.

Estimated Total Annual Responses: 5,112.

Estimated Total Annual Burden Hours: 2,981.84.

Estimated Total Annual Other Burden Costs: $0.

Regulations Sections: Subpart F of part 653.

Agency: DOL–ETA.

The Department invites comments on all aspects of the PRA analysis. Comments that are related to a specific form or a specific form's instructions should identify the form or form's instructions using the form number (*e.g.,* ETA–9142A or Form ETA–790/790A) and should identify the particular area of the form for comment. A copy of the proposed revised information collection tools can be obtained by contacting the office listed below in the addresses section of this notice. Written comments must be submitted on or before November 14, 2023.

The Department is particularly interested in comments that:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, and the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Comments submitted in response to this notice will be considered and summarized or included in the ICR the Department will submit to OMB for approval; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (*e.g.,* confidential business information or personally identifiable information such as a Social Security number).

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. UMRA requires Federal agencies to assess a regulation's effects on State, local, and tribal governments, as well as on the private sector, except to the extent the regulation incorporates requirements specifically set forth in law. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any regulation that includes any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or upon the private sector, except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

This proposed rule does not result in unfunded mandates for the public or private sector because private employers' participation in the program

is voluntary, and State governments are reimbursed for performing activities required under the program. The requirements of title II of the UMRA, therefore, do not apply, and the Department has not prepared a statement under the UMRA.

E. Executive Order 13132 (Federalism)

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132,[125] it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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

The Department has reviewed this proposed rule in accordance with E.O. 13175 [126] and has determined that it does not have tribal implications. This proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and tribal governments.

List of Subjects

20 CFR Part 651

Employment, Grant programs—labor.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Grant programs—labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

20 CFR Part 658

Administrative practice and procedure, Employment, Grant programs—labor, Reporting and recordkeeping requirements.

29 CFR Part 501

Administrative practice and procedure, Agricultural, Aliens, Employment, Housing, Housing standards, Immigration, Labor, Migrant labor, Penalties, Transportation, Wages.

For the reasons stated in the preamble, the Department of Labor proposes to amend 20 CFR parts 651, 653, 655, and 658 and 29 CFR part 501 as follows:

TITLE 20: EMPLOYEES' BENEFITS

Employment and Training Administration

PART 651—GENERAL PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 1. The authority citation for part 651 continues to read as follows:

Authority: 29 U.S.C. 49a; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 2. Amend § 651.10 by:

■ a. Adding the definition for *Agent, Criteria clearance order,* and *Discontinuation of services* in alphabetical order;

■ b. Revising the definition for *Employment-related laws;* and

■ c. Adding definitions for *Farm labor contractor, Joint employer, Non-criteria clearance order, Successor in interest,* and *Week* in alphabetical order.

The additions and revision read as follows:

§651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

* * * * *

Agent means a legal entity or person, such as an association of employers, or an attorney for an association, that is authorized to act on behalf of the employer for purposes of recruitment of workers through the clearance system and is not itself an employer or joint employer, as defined in this section, with respect to a specific job order.

* * * * *

Criteria clearance order means a clearance order that is attached to an application for foreign temporary agricultural workers pursuant to part 655, subpart B, of this chapter.

* * * * *

Discontinuation of services means that an employer, agent, farm labor contractor, joint employer, or successor in interest, as defined in this section, cannot participate in or receive any Wagner-Peyser Act employment service provided by the ES to employers pursuant to parts 652 and 653 of this chapter.

* * * * *

Employment-related laws means those laws and implementing regulations that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.

* * * * *

Farm labor contractor means any person or entity, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker (MSFW).

* * * * *

Joint employer means where two or more employers each have sufficient definitional indicia of being an employer of a worker as defined in this section, they are, at all times, joint employers of that worker. An employer that submits a job order to the ES clearance system as a joint employer, is a joint employer of any worker placed and employed on the job order during the period of employment anticipated, amended, or otherwise extended in accordance with the order.

* * * * *

Non-criteria clearance order means a clearance order that is not attached to an application for foreign temporary agricultural workers pursuant to part 655, subpart B, of this chapter.

* * * * *

Successor in interest—A successor in interest includes any entity that is controlling and carrying on the business of a previous employer, agent, or farm labor contractor, regardless of whether such successor in interest has succeeded to all the rights and liabilities of the predecessor entity. A successor in interest to an employer, agent, or farm labor contractor may be held liable for the duties and obligations of that employer, agent, or farm labor contractor for purposes of recruitment of workers through the ES clearance system or enforcement of ES regulations. The following factors, including those as used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act, may be considered in determining whether an employer, agent, or farm labor contractor is a successor in interest; however, these factors are not exhaustive, and no one factor is dispositive, but all of the circumstances will be considered as a whole:

[125] E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 10, 1999).

[126] E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 9, 2000).

(1) Substantial continuity of the same business operations;

(2) Use of the same facilities;

(3) Continuity of the work force;

(4) Similarity of jobs and working conditions;

(5) Similarity of supervisory personnel;

(6) Whether the former management or owner retains a direct or indirect interest in the new enterprise;

(7) Similarity in machinery, equipment, and production methods;

(8) Similarity of products and services;

(9) The ability of the predecessor to provide relief; and

(10) For purposes of discontinuation of services, the involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violation(s) at issue.

* * * * *

Week means 7 consecutive calendar days.

* * * * *

PART 653—SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

■ 3. The authority citation for part 653 continues to read as follows:

Authority: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B; 38 U.S.C. part III, chapters 41 and 42.

■ 4. Amend § 653.501 by:

■ a. Adding paragraph (b)(4);

■ b. Revising paragraphs (c)(3) introductory text, (c)(3)(i) and (iv), and (c)(5); and

■ c. Removing and reserving paragraphs (d)(4), (7), and (8).

The addition and revisions read as follows:

§ 653.501 Requirements for processing clearance orders.

* * * * *

(b) * * *

(4) Prior to placing a job order into intrastate or interstate clearance, ES staff must consult the Department's Office of Foreign Labor Certification and Wage and Hour Division debarment lists, and the Department's Office of Workforce Investment discontinuation of services list.

(i) If the employer requesting access to the clearance system is currently debarred from participating in the H–2A or H–2B foreign labor certification programs, the SWA must initiate discontinuation of services pursuant to part 658, subpart F, of this chapter.

(ii) If the employer requesting access to the clearance system is currently discontinued from receiving ES services under § 658.503 of this chapter by any State, the SWA must not approve the clearance order for placement into intrastate or interstate clearance.

(iii) For purposes of this paragraph (b)(4), ''employer'' has the meaning given in § 658.500(b) of this chapter.

(c) * * *

(3) SWAs must ensure that the employer makes the following assurances in the clearance order:

(i) The employer will provide to workers referred through the clearance system the number of hours of work cited in paragraph (c)(1)(iv)(D) of this section for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 business days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section).

* * * * *

(iv) The employer will notify the order-holding office or SWA immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment, or other factors have changed the terms and conditions of employment. If there is a change to the date of need, the employer will notify the order-holding office or SWA, and each worker who has been placed on the clearance order using the contact information the worker provided to the employer, in writing (email and other forms of electronic written notification are acceptable) at least 10 business days prior to the original date of need. The employer must maintain records of the notification and the date notification was provided to the order-holding office or SWA and workers for 3 years. If the employer does not properly notify the order-holding office or SWA and workers at least 10 business days prior to the original date of need, the employer will provide housing and subsistence to all workers placed on the clearance order who are already traveling to the place of employment, without cost to the workers, until work commences, and, consistent with paragraph (c)(5) of this section, will pay the placed workers for the hours listed on the clearance order, at a rate consistent with paragraph (c)(5) of this section, for each day work is delayed up to 2 weeks or provide alternative work.

* * * * *

(5) If there is a change to the anticipated date of need and the employer fails to notify the order-holding office or SWA and all workers placed on the clearance order at least 10 business days prior to the original date of need the employer must provide housing and subsistence to all workers placed on the clearance order who are already traveling to the place of employment, without cost to the workers, until work commences, and must pay the placed workers the specified hourly rate of pay, or if the pay is piece-rate, the higher of the Federal or State minimum wage, or an applicable prevailing wage, or for criteria orders the rate of pay required under part 655, subpart B, of this chapter for each day work is delayed up to 2 weeks starting with the originally anticipated date of need or provide alternative work if such alternative work is stated on the approved clearance order. If an employer fails to comply under this paragraph (c)(5) the order-holding office must process the information as an apparent violation pursuant to § 658.419 of this chapter and may refer an apparent violation of the employer's payment obligation under this paragraph (c)(5) to the Department's Wage and Hour Division.

* * * * *

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 5. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 6. Amend § 655.103 by:
■ a. In paragraph (b), adding definitions for *Key service provider* and *Labor organization* in alphabetical order and removing the definition for *Successor in interest;* and
■ b. Adding paragraph (e).
The additions read as follows:

§ 655.103 Overview of this subpart and definition of terms.

* * * * *

(b) * * *

Key service provider. A health-care provider; a community health worker; an education provider; an attorney, legal advocate, or other legal service provider; a government official, including a consular representative; a member of the clergy; and any other service provider to which a worker may need access.

Labor organization. Any organization of any kind, or any agency or employee representation committee or plan, in which workers participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

(e) *Definition of single employer for purposes of temporary or seasonal need and contractual obligations.* Separate entities will be deemed a single employer (sometimes referred to as an ''integrated employer'') for purposes of assessing temporary or seasonal need and for enforcement of contractual obligations if they meet the definition of single employer in this paragraph (e). Under the definition of single employer, a determination of whether separate entities are a single employer is not determined by a single factor, but rather the entire relationship is viewed in its totality. Factors considered in determining whether two or more entities consist of a single employer include:

(1) Common management;

(2) Interrelation between operations;

(3) Centralized control of labor relations; and

(4) Degree of common ownership/financial control.

■ 7. Add § 655.104 to read as follows:

§ 655.104 Successors in interest.

(a) *Liability of successors in interest.* Where an employer, agent, or attorney has violated 8 U.S.C. 1188, 29 CFR part 501, or this subpart, a successor in interest to that employer, agent, or attorney may be held liable for the duties and obligations of the violating employer, agent, or attorney in certain circumstances.

(b) *Definition of successors in interest.* A successor in interest includes an entity that is controlling and carrying on the business of a previous employer, agent, or farm labor contractor, regardless of whether such successor in interest has succeeded to all the rights and liabilities of the predecessor entity. The following factors, including those as used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act, may be considered in determining whether an employer, agent, or attorney is a successor in interest; however, these factors are not exhaustive, and no one factor is dispositive, but all of the circumstances will be considered as a whole:

(1) Substantial continuity of the same business operations;

(2) Use of the same facilities;

(3) Continuity of the work force;

(4) Similarity of jobs and working conditions;

(5) Similarity of supervisory personnel;

(6) Whether the former management or owner retains a direct or indirect interest in the new enterprise;

(7) Similarity in machinery, equipment, and production methods;

(8) Similarity of products and services;

(9) The ability of the predecessor to provide relief; and

(10) For purposes of debarment, the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violation(s) at issue.

(c) *Effect of debarment on successors in interest.* When an employer, agent, or attorney is debarred under § 655.182 or 29 CFR 501.20, any successor in interest to the debarred employer, agent, or attorney is also debarred. No application for H–2A workers may be filed by or on behalf of a successor in interest to a debarred employer, agent, or attorney, subject to the term limits set forth in § 655.182(c)(2). If the CO determines that an application for H–2A workers was filed by or on behalf of a successor in interest to a debarred employer, agent, or attorney during the period of debarment as set forth in § 655.182(c)(2), the CO will issue a Notice of Deficiency (NOD) pursuant to § 655.141 or deny the application pursuant to § 655.164, as appropriate depending upon the status of the H–2A application, solely on the basis that the entity is a successor in interest to a debarred employer, agent, or attorney. If the OFLC Administrator determines that a certification for H–2A workers was issued to a successor in interest to a debarred employer, the OFLC Administrator may revoke the certification pursuant to § 655.181(a). The employer, agent, or attorney may appeal its status as a successor in interest to the debarred entity, pursuant to the procedures for appeals of CO determinations at § 655.171.

■ 8. Amend § 655.120 by revising paragraphs (a) and (b)(2) and (3) to read as follows:

§ 655.120 Offered wage rate.

(a) *Employer obligation.* (1) Except for occupations covered by §§ 655.200 through 655.235, to comply with its obligation under § 655.122(l), an employer must offer, advertise in its recruitment, and pay a wage that is at least the highest of:

(i) The AEWR;

(ii) A prevailing wage rate, if the OFLC Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity, meeting the requirements of paragraph (c) of this section;

(iii) The agreed-upon collective bargaining wage;

(iv) The Federal minimum wage;

(v) The State minimum wage; or

(vi) Any other wage rate the employer intends to pay.

(2) Where the wage rates set forth in paragraph (a)(1) of this section are expressed in different units of pay, the employer must list the highest applicable wage rate for each unit of pay in its job order and must offer and advertise all of these wage rates in its recruitment. The employer's obligation to pay the highest of these wage rates is set forth at § 655.122(l)(2).

(b) * * *

(2) The OFLC Administrator will publish a notice in the **Federal Register**, at least once in each calendar year, on a date to be determined by the OFLC Administrator, establishing each AEWR. The updated AEWRs will be effective as of the date of publication of the notice in the **Federal Register**.

(3) If an updated AEWR for the occupational classification and geographic area is published in the **Federal Register** during the work contract, and the updated AEWR is higher than the highest of the previous AEWR; a prevailing wage for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area; the agreed-upon collective bargaining wage; the Federal minimum wage; or the State minimum wage, the employer must pay at least the updated AEWR beginning on the date the updated AEWR is published in the **Federal Register**.

* * * * *

■ 9. Amend § 655.122 by revising paragraphs (h)(4), (i)(1)(i) and (ii), (l), and (n) to read as follows:

§ 655.122 Contents of job offers.

* * * * *

(h) * * *

(4) *Employer provided transportation.* (i) All employer-provided transportation must comply with all applicable local, State, or Federal laws and regulations, and must provide, at a minimum, the same transportation safety standards, driver's licensure, and vehicle insurance required under 29 U.S.C. 1841, 29 CFR 500.104 or 500.105, and 29 CFR 500.120 through 500.128.

(ii) The employer shall not operate any employer-provided transportation that is required by the U.S. Department of Transportation regulations, including 49 CFR 571.208, to be manufactured with seat belts, unless all passengers and the driver are properly restrained by seat belts meeting standards established by the U.S. Department of Transportation, including 49 CFR 571.209 and 571.210.

(iii) The job offer must include a description of the modes of transportation (*e.g.,* type of vehicle) that will be used for inbound, outbound, daily, and any other transportation.

(iv) If workers' compensation is used to cover transportation in lieu of vehicle insurance, the employer must either ensure that the workers' compensation covers all travel or that vehicle insurance exists to provide coverage for travel not covered by workers' compensation and it must have property damage insurance.

(i) * * *

(1) * * *

(i) For purposes of this paragraph (i)(1), a workday means the number of hours in a workday as stated in the job order and excludes the worker's Sabbath and Federal holidays. The employer must offer a total number of hours to ensure the provision of sufficient work to reach the three-fourths guarantee. The work hours must be offered during the work period specified in the work contract.

(ii) In the event the worker begins working later than the specified beginning date of the contract, the guarantee period begins with the first workday after the arrival of the worker at the place of employment, and continues until the last day during which the work contract and all extensions thereof are in effect.

* * * * *

(l) *Rates of pay.* Except for occupations covered by §§ 655.200 through 655.235, the employer must pay the worker at least the highest wage rate set forth in § 655.120(a)(1).

(1) The employer must calculate workers' wages using the wage rate that will result in the highest wages for each worker in each pay period. When calculating wages based on an hourly wage rate, the calculation must reflect every hour or portion thereof worked during a pay period. The wages actually paid cannot be lower than the wages that would result from the wage rate(s) guaranteed in the job order.

(2) Where the wage rates set forth in § 655.120(a)(1) include both hourly and non-hourly wage rates, the employer must calculate each worker's wages, in each pay period, using the highest wage rate for each unit of pay, and pay the worker the highest of these wages for that pay period. The wage actually paid cannot be lower than the wages that would result from the wage rate(s) guaranteed in the job offer.

(3) If the employer requires one or more minimum productivity standards of workers as a condition of job retention, such standards must be specified in the job offer and be no more than those required by the employer in 1977, unless the OFLC Administrator approves a higher minimum, or, if the employer first applied for temporary agricultural labor certification after 1977, such standards must be no more than those normally required (at the time of the first *Application for Temporary Employment Certification*) by other employers for the activity in the area of intended employment.

(4) If applicable, the employer must state in the job order:

(i) That overtime hours may be available;

(ii) The wage rate(s) to be paid for any such overtime hours;

(iii) The circumstances under which the wage rate(s) for overtime hours will be paid, including, but not limited to, after how many hours in a day or workweek the overtime wage rate will be paid, and whether overtime wage rates will vary between places of employment; and

(iv) Where the overtime pay is required by law, the applicable Federal, State, or local law requiring the overtime pay.

* * * * *

(n) *Termination for cause or abandonment of employment.* (1) If a worker is terminated for cause or voluntarily abandons employment before the end of the contract period, and the employer notifies the NPC, and DHS in the case of an H–2A worker, in writing or by any other method specified by the Department in a notice published in the **Federal Register** or specified by DHS not later than 2 working days after such termination for cause or abandonment occurs, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of that worker under this section, and that worker is not entitled to the three-fourths guarantee described in paragraph (i) of this section, and, in the case of a U.S. worker, the employer will not be obligated to contact that worker under § 655.153.

(2) A worker is terminated for cause when the employer terminates the worker for failure to meet productivity standards or failure to comply with employer policies or rules.

(i) An employer may terminate a worker for cause only if all of the following conditions are satisfied:

(A) The employee has been informed (in a language understood by the worker) of the policy, rule, or productivity standard, or reasonably should have known of the policy, rule, or productivity standard;

(B) If the termination is for failure to meet a productivity standard, such standard is disclosed in the job offer;

(C) Compliance with the policy, rule, or productivity standard is within the worker's control;

(D) The policy, rule, or productivity standard is reasonable and applied consistently;

(E) The employer undertakes a fair and objective investigation into the job performance or misconduct; and

(F) The employer engages in progressive discipline to correct the worker's performance or behavior.

(ii) Progressive discipline is a system of graduated and reasonable responses to an employee's failure to meet productivity standards or failure to comply with employer policies or rules. Disciplinary measures should be proportional to the failure but may increase in severity if the failure is repeated, and may include immediate termination for egregious misconduct. Prior to each disciplinary measure, the employer must notify the worker of the infraction and allow the worker to present evidence in their defense. Following each disciplinary measure, except where the appropriate disciplinary measure is termination, the employer must provide relevant and adequate instruction to the worker, and the employer must afford the worker reasonable time to correct the behavior or to meet the productivity standard following such instruction. The employer must document each disciplinary measure, evidence the worker presented in their defense, and

resulting instruction, and must clearly communicate to the worker that a disciplinary measure has been imposed.

(iii) A worker is not terminated for cause where the termination is: contrary to a Federal, State, or local law; for an employee's refusal to work under conditions that the employee reasonably believes will expose them or other employees to an unreasonable health or safety risk; because of discrimination on the basis of race, color, national origin, age, sex (including sexual orientation or gender identity), religion, disability, or citizenship; or, where applicable, where the employer failed to comply with its obligations under § 655.135(m)(4) in a meeting that contributed to the termination.

(iv) The employer bears the burden of demonstrating that any termination for cause meets the requirements of this paragraph (n)(2).

(3) Abandonment will be deemed to begin after a worker fails to report to work at the regularly scheduled time for 5 consecutive working days without the consent of the employer.

(4) The employer is required to maintain records described in this section for not less than 3 years from the date of the certification.

(i) Records of notification to the NPC, and to DHS in the case of an H–2A worker, of termination for cause or abandonment.

(ii) Disciplinary records, including each step of progressive discipline, any evidence the worker presented in their defense, any investigation related to the termination, and any subsequent instruction afforded the worker.

(iii) Records indicating the reason(s) for termination of any worker, including disciplinary records as described in paragraph (n)(4)(ii) of this section and § 655.167.

* * * * *

■ 10. Amend § 655.130 by revising paragraph (a) to read as follows:

§ 655.130 Application filing requirements.

* * * * *

(a) *What to file.* (1) An employer that desires to apply for temporary agricultural labor certification of one or more nonimmigrant workers must file a completed *Application for Temporary Employment Certification,* all supporting documentation and information required at the time of filing under §§ 655.131 through 655.137, and, unless a specific exemption applies, a copy of Form ETA–790/790A, submitted as set forth in § 655.121(a).

(2) The *Application for Temporary Employment Certification* must include the employer's legal name, trade name(s), and a valid FEIN as well as a valid place of business (physical location) in the United States and a means by which it may be contacted by prospective U.S. applicants for employment. For each employer of any worker employed under this application, the *Application for Temporary Employment Certification* must include the identity, location, and contact information of all persons who are the owners of that entity.

(3) For each place of employment identified in the job order, the *Application for Temporary Employment Certification* must include the identity, location, and contact information of all persons and entities, if different than the employer(s), who are the operators of the place of employment, and of all persons who manage or supervise any worker employed under this application, regardless whether those managers or supervisors are employed by the employer or another entity.

(4) If the information specified in paragraphs (a)(2) and (3) of this section changes during the work contract period, the employer must update its records to reflect the change. The employer must continue to keep this information up to date until the end of the work contract period, including any extensions. The employer must retain the updated information in accordance with § 655.167(c)(9) and must make this updated information available in the event of a post-certification audit or upon request by the Department. The Department may share the information it receives from employers with any other Federal agency, as appropriate for investigative or enforcement purpose, as set forth in paragraph (f) of this section.

* * * * *

■ 11. Amend § 655.132 by revising paragraph (e)(1) to read as follows:

§ 655.132 H–2A labor contractor filing requirements.

* * * * *

(e) * * *

(1) All housing used by workers and owned, operated, or secured by the fixed-site agricultural business complies with the applicable standards as set forth in § 655.122(d) and certified by the SWA and that the fixed-site agricultural business has agreed to comply with the requirements at § 655.135(n); and

* * * * *

■ 12. Amend § 655.135 by revising the introductory text and paragraph (h) and adding paragraphs (m), (n), (o), and (p) to read as follows:

§ 655.135 Assurance and obligations of H–2A employers.

An employer seeking to employ H–2A workers must agree as part of the *Application for Temporary Employment Certification* and job offer that it will abide by the requirements of this subpart and of 29 CFR part 501 and must make each of the following additional assurances:

* * * * *

(h) *No unfair treatment.* (1) The employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has:

(i) Filed a complaint under or related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(ii) Instituted or caused to be instituted any proceeding under or related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(iii) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(iv) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(v) Consulted with a key service provider on matters related to 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188;

(vi) Exercised or asserted on behalf of themself or others any right or protection afforded by 8 U.S.C. 1188 or this subpart or any Department regulation in this chapter or 29 CFR part 501 promulgated under 8 U.S.C. 1188; or

(vii) Filed a complaint, instituted or caused to be instituted any proceeding, or testified or is about to testify in any proceeding under or related to any applicable Federal, State, or local laws or regulations, including safety and health laws.

(2) With respect to any person engaged in agriculture as defined and applied in 29 U.S.C. 203(f), the employer has not and will not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, and has not and will not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any

person who has engaged in activities related to self-organization, including: any effort to form, join, or assist a labor organization; a secondary activity such as a secondary boycott or picket; or other concerted activities for the purpose of mutual aid or protection relating to wages or working conditions; or refused to engage in any or all of such activities.

* * * * *

(m) *Worker voice and empowerment.* With respect to any H–2A worker or worker in corresponding employment engaged in agriculture as defined and applied in 29 U.S.C. 203(f), employed at the place(s) of employment included in the *Application for Temporary Employment Certification,* the employer agrees to:

(1) Provide to a requesting labor organization a complete list of H–2A workers and workers in corresponding employment employed at the place(s) of employment included in the *Application for Temporary Employment Certification* within 1 week of the request. The list will be in alphabetical order (last name first) and will show the worker's full name, date of hire, job title, work location address and ZIP code, and if available, personal email address, personal cellular telephone number and/or profile name for a messaging application used by the worker to communicate, home country address with postal code, and home country telephone number. The list will be provided in an agreed-upon format and transmitted electronically. The employer must update the worker contact list upon the labor organization's request, but no more than once within the period of employment listed in the job order.

(2) Permit workers to designate a representative to attend any meeting between the employer and a worker where the worker reasonably believes that the meeting may lead to discipline and permit workers to receive advice and active assistance from the designated representative during any such meeting. Where such meetings are held at a worker's place of employment or other privately owned property, workers' designated representatives must be given access to the place of employment or property as needed to attend and participate.

(3)(i) Refrain from engaging in coercive employer speech intended to oppose workers' protected activity unless the employer:

(A) Explains the purpose of the meeting or communication;

(B) Assures workers that attendance or participation is voluntary, and that they are free to leave at any time;

(C) Assures workers that nonattendance or nonparticipation will not result in reprisals (including any loss of pay if the meeting or discussion occurs during their regularly scheduled working hours); and

(D) Assures workers that attendance or participation will not result in rewards or benefits (including additional pay for attending meetings or discussions concerning their rights to engage in protected activity outside their regularly scheduled working hours).

(ii)(A) Obtain affirmative consent from a worker to talk to that worker in work areas during working hours concerning their rights to engage in protected activity; and

(B) Assure the worker that such discussions are entirely voluntary and that they may end the meeting or discussion at any time without loss of pay (either by leaving or by asking the employer to stop).

(4) Attest that the employer will either:

(i) Bargain in good faith with a requesting labor organization over the terms of a proposed labor neutrality agreement, meaning an agreement in which the employer agrees to not take a position for or against a labor organizing effort; or

(ii) Not bargain in good faith with a requesting labor organization over the terms of a proposed labor neutrality agreement and provide an explanation for why it has declined to do so.

(n) *Access to worker housing.* (1) Workers residing in employer-furnished housing must be permitted to invite, or accept at their discretion, guests to their living quarters and/or the common areas or outdoor spaces near such housing during time that is outside of the workers' workday subject only to reasonable restrictions designed to protect worker safety or prevent interference with other workers' enjoyment of these areas.

(2) Where employer-furnished housing in which any H–2A worker or worker in corresponding employment engaged in agriculture as defined and applied in 29 U.S.C. 203(f) resides is located on property or in a facility not readily accessible to the public, a labor organization must not be denied access to the common areas or outdoor spaces near such housing for the purpose of meeting with workers, provided that such meetings occur outside of the workers' workday and do not exceed a total of 10 hours per month.

(o) *Passport withholding.* During the period of employment that is the subject of the *Application for Temporary Labor Certification,* the employer may not hold or confiscate a worker's passport, visa, or other immigration or government identification document *except* where the worker states in writing that: the worker voluntarily requested that the employer keep these documents safe, the employer did not direct the worker to submit such a request, and the worker understands that the passport, visa, or other immigration or government identification document will be returned to the worker immediately upon the worker's request.

(p) *Foreign worker recruitment.* The employer, and its attorney or agent, as applicable, must comply with § 655.137(a) by providing a copy of all agreements with any agent or recruiter whom it engages or plans to engage in the recruitment of H–2A workers, and the identity and location of the persons and entities hired by or working for the agent or recruiter and any of the agents and employees of those persons and entities, to recruit foreign workers. Pursuant to § 655.130(a), the agreements and information must be filed with the *Application for Temporary Employment Certification.* The employer must update this documentation in accordance with § 655.137(c).

■ 13. Add § 655.137 to read as follows:

§ 655.137 Disclosure of foreign worker recruitment.

(a) If the employer engaged an agent or foreign labor recruiter, directly or indirectly, in international recruitment, the employer, and its attorney or agent, as applicable, must provide copies of all contracts and agreements with any agent and/or recruiter, executed in connection with the job opportunity, as specified in § 655.135(p). These agreements must contain the contractual prohibition against charging fees as set forth in § 655.135(k).

(b) The employer, and its attorney or agent, as applicable, must provide all recruitment-related information required in the *Application for Temporary Employment Certification,* as defined in § 655.103(b), which includes the identity and location of all persons and entities hired by or working for the recruiter or agent, and any of the agents or employees of those persons and entities, to recruit prospective foreign workers for the H–2A job opportunity.

(c) The employer must continue to keep the foreign labor recruiter information referenced in paragraphs (a) and (b) of this section up to date until the end of the work contract period. The employer must retain the updated information in accordance with § 655.167(c)(8) and must make this

updated information available in the event of a post-certification audit or upon request by the Department. The Department may share the foreign worker recruitment information it receives from employers with any other Federal agency, as appropriate for investigative or enforcement purpose, as set forth in § 655.130(f).

(d) The Department of Labor will maintain a publicly available list of agents and recruiters (including government registration numbers, if any) who are party to the agreements employers submit, as well as the persons and entities the employer identified as hired by or working for the recruiter and the locations in which they are operating.

■ 14. Amend § 655.145 by revising the section heading and paragraph (b) to read as follows:

§ 655.145 Pre-determination amendments to applications for temporary employment certification.

* * * * *

(b) *Minor changes to the period of employment.* The *Application for Temporary Employment Certification* may be amended to make minor changes in the total period of employment before the CO issues a final determination. Changes will not be effective until submitted in writing and approved by the CO. In considering whether to approve the request, the CO will review the reason(s) for the request, determine whether the reason(s) are on the whole justified, and take into account the effect any change(s) would have on the adequacy of the underlying test of the domestic labor market for the job opportunity. An employer must demonstrate that the change to the period of employment could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period. Upon acceptance of an amendment, the CO will submit to the SWA any necessary modification to the job order.

■ 15. Amend § 655.167 by revising paragraphs (c)(6) and (7) and adding paragraphs (c)(8) through (12) to read as follows:

§ 655.167 Document retention requirements of H–2A employers.

* * * * *

(c) * * *

(6) The work contract or a copy of the Application for Temporary Employment Certification as defined in § 655.103(b) and specified in § 655.122(q).

(7) If applicable, records of notice to the NPC and to DHS of the abandonment of employment or termination for cause of a worker as set forth in § 655.122(n).

(8) Written contracts with agents or recruiters as specified in § 655.137(a) and the identities and locations of persons hired by or working for the agent or recruiter and the agents and employees of these agents and recruiters, as specified in § 655.137(b).

(9) The identity, location, and contact information of all persons who are the owners of each employer, as specified in § 655.130(a)(2), and the identity, location, and contact information of all persons and entities who are the operators of the place of employment (if different than the employers) and of all persons who manage or supervise any worker employed under the application, as specified in § 655.130(a)(3).

(10) If applicable, disciplinary records, including each step of progressive discipline, any evidence the worker presented in their defense, any investigation related to the termination, and any subsequent instruction afforded the worker.

(11) If applicable, records indicating the reason(s) for termination of any worker, including disciplinary records described in § 655.122(n)(4)(ii) and this section, relating to the termination as set forth in § 655.122(n).

(12) If applicable, evidence demonstrating the employer notified the SWA and each worker of an unforeseen minor delay in the start date of need, as specified in § 655.175(b)(2)(i).

* * * * *

■ 16. Add § 655.175 to read as follows:

§ 655.175 Post-certification changes to applications for temporary employment certification.

(a) *No post-certification changes.* The *Application for Temporary Employment Certification* may not be changed after certification, except where authorized in this subpart. The employer is obligated to comply with the terms and conditions of employment contained in the *Application for Temporary Employment Certification* and job order with respect to all workers recruited in connection with its certification.

(b) *Post-certification changes to the first date of work.* Where the work under the approved *Application for Temporary Employment Certification* will not begin on the first date of need certified and will be delayed for a period of no more than 14 calendar days, due to circumstances that could not have been foreseen, and the crops or commodities will be in jeopardy prior to the expiration of an additional recruitment period, the employer need not withdraw an approved *Application for Temporary Employment Certification,* provided the employer complies with the obligations at paragraphs (b)(1) and (2) of this section.

(1) In the event of a minor delay (no more than 14 calendar days), the employer must provide to all workers who are already traveling to the place of employment, upon their arrival and without cost to the workers until work commences, daily subsistence in the same amount required during travel under § 655.122(h)(1), except for days for which the worker receives compensation under paragraph (b)(2)(ii) of this section. The employer must fulfill this subsistence obligation to the worker no later than the first date the worker would have been paid had they begun employment on time. Employers must comply with all other requirements of the certified *Application for Temporary Employment Certification* beginning on the first date of need certified, including but not limited to housing under § 655.122(d).

(2)(i) In the event of a minor delay (no more than 14 calendar days), the employer must notify the SWA and each worker to be employed under the approved *Application for Temporary Employment Certification* of the delay at least 10 business days before the certified start date of need. The employer must contact the worker in writing (email and other forms of electronic and written notification are acceptable), using the contact information the worker provided to the employer. The employer must retain evidence of such notification under § 655.167.

(ii) If the employer fails to provide timely notification required under paragraph (b)(2)(i) of this section to any worker(s), the employer must pay such worker(s) the same rate of pay required under this subpart, for each hour of the offered work schedule in the job order, for each day that work is delayed, for a period up to 14 calendar days. The employer must fulfill this obligation to the worker no later than the first date the worker would have been paid had they begun employment on time.

(iii) For purposes of an employer's compliance with the three-fourths guarantee under § 655.122(i), any compensation paid to a worker under paragraph (b)(2)(ii) of this section for any workday included within the time period described in § 655.122(i) will be considered hours offered to the worker.

■ 17. Amend § 655.181 by revising paragraph (a)(1) to read as follows:

§ 655.181 Revocation.

(a) * * *

(1) The issuance of the temporary agricultural labor certification was not

justified due to fraud or misrepresentation in the application process, including because the certification was issued in error to a debarred employer, including a successor in interest, during the period of debarment as set forth in § 655.182(c)(2);

* * * * *

■ 18. Amend § 655.182 by revising paragraphs (a), (b), (d)(1)(viii), (f)(1) through (4), and (f)(5)(i) to read as follows:

§ 655.182 Debarment.

(a) *Debarment of an employer, agent, or attorney.* The OFLC Administrator may debar an employer, agent, or attorney from participating in any action under 8 U.S.C. 1188, this subpart, or 29 CFR part 501 subject to the time limits set forth in paragraph (c) of this section, if the OFLC Administrator finds that the employer, agent, or attorney substantially violated a material term or condition of the temporary agricultural labor certification, with respect to H–2A workers; workers in corresponding employment; or U.S. workers improperly rejected for employment, or improperly laid off or displaced.

(b) *Effect on future applications.* (1) No application for H–2A workers may be filed by or on behalf of a debarred employer, or by an employer represented by a debarred agent or attorney, subject to the term limits set forth in paragraph (c)(2) of this section. If such an application is filed, it will be denied without review.

(2) No application for H–2A workers may be filed by or on behalf of a successor in interest to a debarred employer, agent, or attorney, subject to the term limits set forth in paragraph (c)(2) of this section. If the CO determines that such an application is filed, the CO will issue a NOD pursuant to § 655.141 or deny the application pursuant to § 655.164, as appropriate depending upon the status of the *Application for Temporary Employment Certification,* solely on the basis that the entity is a successor in interest to a debarred employer, agent, or attorney. The employer, agent, or attorney may appeal its status as a successor in interest to the debarred entity, pursuant to the procedures for appeals of CO determinations at § 655.171.

* * * * *

(d) * * *

(1) * * *

(viii) A violation of the requirements of § 655.135(j), (k), or (o);

* * * * *

(f) * * *

(1) *Notice of debarment.* If the OFLC Administrator makes a determination to debar an employer, agent, or attorney, the OFLC Administrator will send the party a Notice of Debarment. The Notice will state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, and it will inform the party subject to the Notice of its right to submit rebuttal evidence or to request a debarment hearing. If the party does not file rebuttal evidence or request a hearing within 14 calendar days of the date of the Notice of Debarment, the Notice will be the final agency action and the debarment will take effect at the end of the 14-day period.

(2) *Rebuttal.* The party who received the Notice of Debarment may choose to submit evidence to rebut the grounds stated in the Notice within 14 calendar days of the date the Notice is issued. If rebuttal evidence is timely filed, the OFLC Administrator will issue a final determination on the debarment within 30 calendar days of receiving the rebuttal evidence. If the OFLC Administrator determines that the party should be debarred, the OFLC Administrator will inform the party of its right to request a debarment hearing according to the procedures of paragraph (f)(3) of this section. The party must request a hearing within 14 calendar days after the date of the OFLC Administrator's final determination, or the OFLC Administrator's determination will be the final agency action and the debarment will take effect at the end of the 14-calendar-day period.

(i) The OFLC Administrator may grant one extension of the time period for filing rebuttal evidence for any party that has shown good and substantial cause.

(ii) If the party seeks to request a one-time extension of time to submit rebuttal evidence, the party must make the request in writing to the OFLC Administrator and the written request for extension must be received by the OFLC Administrator within 14 calendar days of the date the Notice of Debarment is issued. Such a request must be made in writing to the OFLC Administrator.

(iii) Only requests that include detailed information and supporting documentation describing the good and substantial cause that has necessitated the one-time extension request may be granted. Good and substantial cause may include, but is not limited to, health-related emergencies, catastrophic fire- or weather-related incidents, or other similar conditions that are wholly outside the party's control and hinder the party's ability to respond with rebuttal evidence within the required timeframe. A denial of a one-time extension request is not appealable.

(3) *Hearing.* The recipient of a Notice of Debarment may request a debarment hearing within 14 calendar days of the date of a Notice of Debarment or the date of a final determination of the OFLC Administrator after review of rebuttal evidence submitted pursuant to paragraph (f)(2) of this section. To obtain a debarment hearing, the debarred party must, within 14 calendar days of the date of the Notice or the final determination, file a written request to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street NW, Suite 400–N, Washington, DC 20001–8002, and simultaneously serve a copy to the OFLC Administrator. The debarment will take effect 14 calendar days from the date the Notice of Debarment or final determination is issued, unless a request for review is properly filed within 14 calendar days from the issuance of the Notice of Debarment or final determination. The timely filing of a request for a hearing stays the debarment pending the outcome of the hearing. Within 10 calendar days of receipt of the request for a hearing, the OFLC Administrator will send a certified copy of the ETA case file to the Chief ALJ by means normally assuring next-day delivery. The Chief ALJ will immediately assign an ALJ to conduct the hearing. The procedures in 29 CFR part 18 apply to such hearings, except that the request for a hearing will not be considered to be a complaint to which an answer is required.

(4) *Decision.* After the hearing, the ALJ must affirm, reverse, or modify the OFLC Administrator's determination. The ALJ will prepare the decision within 60 calendar days after completion of the hearing and closing of the record. The ALJ's decision will be provided immediately to the parties to the debarment hearing by means normally assuring next-day delivery. The ALJ's decision is the final agency action, unless either party, within 14 calendar days of the ALJ's decision, seeks review of the decision with the Administrative Review Board (ARB).

(5) * * *

(i) Any party wishing review of the decision of an ALJ must, within 14 calendar days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition must be served on all parties and on the ALJ. The ARB will decide whether to accept the petition within 30 calendar days of receipt. If the ARB declines to accept the petition, or if the ARB does not issue a notice accepting a petition within 30 calendar days after the receipt of a timely filing

of the petition, the decision of the ALJ will be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ will be stayed unless and until the ARB issues an order affirming the decision. The ARB must serve notice of its decision to accept or not to accept the petition upon the ALJ and upon all parties to the proceeding.

* * * * *

■ 19. Add § 655.190 to read as follows:

§ 655.190 Severability.

If any provision of this subpart is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of total invalidity or unenforceability, in which event the provision or sub-provision shall be severable from this subpart and shall not affect the remainder thereof.

■ 20. Amend § 655.210 by adding paragraph (g)(3) to read as follows:

§ 655.210 Contents of herding and range livestock job orders.

* * * * *

(g) * * *

(3) If applicable, the employer must state in the job order:

(i) That overtime hours may be available;

(ii) The wage rate(s) to be paid for any such overtime hours;

(iii) The circumstances under which the wage rate(s) for overtime hours will be paid, including, but not limited to, after how many hours in a day or workweek the overtime wage rate will be paid, and whether overtime wage rates will vary between-place(s) of employment; and

(iv) Where the overtime pay is required by law, the applicable Federal, State, or local law requiring the overtime pay.

* * * * *

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

■ 21. The authority citation for part 658 continues to read as follows:

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

■ 22. Revise § 658.500 to read as follows:

§ 658.500 Scope and purpose of subpart.

(a) This subpart contains the regulations governing the discontinuation of services provided by the ES to employers pursuant to parts 652 and 653 of this chapter.

(b) For purposes of this subpart only, where the term ''employer'' is used, it refers to employers, agents, farm labor contractors, joint employers, and successors in interest to any employer, agent, farm labor contractor, or joint employer, as defined at § 651.10 of this chapter.

■ 23. Amend § 658.501 by:

■ a. Revising paragraphs (a)(1), (2), and (4) through (8) and (b); and

■ b. Removing paragraph (c).

The revisions read as follows:

§ 658.501 Basis for discontinuation of services.

(a) * * *

(1) Submit and refuse to correct or withdraw job orders containing terms and conditions which are contrary to employment-related laws;

(2) Submit job orders and refuse to provide assurances, or refuse to withdraw job orders that do not contain assurances, required pursuant to the Agricultural Recruitment System for U.S. Workers at part 653, subpart F, of this chapter;

* * * * *

(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to the Department or the SWA by that enforcement agency, including those who are currently debarred from participating in the H–2A or H–2B foreign labor certification programs pursuant to § 655.73 or § 655.182 of this chapter or 29 CFR 501.20 or 503.24;

(5) Are found to have violated ES regulations pursuant to § 658.411 or § 658.419;

(6) Refuse to accept qualified workers referred through the clearance system for criteria clearance orders filed pursuant to part 655, subpart B, of this chapter;

(7) Refuse to cooperate in field checks conducted pursuant to § 653.503 of this chapter; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (7) of this section.

(b) If an ES office or SWA has information that an employer participating in the ES may not have complied with the terms of its current or prior temporary labor certification, under, for example the H–2A and H–2B visa programs, SWA officials must determine whether there is a basis under paragraph (a) of this section for which the SWA must initiate procedures for discontinuation of services. SWA officials must simultaneously notify the OFLC National Processing Center of the alleged non-compliance.

■ 24. Revise § 658.502 to read as follows:

§ 658.502 Notification to employers of intent to discontinue services.

(a) Except as provided in paragraph (b) of this section, where the SWA determines that there is an applicable basis for discontinuation of services under § 658.501(a)(1) through (8), the SWA must notify the employer in writing that it intends to discontinue the provision of ES services in accordance with this section and must provide the reasons for proposing discontinuation of services.

(1) Where the decision is based on § 658.501(a)(1), the SWA must specify the date the order was submitted, the job order involved, and the terms and conditions contrary to employment-related laws and the laws involved. The SWA must notify the employer in writing that all ES services will be terminated unless the employer within 20 working days:

(i) Provides adequate evidence that the terms and conditions are not contrary to employment-related laws; or

(ii) Withdraws the terms and conditions and resubmits the job order in compliance with all employment-related laws; or

(iii) If the job is no longer available, makes assurances that all future job orders submitted will be in compliance with all employment-related laws.

(2) Where the decision is based on § 658.501(a)(2), the SWA must specify the date the order was submitted, the job order involved, the assurances involved, and explain how the employer refused to provide the assurances. The SWA must notify the employer that all ES services will be terminated unless the employer within 20 working days:

(i) Resubmits the order with the required assurances; or

(ii) If the job is no longer available, makes assurances that all future job orders submitted will contain all assurances required pursuant to the Agricultural Recruitment System for U.S. Workers at part 653, subpart F, of this chapter.

(3) Where the decision is based on § 658.501(a)(3), the SWA must specify the terms and conditions the employer misrepresented or the assurances with which the employer did not fully comply, and explain how the employer misrepresented the terms or conditions or failed to comply with assurances on the job order. The SWA must notify the

employer that all ES services will be terminated unless the employer within 20 working days:

(i) Provides adequate evidence that terms and conditions of employment were not misrepresented; or

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders; or

(iii) Provides adequate evidence that it has resolved the misrepresentation of terms and conditions of employment or noncompliance with assurances and provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances.

(4) Where the decision is based on § 658.501(a)(4), the SWA must provide evidence of the final determination, including debarment. For final determinations, the SWA must specify the enforcement agency's findings of facts and conclusions of law as to the employment-related law violation(s). For final debarment orders, the SWA must specify the time period for which the employer is debarred from participating in one of the Department's foreign labor certification programs. The SWA must notify the employer that all ES services will be terminated unless the employer within 20 working days:

(i) Provides adequate evidence that the enforcement agency's determination is not final because, for example, it has been stayed pending appeal, overturned, or reversed; or

(ii) Provides adequate evidence that, as applicable:

(A) The Department's debarment is no longer in effect; and

(B) The employer has completed all required actions imposed by the enforcement agency as a consequence of the violation, including payment of any fines or restitution to remediate the violation; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on § 658.501(a)(5), the SWA must specify which ES regulation, as defined in § 651.10, the employer has violated and must provide basic facts to explain the violation. The SWA must notify the employer that all ES services will be terminated unless the employer within 20 working days:

(i) Provides adequate evidence that the employer did not violate ES regulations; or

(ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(6) Where the decision is based on § 658.501(a)(6), the SWA must indicate that the employer filed the job order pursuant to part 655, subpart B, of this chapter, and specify the name of each worker the SWA referred and the employer did not accept. The SWA must notify the employer that all ES services will be terminated unless the employer within 20 working days:

(i) Provides adequate evidence that the workers were accepted; or

(ii) Provides adequate evidence that the workers were not available to accept the job; or

(iii) Provides adequate evidence that the workers were not qualified; or

(iv) Provides adequate evidence that the workers were referred after the time period described in § 655.135(d) of this chapter elapsed; or

(v) Provides adequate evidence that:

(A) After refusal, the employer accepted the qualified workers referred; or

(B) Appropriate restitution has been made or other remedial action taken; and

(vi) Provides assurances that qualified workers referred in the future will be accepted or, if the time period described in § 655.135(d) of this chapter has lapsed, provides assurances that qualified workers referred on all future criteria clearance orders will be accepted.

(7) Where the decision is based on § 658.501(a)(7), the SWA must explain how the employer did not cooperate in the field check. The SWA must notify the employer that all ES services will be terminated unless the employer within 20 working days:

(i) Provides adequate evidence that it did cooperate; or

(ii) Immediately cooperates in the conduct of field checks; and

(iii) Provides assurances that it will cooperate in future field checks.

(8) Where the decision is based on § 658.501(a)(8), the SWA must list and provide basic facts explaining the prior instances where the employer has repeatedly caused initiation of discontinuation proceedings. The SWA must notify the employer that all ES services will be terminated unless the employer within 20 working days provides adequate evidence that the SWA's initiation of discontinuation in prior proceedings was unfounded.

(b) SWA officials must discontinue services immediately in accordance with § 658.503, without providing the notice described in this section, if an employer has met any of the bases for discontinuation of services under § 658.501(a) and, in the judgment of the State Administrator, exhaustion of the administrative procedures set forth in this section would cause substantial harm to workers.

■ 25. Revise § 658.503 to read as follows:

§ 658.503 Discontinuation of services.

(a) Within 20 working days of receipt of the employer's response to the SWA's notification under § 658.502(a), or at least 20 working days after the SWA's notification has been received by the employer if the SWA does not receive a response, the SWA must notify the employer in writing of its final determination. If the SWA determines that the employer did not provide a satisfactory response in accordance with § 658.502(a), the SWA's notification must specify the reasons for its determination and state that the discontinuation of services is effective 20 working days from the date of the notification. The notification must also state that the employer may request reinstatement or appeal the determination by requesting a hearing pursuant to § 658.504, and that a request for a hearing stays the discontinuation pending the outcome of the hearing. If the employer does not request a hearing, the SWA must also notify the ETA Office of Workforce Investment of any final determination to discontinue ES services within 10 working days of the date the determination becomes effective.

(b) Where the SWA discontinues services immediately under § 658.502(b), the SWA's written notification must specify the facts supporting the applicable basis for discontinuation under § 658.501(a), the reasons that exhaustion of the administrative procedures would cause substantial harm to workers, and that services are discontinued as of the date of the notification. The notification must also state that the employer may request reinstatement or appeal the determination by requesting a hearing pursuant to § 658.504, and that a request for a hearing relating to immediate discontinuation does not stay the discontinuation pending the outcome of the hearing. Within 10 working days of the date of issuance, the SWA must also notify the ETA Office of Workforce

Investment of any determination to immediately discontinue ES services.

(c) If the SWA discontinues services to an employer that is subject to Federal Contractor Job Listing Requirements, the SWA must notify the ETA regional office immediately.

(d) If the SWA discontinues services to an employer based on a complaint filed pursuant to § 658.411, the SWA must notify the complainant of the employer's discontinuation of services.

(e) If the SWA discontinues services to an employer, the employer cannot participate in or receive Wagner-Peyser Act ES Services provided by the ES, including by any SWA, to employers pursuant to parts 652 and 653 of this chapter. From the date of discontinuance, the SWA that issued the determination must remove the employer's active job orders from the clearance system. No SWA may process any future job orders from the employer or provide any other services pursuant to parts 652 and 653 of this chapter to the employer unless services have been reinstated under § 658.504.

(f) SWAs must continue to provide the full range of ES and other appropriate services to workers whose employers experience discontinuation of services under this subpart.

■ 26. Revise § 658.504 to read as follows:

§ 658.504 Reinstatement of services.

(a) Where the SWA discontinues services to an employer under § 658.502(b) or § 658.503, the employer may submit a written request for reinstatement of services to the SWA or may, within 20 working days of receiving notice of the SWA's final determination, appeal the discontinuation by submitting a written request for a hearing.

(b) If the employer submits a written request for reinstatement of services to the SWA:

(1) Within 20 working days of receipt of the employer's request for reinstatement, the SWA must notify the employer of its decision to grant or deny the request. If the SWA denies the request for reinstatement, it must specify the reasons for the denial and notify the employer that it may request a hearing, in accordance with paragraph (c) of this section, within 20 working days.

(2) The SWA must reinstate services if:

(i) The employer provides adequate evidence that the policies, procedures, or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future; and

(ii) The employer provides adequate evidence that it has responded to all findings of an enforcement agency, SWA, or ETA, including payment of any fines or restitution to remediate the violation, which were the basis of the discontinuation of services, if applicable.

(c) If the employer submits a timely request for a hearing:

(1) The SWA must follow the procedures set forth in § 658.417.

(2) The SWA must reinstate services to the employer if ordered to do so by a State hearing official, Regional Administrator, or Federal Administrative Law Judge as a result of a hearing offered pursuant to paragraph (c)(1) of this section.

(d) Within 10 working days of the date of issuance, the SWA must notify the ETA Office of Workforce Investment of any determination to reinstate ES services, or any decision on appeal upholding a SWA's determination to discontinue services.

TITLE 29: LABOR

Wage and Hour Division

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 27. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 note; and sec. 701, Pub. L. 114–74, 129 Stat. 584.

■ 28. Amend § 501.3 by:

■ a. In paragraph (a), adding the definitions of *Key service provider* and *Labor organization* in alphabetical order and removing the definition of *Successor in interest;* and

■ b. Adding paragraph (d).

The additions read as follows:

§ 501.3 Definitions.

(a) * * *

Key service provider. A health-care provider; a community health worker; an education provider; an attorney, legal advocate, or other legal service provider; a government official, including a consular representative; a member of the clergy; and any other service provider to which a worker may need access.

Labor organization. Any organization of any kind, or any agency or employee representation committee or plan, in which workers participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

(d) *Definition of single employer for purposes of temporary or seasonal need and contractual obligations.* Separate entities will be deemed a single employer (sometimes referred to as an ''integrated employer'') for purposes of assessing temporary or seasonal need and for enforcement of contractual obligations if they meet the definition of single employer in this paragraph (d). Under the definition of single employer, a determination of whether separate entities are a single employer is not determined by a single factor, but rather the entire relationship is viewed in its totality. Factors considered in determining whether two or more entities consist of a single employer include:

(1) Common management;

(2) Interrelation between operations;

(3) Centralized control of labor relations; and

(4) Degree of common ownership/financial control.

■ 29. Amend § 501.4 by revising paragraph (a) to read as follows:

§ 501.4 Discrimination prohibited.

(a)(1) A person may not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has:

(i) Filed a complaint under or related to 8 U.S.C. 1188 or this part;

(ii) Instituted or caused to be instituted any proceedings related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part;

(iii) Testified or is about to testify in any proceeding under or related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part;

(iv) Consulted with an employee of a legal assistance program or an attorney on matters related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part;

(v) Consulted with a key service provider on matters related to 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part;

(vi) Exercised or asserted on behalf of themself or others any right or protection afforded by 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part; or

(vii) Filed a complaint, instituted or caused to be instituted any proceeding, or testified or is about to testify in any proceeding under or related to any applicable Federal, State, or local laws or regulations, including safety and health laws.

(2) With respect to any person engaged in agriculture as defined and

applied in 29 U.S.C. 203(f), a person may not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner discriminate against, and may not cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, any person who has engaged in activities related to self-organization, including: any effort to form, join, or assist a labor organization; a secondary activity such as a secondary boycott or picket; or other concerted activities for the purpose of mutual aid or protection relating to wages or working conditions; or refused to engage in any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment.

* * * * *

■ 30. Add § 501.10 to subpart A to read as follows:

§ 501.10 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of total invalidity or unenforceability, in which event the provision or sub-provision shall be severable from this part and shall not affect the remainder thereof.

■ 31. Amend § 501.20 by revising paragraphs (a), (b), (d)(1)(viii), and (e) and adding paragraph (j) to read as follows:

§ 501.20 Debarment and revocation.

(a) *Debarment of an employer, agent, or attorney.* The WHD Administrator may debar an employer, agent, or attorney from participating in any action under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or this part, subject to the time limits set forth in paragraph (c) of this section, if the WHD Administrator finds that the employer, agent, or attorney substantially violated a material term or condition of the temporary agricultural labor certification, with respect to H–2A workers, workers in corresponding employment, or U.S. workers improperly rejected for employment, or improperly laid off or displaced, by issuing a Notice of Debarment.

(b) *Effect on future applications.* (1) No application for H–2A workers may be filed by or on behalf of a debarred employer, or by an employer represented by a debarred agent or attorney, subject to the time limits set forth in paragraph (c)(2) of this section. If such an application is filed, it will be denied without review.

(2) No application for H–2A workers may be filed by or on behalf of a successor in interest, as defined in 20 CFR 655.104, to a debarred employer, agent, or attorney, subject to the term limits set forth in paragraph (c)(2) of this section. If the CO determines that such an application is filed, the CO will issue a Notice of Deficiency (NOD) pursuant to 20 CFR 655.141 or deny the application pursuant to 20 CFR 655.164, as appropriate depending upon the status of the *Application for Temporary Employment Certification,* solely on the basis that the entity is a successor in interest to a debarred employer, agent, or attorney. The employer, agent, or attorney may appeal its status as a successor in interest to the debarred entity, pursuant to the procedures for appeals of CO determinations at 20 CFR 655.171.

* * * * *

(d) * * *

(1) * * *

(viii) A violation of the requirements of 20 CFR 655.135(j), (k), or (o);

* * * * *

(e) *Procedural requirements.* The Notice of Debarment must be in writing, must state the reason for the debarment finding, including a detailed explanation of the grounds for and the duration of the debarment, must identify appeal opportunities under § 501.33 and a timeframe under which such rights must be exercised and must comply with § 501.32. The debarment will take effect 14 calendar days from the date the Notice of Debarment is issued, unless a request for review is properly filed within 14 calendar days from the issuance of the Notice of Debarment. The timely filing of an administrative appeal stays the debarment pending the outcome of the appeal as provided in § 501.33(d).

* * * * *

(j) *Successors in interest.* When an employer, agent, or attorney is debarred under this section, any successor in interest to the debarred employer, agent, or attorney is also debarred, regardless of whether the successor is named or not named in the notice of debarment issued under paragraph (a) of this section.

■ 32. Amend § 501.33 by revising paragraphs (a), (b)(2), and (c) to read as follows:

§ 501.33 Request for hearing.

(a)(1) Any person desiring review of a determination referred to in § 501.32, including judicial review, except any determination that includes debarment, shall make a written request for an administrative hearing to the official who issued the determination at the WHD address appearing on the determination notice, no later than 30 calendar days after the date of issuance of the notice referred to in § 501.32.

(2) Any person desiring review of any determination that includes debarment, including judicial review, shall make a written request for an administrative hearing to the official who issued the determination at the WHD address appearing on the determination notice, no later than 14 calendar days after the date of issuance of the notice referred to in § 501.32.

(b) * * *

(2) Specify the issue or issues stated in the notice of determination giving rise to such request (any issues not raised in the request ordinarily will be deemed waived);

* * * * *

(c) The request for such hearing must be received by the official who issued the determination, at the WHD address appearing on the determination notice, within the time set forth in paragraph (a)(1) or (2) of this section. Requests may be made by certified mail or by means normally assuring overnight delivery.

* * * * *

■ 33. Amend § 501.42 by revising paragraph (a) to read as follows:

§ 501.42 Procedures for initiating and undertaking review.

(a) A respondent, WHD, or any other party wishing review, including judicial review, of a decision of an ALJ not including debarment must, within 30 calendar days of the decision of the ALJ, petition the ARB to review the decision. A respondent, WHD, or any other party wishing review, including judicial review, of a decision of an ALJ involving debarment must, within 14 calendar days of the decision of the ALJ, petition the ARB to review the decision. Copies of the petition must be served on all parties and on the ALJ. If the ARB does not issue a notice accepting a petition for review of any decision (whether involving debarment, or not) within 30 calendar days after receipt of a timely filing of the petition, the decision of the ALJ will be deemed the final agency action. If within 30 calendar days of the date of a decision not involving debarment, or within 14 calendar days of the date of a decision involving debarment no petition has

been received, the decision of the ALJ will be deemed the final agency action.

* * * * *

Julie A. Su,

Acting Secretary of Labor.

[FR Doc. 2023–19852 Filed 9–13–23; 8:45 am]

BILLING CODE 4510–FP–P; 4510–FR–P; 4510–27–P

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